

1923.

Present : Bertram C.J., Porter J., and Garvin A.J.

KURUP v. BANDA.

509—P. C. Nuwara Eliya, 6,948.

Penal Code, s. 450—Being found in a building—Failing to give a satisfactory account of himself.

Where a person is charged under section 450 of the Penal Code with being found in or upon any building or enclosure and failing to give a satisfactory account of himself, the accused has to give a satisfactory account of his presence at the place.

THE accused-appellant was charged under section 450 of the Ceylon Penal Code with "being found upon an enclosure and failing to give a satisfactory account of himself." He was convicted and sentenced to a term of one month's rigorous imprisonment. He appealed, and the case came up for argument before Garvin A.J.

At the argument counsel for the appellant relied on *The King v. Don Martin*¹ and contended that the accused's conviction was bad inasmuch as he had given a sufficient account of himself, even if he had failed to account satisfactorily for his presence in the enclosure.

Garvin A.J. referred the question to a Court of three Judges, and the case was argued before Bertram C.J., Porter J., and Garvin A.J.

Soertsz, for the appellant.—In our Ordinances the words "not giving a satisfactory account of himself" occur earliest in Ordinance No. 3 of 1840 dealing with *vagrants*.

Section 2 (12) of that Ordinance provides that "every person being found in or upon any dwelling house, warehouse, godown, stable, outhouses, or other building, or in any enclosed garden, yard, plantation, or compound for any unlawful purpose, or not giving a satisfactory account of himself, &c."

Ordinance No. 3 of 1840 was repealed by Ordinance No. 4 of 1841, and section 2 (12) of the old Ordinance was re-enacted in section 4 (6) of Ordinance No. 4 of 1841. This section 4 (6) of Ordinance No. 4 of 1841 was repealed, and by section 6 of Ordinance No. 6 of 1898 section 450 of the Penal Code was amended by the addition of the words "or not giving a satisfactory account of himself."

This shows that the words were taken from the Ordinance dealing with *vagrants* and incorporated in section 450 of the Penal Code. The words should therefore be construed in the same way

¹ (1923) 25 N. L. R. 169.

as they would have been construed in their context in the Vagrants' Ordinance.

In the Ordinance dealing with vagrants it is of the first importance that the vagrant should be able to give a satisfactory account of himself, an account that will show that he is not really a vagrant.

The words in themselves are clear. If the Legislature intended to require a satisfactory account of the accused's presence at a place, it would have provided as it has been provided in the English Prevention of Crimes Act, 1879, "account to the satisfaction of the Court before whom he is brought for being found on such premises."

If this interpretation does not provide for certain cases, the section should be amended. As it stands all that is required is a satisfactory personal account.

Akbar, S.-G. (with him *Dias, C.C.*), for the Crown.—Section 450 was meant to provide for the case of an accused not able to account for his presence. Satisfactory account of himself would include an account of himself up to the moment of his being found at the place including an explanation of his presence there. Counsel cited the following cases :—*Wendt's Reports*, p. 237 ; *Ramanathan's Reports*, 63–66, p. 134 ; *Grenier's Reports*, 1872, p. 6 ; *Ramanathan's Reports*, 72–75 and 76, p. 117.

November 26, 1923. BERTRAM C.J.—

In this case we have been called upon to consider the interpretation of a provision of section 450 of the Penal Code. The particular words that we have to consider are the words : "Fails to give a satisfactory account of himself." The words are used with reference to a person who is found upon any building or enclosure, and the question propounded is whether the expression "satisfactory account of himself" refers to an account of a man's antecedents, occupation, and other personal characteristics, irrespective of his presence at the spot in question, or whether in considering the question whether a man has given a satisfactory account of himself, we are entitled to take into consideration the account he gives of his presence at the spot.

We may be assisted by considering the history of the provision. It is derived from our Vagrancy Ordinance, No. 4 of 1841. That Ordinance replaced an earlier enactment, Regulation No. 3 of 1840. Section 2 of that Regulation contained two material provisions : One, No. 4, which dealt with a case of a person wandering abroad or lodging in a verandah, house, shed, or unoccupied building, not having any visible means of subsistence, and not giving a good account of himself. The other provision is section 12, which relates to a person being found in or upon any dwelling house, warehouse, building, outhouse, or other building, or any enclosed garden, plantation, or compound for any unlawful

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purpose, or not giving a satisfactory account of himself. Both these provisions were taken from the English Vagrancy Act, 5 George IV., chapter 83, section 4. But our own enactment made a very important addition to the terms of the English enactment, namely, the addition of these very words now in question, the words: "not giving any satisfactory account of himself."

We have to ask ourselves what our Legislature meant in adding those words. Did they mean that a man found in a dwelling house or enclosed yard was to be called upon to give an account of his antecedents, or did they mean that he was to be called upon to give a satisfactory account of his presence. Clearly, the latter is the more reasonable interpretation of the provision, if the words are capable of it. It would be absurd if inquiries as to a man found in one's house or yard should be confined to the antecedents of the person so found, and that no question should be asked as to his reasons for being there. The only difficulty about the interpretation is that the enactment says "a satisfactory account of himself," and does not say "a satisfactory account of his presence." The expression is remarkably parallel to the corresponding expression in the other enactment, paragraph 4. In one case the words are "not giving a satisfactory account of himself"; in the other "not giving a good account of himself." It is conceded that the words "not giving a good account of himself" refer to a personal account, and that in the enactment in which these words occur, a man would not necessarily be called upon to give an account of his presence at a particular spot at a particular time. He could only be called upon to give an account of himself personally.

The question arises, therefore, why a similar interpretation should not be given to the other provision. The answer is, I think, that each of these two provisions must be considered in reference to its context. In the one case it must first be shown that a man was found wandering about or lodging somewhere and that he has no visible means of subsistence. He must thereupon give a good account of himself. "Good" in this context must be interpreted as having reference to the previous words "visible means of subsistence." The account under these circumstances is only a personal account, and not an account of the man's presence where he was found. In the other provision, however, the words "satisfactory account" must be interpreted with reference to the fact that a man is found in or upon a dwelling house or an enclosed yard, where, ordinarily speaking, a stranger ought not to be. An account of himself, under these circumstances, in order to be a satisfactory account, should include some account of his presence at such a spot.

An interpretation of the provision had previously been under consideration by this Court, and it was because of the opinion expressed by Jayewardene J. in the case of *The King v. Martin*¹ that

¹ (1923) 25 N. L. R. 169.

the question is referred to this Court. In that case Jayewardene J. pointed out that the accused is not called upon to account for his presence ; he has only to give an account of himself. I feel the force of that observation. But I think that the explanation I have suggested satisfactorily disposes of the difficulty. It is certainly true that the wording of our section is unfortunate. It would have been much clearer if the words used had been those which appear in section 7, paragraph 4, of the Prevention of Crimes Act, 1879. There the words are "without being able to account to the satisfaction of the Court before whom he is brought for being found on such premises." I think, nevertheless, the words in our enactment were intended to have the same meaning, and, if considered in their context, they may legitimately bear that meaning. This is the view which I understand we take of the law.

The question is what should be done with the offender on the facts. Mr. Soertsz appeals for lenient treatment on the ground that he is only 18 years of age, and that he has not been previously convicted. It might be possible to deal with him under the section dealing with first offenders. But there appear to be objections to ordering a person to be bound over to be of good behaviour. In many cases a small fine is thought to be preferable even by the offender. Under the circumstances, on the appeal of Mr. Soertsz, I think the punishment of a fine of Rs. 25 would be sufficient instead of the imprisonment ordered by the learned Magistrate. In default of the payment of the fine, the accused will undergo a fortnight's simple imprisonment.

PORTER J.—I agree.

GARVIN A.J.—I agree.

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Varied.

