

1970

Present : H. N. G. Fernando, C.J.

K. G. WIJERATNE, Appellant, *and* INSPECTOR OF POLICE, FORT,
Respondent

*S. C. 31/69—J. M. C. Colombo, 3S496**Criminal law—Charge of retaining stolen property—Quantum of evidence.*

In a prosecution for dishonestly retaining stolen property there must be proper proof of the alleged theft and that the accused knew that the property in question was stolen property.

APPEAL from a judgment of the Joint Magistrate's Court, Colombo.

Desmond Fernando, with *Miss Suriya Wickremasinghe*, for the accused-appellant.

M. L. M. Ameen, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

¹ *12 Cr. App. R. 219 at 221.*

September 27, 1970. H. N. G. FERNANDO, C.J.—

It appears from the evidence in this case that the C. T. B. issued to a Union of C. T. B. workers Travel Cards authorising free travel on buses, and that the document P1 was one of the cards which had been issued to the Union. The practice regarding the use of these cards is apparently that, if a particular person is to be authorised to travel on the authority of one of these cards, the President of the Union signs a note stating that the named person is allowed to use the Travel Card the number of which is specified in the note, and the person is then given the card for use.

The charge in the present case was that this accused had dishonestly retained the Travel Card P1 having reason to believe that the card was stolen property.

According to the evidence the accused travelled on a bus on 23rd July, 1967 and was asked by a Checker for his ticket. The accused thereupon showed the Travel Card P1 as well as a letter P2 signed by the President of the Union to the effect that the accused was authorised to use this particular Travel Card. *Prima facie* therefore the fact that the accused had in his possession the covering note P2 which authorised him to travel under the Travel Card P1, sufficiently explained his possession of both these documents.

The case for the prosecution however was that the employment of the accused had been terminated in March 1966, and that this Travel Card had not been delivered on him for the purpose of the journey which he made in August 1967. The President of the Union gave evidence to the effect that this particular Travel Card had been lost in 1965 and that he had informed the Staff Manager of C. T. B. of the loss. It was proved beyond any doubt that this information had been given to the Staff Manager and that a substitute Travel Card had been issued in place of the Travel Card which had been lost. Thus the case for the prosecution was that the lost Travel Card had been stolen by someone, and that the accused had somehow got possession of it after the theft and had improperly retained it and used it for free travel on a C. T. B. bus.

The evidence of the President of the Union clearly justified a finding that the accused, although he did have in his possession the letter P2 which purported to authorise him to use the Travel Card P1, had in fact no authority from the President of the Union to use the Travel Card on this particular day. But the most important element of the charge against him is that he knew or had reason to believe that the Travel Card had been stolen before he used it. On this point there was the evidence of the President that in 1965 he had discovered the loss of this card, and there was documentary evidence to show that he had reported the alleged loss to the Staff Manager and that a substitute card had been issued in place of the one stated to be lost. But, on the President's own evidence, it is apparent that the Travel Cards were kept in the custody of a Clerk at the Union and that it was this Clerk who, whenever occasion arose, handed a Travel Card to a person authorised to use it. If then this

particular card had indeed been stolen, it was the Clerk and not the President who could properly testify to the fact of theft; since, as the President himself stated, the Clerk had the custody of the cards, any evidence given by anyone other than the Clerk, that the card had been stolen, was mere hearsay. Since the Clerk was not called as a witness at the trial, there was no proper proof of the alleged theft.

In these circumstances, the prosecution failed to prove that the card which the accused used was stolen property to his knowledge.

I accordingly allow the appeal and set aside the conviction and sentence.

Appeal allowed.
