

1946

Present : Wijeyewardene S.P.J.

PONNAMAL PANDITHU, Appellant, and THE INSPECTOR  
OF POLICE, DEMATAGODA, Respondent.

713—M. C. Colombo, 14,755.

*Evidence—Magistrate's belief in evidence for the prosecution—No ground in itself for disbelieving evidence for the defence.*

A Magistrate would be wrong in deciding the question of an accused's guilt by saying "I believe the evidence for the prosecution and therefore I disbelieve the evidence for the defence".

**A** PPEAL against a conviction from the Magistrate's Court, Colombo.

*L. A. Rajapakse, K.C.* (with him *Ian de Zoysa*), for the accused, appellant.

*E. P. Wijetunge, C.C.*, for the Attorney-General.

*Cur. adv. vult.*

July 23, 1946. WIJEYWARDENE S.P.J.—

The accused-appellant was convicted on a charge of retaining a stolen rickshaw belonging to one Marimuttu and sentenced to pay a fine of Rs. 100.

Marimuttu lost his rickshaw on February 16, 1946, and made a complaint to the Police the next day. On February 21, Selvam, the son-in-law of Marimuttu, gave some information to the Police and Police Constable Thuraisingham went to the accused's shed accompanied by Selvam. In the shed there were about ten rickshaws. Selvam could not identify the lost rickshaw when he first examined them. He was then asked by Thuraisingham "to look again". He did so and identified

P 1, the rickshaw produced in Court, as the lost rickshaw of Marimuttu. Selvam says, "Then we examined it clearly and I found the identifying marks". According to his evidence, these identifying marks were (i) "a projecting nail in the spring", and (ii.) "a patch on the back plank about the size of a span". Thuraisingham, the Police Constable, says that Selvam mentioned to him the second identifying mark only after the rickshaw was taken out of the accused's shed. He does not refer at all to the first identifying mark and there is no evidence that it was ever mentioned to Thuraisingham by Selvam. The evidence given by Marimuttu does not carry the case for the prosecution any further, as Marimuttu was not present when the Police inspected the rickshaw in the accused's shed. There is further no evidence that Marimuttu mentioned any identifying mark when he made his complaint on February 17. On the other hand the accused produced a document D 1 as soon as the Police went to his shed and stated he bought the rickshaw P1 on that document on January 28. At the trial the accused gave evidence and called as his witness Rosahamy, the vendor on P 1.

On the evidence itself I experience some difficulty in upholding the judgment of the learned Magistrate. That difficulty is increased in view of the following passage which forms a substantial part of the judgment of the Magistrate :—

"The case turns on the question whether I believe that the rickshaw produced in Court was the property of the complainant. I am satisfied on the evidence of the complainant and his son-in-law both of whom used the rickshaw that this rickshaw is the one that belonged to complainant and which was stolen from his possession on 16th of February last. If I believe that evidence I must necessarily reject the evidence of the witness called by the accused and the accused's own story that he bought this rickshaw from her on January 28, for it is obvious from a comparison of the two dates that the rickshaw was still in the possession of the complainant and not in Rosahamy's possession on the date she sold the same rickshaw to accused".

A Magistrate would acquit the accused in a case, if, at the close of the case for the prosecution he thinks that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. If he thinks, however, that a *prima facie* case has been made, he would ask the defence to lead evidence and then consider whether the tentative decision reached by him on the evidence for the prosecution should be altered or not in view of the evidence for the defence. That however is very different from a Magistrate deciding the question of an accused's guilt by saying, "I believe the evidence for the prosecution and therefore I disbelieve the evidence for the defence".

I allow the appeal and acquit the accused.

*Appeal allowed.*