

1940

Present : Moseley J.

DIAS *v.* SUPPIAH.884—*M. C. Mallakam, 19,202.*

Found in a building or enclosure—Failing to give a satisfactory account of himself—Burden of proof—Penal Code, s. 450 (Cap. 15).

Where a person is charged under section 450 of the Penal Code with having been found in a certain compound and failing to give a satisfactory account of himself,—

Held, that the burden is on the prosecution to prove that the accused failed to give a satisfactory account of his presence.

Kurup v. Banda (25 N. L. R. 402) referred to.

A PPEAL from a conviction by the Magistrate of Mallakam.

T. K. Curtis. for accused, appellant.

Nihal Gunasekera. C.C.. for complainant, respondent.

Cur. adv. vult.

February 21, 1940. MOSELEY J.—

The appellant was charged with having been found in a certain compound and failing to give a satisfactory account of himself, an offence punishable under section 450 of the Penal Code. I would observe, in passing, that the complaint was filed on December 14, 1938, the trial fixed for March 7, 1939, and it was not until November 14, 1939, after many adjournments that the accused was convicted and sentenced to three months' rigorous imprisonment. Two adjournments, each of a month or more, were granted on the ground that the prosecution was not ready, three others on account of the absence of a prosecution witness. Such delays must meet with strong disapproval and these comments are made in the hope that efforts will be made to avoid them in future.

The main ground of appeal is that the appellant gave to the Court a reasonable explanation of his presence on the premises, an explanation which, in the absence of contradiction by the prosecution, should have been accepted. If the case depended upon the explanation which was given by the appellant to the trial Court, I should be inclined to agree with his contention and would, to put it no higher, give the appellant the benefit of the doubt.

But it seems to me that the prosecution has failed to prove a *prima facie* case against the appellant. There are two ingredients of the offence, viz., that the accused (1) was found in the compound; and (2) that he failed to give a satisfactory account of himself. I find that in a similar English enactment the onus is placed upon an accused person to "account to the satisfaction of the Court before whom he is brought for being found upon such premises". Presumably in such a case, the prosecution would merely have to prove that the accused was found upon the premises, leaving it to him to make his defence in terms of the section.

As however I have indicated above, section 450 of the Penal Code appears to me to cast the burden upon the prosecution of proving that an accused person failed to give a satisfactory account of himself, that is to say, as held by Bertram C.J. in *Kurup v. Banda*,¹ a satisfactory account of his presence at the place. In this case the prosecution does not appear to have made any attempt to do so and has therefore, in my opinion, failed to prove a *prima facie* case against the appellant. I would therefore allow the appeal. Conviction and sentence are set aside.

Set aside.

¹ 25 N. L. R. p. 402.