

1945

Present: Rose J.

SEENITAMBY, Appellant, and INSPECTOR OF POLICE.
BATTICALOA, Respondent.

1,142—*M. C. Batticaloa, 312.**Robbery—Necessary elements—Penal Code, s. 379.*

The appellant was convicted of robbing a gun.

The case for the prosecution was that the complainant and two other persons, the complainant carrying the gun in question, met the appellant. The appellant then asked the complainant to lend him his gun as he wished to go shooting the following day. The complainant refused to do so and a scuffle ensued in the course of which the appellant became possessed of the gun. He then went back with the gun to his own house in the neighbourhood, which house was well known to the complainant. It appeared that the appellant was on bad terms with the complainant for family reasons:—

Held, that, on the facts narrated, there was a reasonable doubt as to whether the necessary elements of the offence of robbery were present.

A PPEAL against a conviction by the Magistrate of Batticaloa.

N. Nadarajah, K.C. (with him *S. H. Perimpanyagam*), for the accused, appellant.

V. T. Thamootheram, C.C., for the Attorney-General.

November 15, 1945. ROSE J.—

This is a case which has caused me some difficulty. It appears that the appellant who was convicted of robbing a double barrel breech-loading gun was on bad terms with the complainant for family reasons.

The learned Magistrate accepted the view of the facts as given by the prosecution and says, "I accept the prosecution version as the correct version that happened that night". The case for the prosecution as stated by their own witnesses is that the complainant and two other persons, the complainant carrying the gun in question, met the appellant. The appellant then according to these witnesses asked the complainant to lend him his gun as he wished to go shooting the following day. The complainant refused to do so and a scuffle ensued in the course of which the appellant became possessed of the gun. He then apparently went back to his own house in the neighbourhood, which house is well known to the complainant, with the gun.

The complainant made a protest to the police and in due course a party of police officers with the complainant went to the house of the appellant who emerged from his house holding the gun and objecting to the presence of the police and threatened to shoot anybody who entered the garden. The Police then withdrew for reinforcements and came back later, this time the appellant being arrested after a struggle, the gun then being nowhere to be seen. On that version of the facts the learned Magistrate found the accused guilty of robbery.

It seems to me that the learned Magistrate failed to appreciate that on the facts narrated there must be held to be—putting the matter at its lowest—a reasonable doubt as to whether the necessary elements of the offence of robbery are present. On that version of the facts the complainant obviously has a number of remedies both civil and criminal. But it seems to me that on the facts as stated the charge of robbery cannot be sustained. For these reasons the appeal is allowed and the accused is acquitted.

Appeal allowed.
