

**KUAR SINGH**

**A**

v.

**REGINAM**

[SUPREME COURT, 1965 (Hammett P.J.), 4th, 10th, 18th December  
1964, 4th February, 1965]

**B**

Appellate Jurisdiction

*Criminal law—evidence—circumstantial evidence—alternative hypotheses consistent with guilt or innocence—Penal Code (Cap. 8) ss.327(a), 328(b), 329(d)—Criminal Procedure Code (Cap. 9) s.175.*

**C**

A conviction of the offence of "Being found by night in a building with intent to commit a felony therein", was quashed where the proved facts were such that it was open to infer an intent to steal on the part of the accused but where it was also reasonably possible to draw from those facts another inference consistent with the absence of such intent.

**D**

Appeal against conviction by a Magistrate's Court.

K. C. Ramrakha and A. M. Raman for the appellant.

B. A. Palmer for the Crown.

**E**

The facts sufficiently appear from the judgment.

HAMMETT P.J.: [4th February, 1965]—

The appellant was originally charged with "Shop-breaking and Entering and Larceny" contrary to section 327(a) of the Penal Code. The evidence for the prosecution was not sufficient to support that charge and during the course of the trial the Court below amended the charge to one of "Shopbreaking with intent to commit a felony therein, to wit theft", contrary to section 328(b). At the conclusion of the trial the appellant was in fact convicted of the offence of "Being found by night in a building with intent to commit a felony therein" contrary to section 329(d) of the Penal Code, under the provisions of section 175 of the Criminal Procedure Code.

**F**

**G**

He appeals against conviction on a number of grounds, which complain that in fact and in law there was insufficient evidence upon which an intent to steal could be inferred beyond reasonable doubt.

The evidence showed that at about 9.00 p.m. the appellant was seen through the glass windows of a well lighted store, by a person outside, to be inside, at a time when the store should have been closed. He was in no apparent haste and made no effort to conceal himself and was seen to wander idly around in full sight of persons outside,

**H**

A for about 15 minutes. He had apparently entered the store through an open door and made no attempt to escape when people came to the scene and questioned him. Nothing was found to be missing from the store and there was no sign of any forcible entry. He was found to be smelling of liquor.

When asked to explain himself he said he had come there in search of companions with whom he had been drinking and whom, rightly or wrongly, he said he thought had gone into the store through the open and well lit door.

B I have given careful and anxious consideration to the whole of the evidence in this case and to the findings of fact of the learned trial Magistrate from which he inferred an intent to steal.

C It is quite apparent to me that it was open on those facts for such an intent to be inferred. What is not so clear to me is that such an inference was the only inference that it was reasonably possible to draw from those facts. It appears to me that several of the admitted or proved facts were not merely equivocal but were in fact more consistent with the absence of an intent to steal and with the explanation the appellant gave, than with an intent to steal.

D In the whole of the circumstances I have come to the conclusion that the facts in this case are not incapable of explanation upon any other reasonable hypotheses than that the appellant had an intent to steal. The evidence appears to me to be equally consistent with at least one other hypothesis. One of these is that the appellant whilst his keener senses had become befuddled by drink, wandered into this store through an open door, in search of his drinking companions whom, rightly or wrongly, he believed had preceded him, without any other intent. This hypothesis is supported by the evidence of one of the witnesses for the prosecution who said he saw the appellant standing idle under the bright light in the store for about 15 minutes before persons in authority, who were called, had arrived at the scene.

E I am not satisfied that the case of the prosecution against the appellant was established with that high standard of proof that is necessary to sustain a conviction on a criminal charge.

F The appellant's foolish and reprehensible conduct led to him placing himself in circumstances open to the gravest suspicion that he had gone to this store with the intention of stealing something. The evidence on the record does not however, in my view, amount to more than that.

G For these reasons the appeal must be allowed and the conviction and sentence quashed.

*Appeal allowed — conviction and sentence quashed.*