

Raphael v The State, (S. C. 15/74, D. C. Colombo B/179) (3/SC) Decided on 02/09/1975

Where an accused is tried on two connected but different charges in the same proceedings, a conviction on one charge cannot be based on evidence which has been rejected by an order of acquittal on the other charge.

Tennekoon CJ. with Sirimane J. and Vythialingam J. agreeing,

The accused was charged under section 19 of the Bribery-Act on two connected, but different charges in the same proceedings. Those two charges are

1. On 21st of August, 1973, as a medical officer, accepting Rs. 25/- from a patient as an inducement or a reward for giving treatments to the said patient
2. On 3rd of September, 1973, as a medical officer, accepting Rs. 25/- from the aforesaid patient as an inducement or a reward for giving treatments

According to the evidence, the accused had taken the said gratification from the son-in-law of the aforesaid patient. Two witnesses were called to prove the accused's demand to have the gratification, but neither of them were called.

The District Judge acquitted the accused on the first charge, because there was nothing to corroborate the complainant's evidence and, because it would be dangerous to convict, on his sole uncorroborated testimony. However, the second charge was challenged in the Supreme Court.

Held;

The accused should be acquitted on charge two, because, where an accused is tried on two connected, but different charges in the same proceedings, a conviction on one charge cannot be based on evidence which has by implication been rejected by an order of acquittal on the other charge.

The case of **Nalliah v. Herat 54 NLR 473**, where Gratiaen J. held relying on the authority of the **Privy Council case, Sambasivam v Public Prosecutor Malaya 1950 A. C. 458** is undistinguishable from this case.

Appeal allowed.