

***Raphael v The State 78 NLR 29 (SC 15/74, DC- Colombo B/179) (3/SC) Decided on 02/07/1975***

*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,

**Facts;**

The accused was charged under section 19 of the Bribery Act on two counts; for the acceptance of bribes twice to treat the same patient. The learned district judge acquitted the accused on the first charge, because there was nothing to corroborate the complainant's evidence and because it is dangerous to convict on the complainant's sole uncorroborated testimony. But the accused was convicted and was sentenced in respect of the second count. Therefore the second charge was challenged in the Supreme Court. The learned judge had to rely upon the same evidence provided by the complainant with regard to the second charge as well.

**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*