QUEEN *v.* PIANERIS *et al.*

1894.
July 31 and September 5.

D. C., Kalutara, 572.

Counter criminal cases—Duty of Judge to hear each case in full and give judgment upon evidence called—Criminal Procedure Code, s. 352—Ordinance No. 1 of 1888, s. 16—Necessity of calling upon accused to explain points made against him.

Where there are counter cases between the same parties, it is the duty of the Judge to hear each case in full and give judgment upon the evidence called therein for the prosecution and defence, without deferring judgment until he had heard the counter case.

It would be irregular to import into one case the knowledge which he may have obtained from another case.

The record must show that each of the accused was clearly informed of his right to make a statement under section 352 of the Procedure Code, and they ought to be asked to explain any points made against them, as required by Ordinance No. 1 of 1888, section 16.

SIX accused persons were indicted, some under section 317 of the Penal Code for voluntarily causing grievous hurt by means of an instrument for cutting, some under section 316 for

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voluntarily causing grievous hurt, and some under section 315 for voluntarily causing hurt. After the District Judge had heard evidence for the prosecution and defence, he refrained from giving his judgment and proceeded to hear the counter case between the same parties. Then he delivered the following judgment :—

" This and District Court case 573 are clearly connected, and in " my opinion relate to one and the same fight, in which both sides " were more or less injured. A rape case (probably false) led to " mutual recriminations on the road as the parties thereto returned " from Court, and on reaching the village a general fight took place " . . . . . . There are several improbable and suspicious circum- " stances in the version of the complainant's party in District Court " 573 . . . . . . I find all the six accused guilty : the first under " section 317 of assault on Ley Sinho and Podi Sinho ; the second " under section 316 of assault on Sayohami ; the third under " section 316 of assault on Davit Sinho," &c. And they were sentenced to different terms of imprisonment.

They appealed.

Dornhorst appeared for appellants.

De Saram, C.C., for the Crown.

31st July, 1894. BONSER, C.J.—

The appellants were found guilty of an offence not known to the law, of assault under sections 316 and 317 of the Penal Code. But there is a still more serious irregularity. The District Judge, instead of deciding this case upon the evidence called in the case itself, deferred his judgment until he had heard some other case, and gave judgment thereafter in accordance with the impression produced in his mind by the facts of the other case. The duty of a Judge acting as a jury is to decide a case upon the evidence and the evidence only, and not to import into one case the knowledge which he may have obtained from another case. Each case must be decided on its own merits.

The judgment of the District Court is set aside and case remitted for re-trial.

At the re-trial the Court heard five witnesses and recorded as follows :—

" The several statements made by the accused before the Police " Magistrate are once more put in evidence. They make no further " statement."

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It then proceeded to give judgment on the footing of the evidence heard at the re-trial, and found all the accused guilty and sentenced them to various punishments.

The accused appealed.

Dornhorst, for appellants.

Cooke, C.C., for the Crown.

5th September, 1894. WITHERS, J.—

I must send this case back once more to the District Judge who tried it, as I am not satisfied from the record that each of the accused was clearly informed of his right to make a statement under section 352 of the Procedure Code. It certainly does not appear from the record that the accused were severally asked to explain any points made against them as required by Ordinance 1 of 1888, section 16. It is absolutely essential in every criminal case that the accused should have an opportunity of explaining the points made against him, or of stating what he desires to offer by way of explanation, and that he should be clearly made to understand that that opportunity is offered to him.

A jury may always take into consideration a statement by a prisoner which reasonably accounts for a state of things which otherwise would not be explicable. But, in this particular case, judging from the first petition of appeal presented to this Court, I cannot help thinking that the accused relied for their defence on facts disclosed in a counter case to which they refer in their petition of appeal. Now, the deposition in that case can be made no use of in the present appeal.

I think the accused ought, if they desire it, to have an opportunity of calling for their defence the witnesses who testified on their side in the counter case.

I therefore remit the case in order that the accused may be asked either to explain the points against them or clearly informed of their right to make such a statement as is provided for by section 352 of the Criminal Procedure Code, or both, and to give them an opportunity of calling witnesses in their own behalf. I refer in particular to the witnesses called by them in the counter case.

I quash the conviction against them, and send the case back for re-trial from the close of the prosecution.