

WILSON v. COLANDE CANGANY *et al.*

P. C., Gampola, 22,974.

1897.

September 28

and

October 4.

Using criminal force—Mischief—Conviction for two offences in respect of same act.

Where accused threw stones at complainant with the object of hitting or intimidating him, and without a separate intention of causing loss to him or injury to his property, and the stones fell on complainant's house and panes of glass, roof, tiles, and guttering were broken thereby—*Held*, that by the conviction of accused under section 343 of the Penal Code of using criminal force, he had been punished for his criminal act, and that further punishment for mischief was impossible.

THE facts of the case appear in the judgment.

Bawa, for appellant.

Dornhorst, for respondent.

4th October, 1897. LAWRIE, A.C.J.—

Seven men were convicted of using criminal force to Mr. Wilson under section 343 and were sentenced to three months' rigorous imprisonment, and the same men were also convicted of mischief under section 409 and were sentenced to the same punishment, while two women were at the same time tried and convicted for intentionally insulting Mr. Wilson with intent to provoke a breach of the peace, punishable under section 484.

The Police Magistrate has reported that since the trial two of the seven men have died, the second and the fourth. I take the case of the two women first.

They used the filthy words set forth in the charge. To warrant a conviction it was necessary that the person who uses the words gave provocation thereby, and intended or knew that such provocation was likely to cause a breach of the public peace or the commission of some other offence.

It seems to me impossible to hold that these women could intend, or could know it to be likely that the provocation given by them would cause an English gentleman to strike them and break the peace. The essence of the offence consists in the effect which it is likely to produce upon the person to whom the provocation is addressed.

It seems to me that the words spoken by these Tamil cooly women could not possibly provoke their master into committing

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any offence. Mr. Wilson does not say he felt any inclination to commit an offence, and he did not yield to the inclination if he felt it. The Police Magistrate, however, holds the offence proved, and as he has sentenced the women to no more than one month's imprisonment no appeal lies, and the responsibility rests with the complainant and the Magistrate.

I am not sure that the men were rightly convicted under section 343; none of the stones thrown at Mr. Wilson hit him; certainly the accused did not bring any substance into contact with Mr. Wilson's body. Did they cause him to move, to change of motion, or to cease to move? I suppose they did, for Mr. Wilson had to move from one point of vantage to another, especially to place his wife in safety. If the acts of the accused did not amount to criminal force under section 340, they did amount to assault under section 341, and I affirm the conviction and sentence passed on the first, third, fourth, fifth, and sixth accused (the second and the seventh are dead).

Now I think that, although damage was done to Mr. Wilson's property in the course of the assault, though panes of glass, roof, tiles, and guttering were broken, that did not constitute a separate offence. These were part of the criminal force or assault. As I understand the evidence, all the stones were thrown with the object of hitting or intimidating Mr. Wilson; there was no separate intention of causing loss to him or injury to his property, and on the principle often laid down and acted on that the same act shall not be twice punished, first as one offence and then as another, I think it necessary to hold that by the conviction and sentence under section 243 the criminal act of the accused had been punished, and that further punishment is impossible. I set aside the conviction and sentence for mischief.
