

1895.
July 26.

BALTHAZAR v. GUNAWARDANA.

P. C., Galle, 17,318.

Penal Code, s. 199—Intentional omission to give information of offence—Criminal Procedure Code, s. 24—Duty of police officer—Mistake—Punishment.

Where a headman, who had received information that A had committed rape on B, omitted to inform the nearest Police Magistrate of the same, and it appeared that such omission was due to the belief that, as the parties were willing to settle the matter by marriage so as to avoid the disgrace of a public exposure, he was not bound to communicate the information,—

Held, the offence of the headman was, in the circumstances, committed under a mistake as to his duty, and that his punishment should be therefore nominal.

The facts of this case appear in the judgment of the Supreme Court.

Dornhorst and Alwis, for defendant appellant.

26th July, 1895. BONSER, C.J.—

The appellant in this case has been found guilty of “omitting to give information he was legally bound to give” under section 199 of the Penal Code, and sentenced to pay a fine of Rs. 50, or in default of payment to undergo six weeks’ rigorous imprisonment. There is evidence that it is the duty of the appellant, as a police officer, to give information to the nearest Police Magistrate of every offence that is provided by section 24 of the Criminal Procedure Code. The offence as to which this appellant omitted to give information was rape. It appears that the young woman

complained to the Mudaliyár, who is the superior of the police officer, that she had been ravished by her cousin Janis. The Mudaliyár had the young man arrested and sent him to the appellant to deal with the case. The parties were evidently willing to settle the matter by the very natural method of the young man marrying the young woman. The Mudaliyar said that he could not allow an amicable settlement. Then they go to the house of the young woman, a sort of conference is held, and the relations being willing to settle the matter by the young man marrying the girl, notice of an intended marriage between the parties is accordingly given to the Registrar on the same day. However, before the day, Janis absconded, and thereupon these proceedings were taken against the appellant for not reporting the information he had received to the nearest Police Magistrate. There is no doubt that the appellant did receive information of the alleged rape, because the evidence shows that the girl did make a complaint to him that she had been ravished, and that the overtures for a settlement were made in his presence. It is admitted that no report was made; but I think, under the circumstances, the parties being willing to settle, to avoid the disgrace of a public exposure of the young woman's shame, that the appellant might have reasonably believed that he was not bound to report the matter. At the same time, the law is clear that he ought to have made a report.

The Magistrate has sentenced the appellant to pay a fine of Rs. 50, or in default of payment to undergo six weeks' rigorous imprisonment. The offence under the circumstances was a technical offence, and I think that a nominal fine of Re. 1 will meet the justice of the case.

It must not be understood that I shall regard with leniency a case in which crime has been deliberately suppressed. This Court will visit with severity any case of deliberate suppression of information as to crime. The present case I consider is one in which the appellant made a mistake as to his duty.

Sentence modified.

