1895.
July 1.

VENASY *v.* VELAN *et al.*

P. C., Mallakam, 8,091.

Criminal Procedure Code, s. 226, s. 16 of Ordinance No. 1 of 1888, and s. 352 of the Procedure Code—Irregularity of deciding case upon evidence outside it.

The necessity for the framing of a charge by a Magistrate under section 226 of the Criminal Procedure Code does not exist in the case of a simple complaint, more or less in the words of a formal charge read and explained to an accused at the commencement of the trial and adopted by the Magistrate as his charge.

Failure to give an accused an opportunity to make a statement and to question him generally as to his defence, as required by section 352 of the Criminal Procedure Code and section 16 of Ordinance No. 1 of 1888, amounts to a fatal irregularity only if he were an ignorant and illiterate person and destitute of legal assistance at the trial.

Each case must be decided solely upon evidence recorded therein, without reference to any other case.

Tissera v. Foster (9 S. C. C. 173) distinguished.

THE facts of the case are stated sufficiently in the judgment of his Lordship the Chief Justice.

Blazé and *Aserappa*, for the appellant.

1st July, 1895. BONSER, C.J.—

This is an appeal from a conviction of Mr. Kathiravelupullai, Police Magistrate at Mallakam, on points of law.

He convicted the appellants of an assault, and fined them Rs. 10 and Rs. 5 respectively. They can only appeal on grounds of law.

The first objection is, that the Magistrate did not frame a charge.

What happened was this. A written plaint was filed by the complainant, charging the accused "with voluntarily causing "hurt and thereby committing an offence punishable under section "314 of the Penal Code." That plaint was read over and explained to the accused at the commencement of the trial, but no fresh charge was framed by the Magistrate.

I cannot see that that was necessary. We have here in writing an accusation, which has all the requirements of a charge, and the Magistrate adopts that as his charge.

It is said that section 226 of the Procedure Code requires him to write that out again, and that there is a decision of this Court—*Tissera v. Foster*, 9 *S. C. C. 173*—which renders such a course necessary.

But in that case, it will be seen, that the complaint was not a simple complaint like the one in the present case, but a complaint embodying charges under three different enactments. In that case the prisoner was found guilty of one only of the offences complained of. Again, the complaint was explained to the defendants on one day and the trial took place on a subsequent day.

That is quite a different case from the present, in which we have a simple complaint almost in the very words of a formal charge, and which is read over and explained to the prisoner at the commencement of the trial.

But, however that may be, whether *Tissera v. Foster* was rightly decided or not, or whether it can be distinguished from the present case, I am of opinion that there is not the slightest shadow of a reason for suggesting that the accused were in any way prejudiced by the omission, and therefore (whether the objection be a good one or bad one) I decline to set aside the conviction on that ground.

The next objection was, that the Magistrate did not observe the requirements of section 352 of the Code and section 16 of Ordinance 1 of 1888, that he did not give the prisoners an opportunity of making a statement, or question them generally as to their defence.

This, no doubt, was an irregularity, and, had the appellants been ignorant and illiterate persons without legal assistance, I think that the objection would have been a substantial one, but in the present case the interests of the accused were protected by two legal practitioners who appeared for them. Under these circumstances I think that there is no ground for saying that the accused were prejudiced by the irregularity.

The third objection is this, that the trial having taken place on the 4th of May the Magistrate did not convict until the 11th of May.

Now, I have already stated in another case that I think it most desirable that Magistrates and District Judges should state their finding as to the guilt or innocence of the accused immediately at the conclusion of the trial, and that, if the impression left upon their minds by the prosecution, after hearing all the evidence, is so weak and unsatisfactory that they are unable to say whether they consider the accused to be guilty or not, they should give the accused the benefit of the doubt and acquit.

The Magistrate in this case has forwarded his explanation of the delay.

It appears that the 11th was the next Court day at Mallakam, and that he waited to give judgment until he had heard a connected counter case.

It would appear from this that he did not decide the case on the evidence recorded in the case solely, but on that evidence combined with the evidence taken in some other proceedings. If that is so, the conviction cannot stand.

Cases must be decided on the recorded evidence without reference to other cases.