

BASTIAN SILVA v. APPUHAMY.

P. C., Hatton, 29,830.

1900.

February 16.

*Serious wound—Circumstances showing intention of accused—Attempt to murder—Criminal Procedure Code, s. 152—Summary trial.*

Where a person, after abusing another and tearing out some of his hair, followed him for some distance as he was going towards the court-house and deliberately stabbed him in the back, causing a wound  $2\frac{1}{2}$  inches deep and 4 inches long, and then stabbed three other persons who attempted to arrest him—*Held*, this was not a case to be summarily dealt with by the Police Magistrate, as the circumstances showed a murderous intention and were consistent with an attempt to murder, though the wound did not prove dangerous to life.

It is not the nature of the wound, but the intention of the accused, which is decisive as to the nature of the crime committed.

THE accused in this case was brought up before the Police Court of Gampola, together with a report signed by a police sergeant, in which the accused was alleged to have voluntarily caused grievous hurt to the complainant Bastian Silva and three others.

The Police Magistrate read the particulars of the charge to the accused, took his statement, and remanded him to be produced at Hatton.

At Hatton the Police Magistrate recorded the evidence of the medical officer, which was as follows:—

“ Bastian Silva had a wound on the right side of his back with  
“ clean cut edges, 4 inches long, situated below the right shoulder  
“ blade, directed obliquely from below upwards and outwards. At  
“ its commencement the wound was  $2\frac{1}{2}$  inches deep in a direction  
“ obliquely upwards and inwards towards the cavity of the  
“ chest.....there were no signs of penetration of the chest, and  
“ no injury to the lungs,” &c.

Upon this medical evidence the Police Magistrate was of opinion that the case was triable summarily, and informed the accused that he was on his trial. After evidence heard and considered, the Police Magistrate convicted the accused.

On appeal, *Van Langenberg* and *Bawa* appeared for the accused.

BONSER, C.J.—

In this case the appellant was convicted of having caused hurt by a knife to one Bastian Silva, and was sentenced to undergo three months' rigorous imprisonment and to receive fifteen lashes. He was also convicted of having at the same time and place wounded with a knife three other persons who tried to arrest him

1900.  
 February 16.  
 BONSER, C.J.

after he had wounded Bastian Silva, and he was sentenced to a further period of three months' rigorous imprisonment in respect of each case.

The prisoner was brought up by a police sergeant before the Magistrate charged with having voluntarily caused grievous hurt. I notice that the Magistrate did not observe the provisions of the Code by examining at once the person who brought him up: The accused was remanded for the attendance of the medical officer, who, when he was called, stated the nature of the injuries on Bastian Silva and the three other wounded men. He describes the wound on Bastian Silva in these words:—" He had a wound " on the right side of his back with clean cut edges, 4 inches long, " situated below the right shoulder blade directed obliquely from " below upwards and outwards. At its commencement the wound " was  $2\frac{1}{2}$  inches deep in a direction obliquely upwards and " inwards towards the cavity of the chest. The rest of the wound " was superficial and tailing off at the upper and outer extremities. " There were no signs of penetration of chest, and no injuries to " lungs. The coat worn by Bastian Silva had a cut corresponding " to the wound on the body. The injury would have been caused " by a sharp cutting instrument. It did not endanger life." From the description of that wound it appears that it was a very serious wound. A stab on the back,  $2\frac{1}{2}$  inches deep, is a very serious thing, and it must have been more by good luck than by design that the wound did not endanger life. The Magistrate thereupon records: " On the medical evidence I find that the " case is a summarily triable one." Now, I must say that I do not understand the view taken by the Police Magistrate. The nature of a wound is not decisive as to the nature of the crime; that depends upon the intention of the accused. The medical evidence was consistent with this being an attempt to murder, and it was quite impossible for the Magistrate to say that the case was summarily triable on the materials before him. The Magistrate proceeded to try the case summarily, and, after hearing evidence for the prosecution and defence, arrived at the conclusion which he thus stated:—" When Bastian Silva, a contractor on Hardenhuish " estate, asked accused why he was cutting a tree where he had no " right to be cutting, accused abused him, attacked him, and tore " out some of his hair in the course of the struggle which followed. " Bastian Silva picked up the hair and walked away intending, " wisely, to come to Court about the matter instead of further " quarrelling with accused, who was evidently in a savage state of " mind. Accused followed Bastian Silva some distance, and then " deliberately stabbed him in the back."

Moreover he found that, when the bystanders attempted to arrest him, he stabbed three of them.

1900.  
*February 16.*  
**BONSER, C.J.**

The finding of the Police Magistrate conclusively shows that this was not a case for summary trial, and therefore I set aside the conviction. I say nothing about the merits of the case on the defence raised by the accused, that I may not prejudice in any way the further proceedings.

I order the record be sent to the Attorney-General, that he may take such proceedings as he may think fit.

