1901.
April 23

PHILLIPPU PILLAI *v.* NAGANATHAR.

P. C., Kayts, 6,526.

Penal Code, s. 315—Voluntarily causing hurt with a cutting instrument—Sickle—Injury caused by back of sickle.

Though a sickle be not used by an assailant to cut with its sharp side yet if he used the back of it with such force as to produce an incised wound, he would be guilty of the offence of voluntarily causing hurt with a cutting instrument, under section 315 of the Penal Code.

THIS was an appeal against a conviction for voluntarily causing hurt, under section 315 of the Penal Code, by means of a sickle.

Walter Pereira (*Elliott* with him), for accused, appellant.—The sickle used in this case had a blunt side, and the wound was

inflicted with the blunt edge. Consequently the sickle was not used as a cutting instrument, nor can the conviction be for using a cutting instrument. As far as this case goes, the weapon was not a cutting weapon at all. If I used the barrel of a gun to strike at anybody, I would not use an instrument for shooting, though ordinarily the gun is a shooting instrument. Mr. Justice Lawrie has held that, in order to be convicted for inflicting an injury with a cutting instrument, the accused must be found to have used the instrument as a cutting instrument. A weapon, to be called a cutting weapon, must be more likely than not a cutting instrument. Unless the sickle is used as a cutting instrument, it cannot be said to be a cutting instrument. It cannot ordinarily be said to be so dangerous as to be likely to cause death. It was too light for that. Any weapon, even a stick, might otherwise be called a lethal weapon. It must be more likely than not to cause death. The weapon must be so dangerous in its nature and so formidable in its size as to be likely to cause death. But here the sickle was not so used. There was no intention to cut, because the blunt side was used only. If I had a penknife and threw it at somebody unopened, I could not be said to have used a cutting instrument under this section (*Marihamy v. Robartu, 9 S. C. C. 68*): the instrument must be used intentionally to stab or cut. Where the cut is accidental, this section does not apply. So long as I do not use an instrument, *qua* a cutting instrument, I am not within the purview of this section. I might be guilty under some other section, but not under 315.

MONCREIFF, J.—

Upon the facts of this case I do not see my way to disagree with the decision come to in the Court below. I have no reason to say it was wrong. All I know is, it takes an extremely sensible view of the facts.

However, a question of law was raised with regard to the conviction under section 315. As far as I understand the argument, it was this: that the first accused, according to the version of the story believed by the Magistrate, struck the complainant with the back of the sickle which he had in his hand. According to the medical evidence, the wound which was found to be upon the complainant's head was one which could only have been caused by a cutting instrument, and the judicial medical officer added that the back of the sickle produced before the Court could not have caused the injury upon the plaintiff's head. Upon being pressed, however, in cross-examination, he modified what he had said, and gave it as his opinion that, if the blow was given with

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the blunt side of the edge of the sickle with very great force, it might have caused the injury on the complainant's head. I think that we are bound to accept it, although no doubt what he said is to some extent weakened by the positive statement which he made in the first place. Now, the argument founded upon this part of the evidence is that a blow struck with the back of a sickle, granting that a sickle is a cutting instrument, is not such a blow as is contemplated by section 315 of the Penal Code, because the sickle was not used as a cutting instrument. To some extent this argument is weakened by the later observation of the medical officer, because if that statement is correct, even the back of the sickle, although not intended for cutting might have produced an incised wound.

A case was cited in support of the argument from *9 S. C. C. 68*, where Mr. Justice Clarence said that, if the defendant intentionally used his knife to stab or cut the complainant, or used it on the man with whom he was fighting, the case falls under section 315. If the cuts were inflicted accidentally, then the defendant ought not to receive any punishment based on his having used a knife, and that he was not guilty of an offence under section 315. I am not sure that this opinion is altogether an authority for the argument put forward, but I am not disposed, unless I am authorized by a superior court, to hold that a cutting instrument is not to be regarded as a cutting instrument within section 315 so long as the blows which were given with it are given with the blunt side. It is possible that, if it were necessary, I should go further than that, but I do not think it desirable to go further than the argument which has been pressed by counsel.

With regard to the sentence, it is difficult for me to form a very accurate opinion of the merits of this struggle. Certainly I have not the same facilities as the Magistrate, and I do not see that I can alter the sentence passed by him.