

COSTA v. SINHO.

1903.

August 7.

P. C., Colombo, 81,752.

Police vidane—Village headman—Peace officer—Criminal Procedure Code s. 3—Search for stolen property without search warrant—Criminal trespass—Penal Code, s. 434.

A police vidane who searches a man's house for stolen property, believing that he has the power to do so, cannot be convicted of criminal trespass with intent to commit theft.

A police vidane appointed by the Government Agent "by virtue of the powers vested by the Governor" is a "peace officer" as defined by section 3 of the Criminal Procedure Code.

THE accused was found guilty of committing house trespass by entering into a human dwelling in the occupation of Juwanis de Costa with intent to commit theft, and so committing an offence punishable under section 434 of the Penal Code, and with committing theft of certain property, then and there.

1903.

August 7.

The Police Magistrate, Mr. W. E. Thorpe, said:—

“ This case raises a very important point in connection with Police Administration in the rural districts. The first accused, a police vidane, has searched the complainant's house for stolen property without a search warrant. A regular policeman has this power under section 59 of the Ordinance No. 16 of 1865, and under the old Code, by the definition of police officer, village headmen have this power as well. But by the definition of police officer and peace officer in the new Criminal Procedure Code this power is taken away, and village headmen cannot search without search warrant.

“ It is a most serious deficiency, as now, unless they want to expose themselves to a criminal charge, most important evidence must be frequently lost. A man may be robbed and the stolen property known to be in the accused's house, but the peace officer without a warrant has no legal power to search. This defect in the machinery for administering justice calls for the speediest remedy.

“ I must convict the police headman of criminal trespass and theft, as he had no legal power to take away the property found.”

The accused appealed.

Allan Drieberg, for appellant.

Batuwantudawe, for complainant, respondent.

Fernando, C.C., for the Crown.

7th August, 1903. GRENIER, A.J.—

The appellant in this case is a police vidane, and the charge against him was that he committed house trespass with intent to commit theft. It appears that the appellant searched the complainant's house for stolen property without a search warrant, and the Police Magistrate was of opinion that he was not entitled to do this because he was a village headman and not a police officer or peace officer within the meaning of the Criminal Procedure Code, section 3. I was in doubt at first as to whether the appellant held any appointment from Government, and I therefore sent the proceedings back to the Magistrate with a request that he should call upon the appellant to produce his appointment, if he had one. The appellant has produced his appointment, which is signed by the Government Agent for the Western Province “ by virtue of the powers vested in him by the Governor.” The act of appointment does not show what the duties of the appellant are, but, from the fact of the appellant being appointed a police vidane—I would wish to emphasize the word “ police ”—I take it that he is to

perform police duties, because it seems to me that we must look to the popular meaning of the words and to the sense in which they are universally understood. Now, there can be no doubt that, as a matter of fact, a police vidane performs police duties in arresting persons charged with criminal offences, whether with or without a warrant, as the case may be; and that, generally speaking, a police vidane is expected to and actually does perform duties in the maintenance of peace and the detection and suppression of crime. Perhaps the question does not properly arise in this case, but I am prepared to hold that a police vidane, appointed by the Government Agent in the manner in which this appellant has been appointed, comes within the definition of a peace officer, as the term peace officer is defined by section 3 of the Criminal Procedure Code. In this view the appellant was justified in searching the complainant's house for stolen property without a warrant.

I shall, however, at the same time deal with the case with reference to the validity of the conviction on the materials in the record. According to the Magistrate himself, the appellant appears to have acted in a perfectly *bona fide* manner, assuming that he was not a peace officer within the meaning of section 3. The statement that he made to the Magistrate cannot be construed into an unqualified admission of "legal guilt," as the Magistrate puts it, simply because, in the opinion of the Magistrate, the appellant had no power to search. Even if he had no power to search, I fail to see anything in the statement amounting to an unqualified admission that the appellant committed house trespass with intent to commit theft, which is a specific charge and must be supported by sufficient proof or by a clear and unqualified admission of guilt with full knowledge both of the meaning of the charge and the effect of such an admission as I have indicated. On the contrary, the appellant's statement entirely exonerates him from all criminality in regard to this transaction. He never entered the house of the complainant with intent to commit theft, nor did he actually commit any theft of the articles mentioned in the charge, because he distinctly states that the watch that he took from the house was subsequently produced by him in Court with his report, and there is nothing in the whole of the complainant's evidence to support his present charge against the appellant.

The appellant must be acquitted and discharged.

1903.
August 7.
GREENIEL,
A.J.