

1945

Present : Canekeratne J.

VEERAKUTTY *et al.*, Appellants, and PULLENAYAGAM,
D. R. O., AKKARAIPATTU, Respondent.

1,065-66—M. C. Kalmunai, 834.

*Joinder of accused—Several persons accused of jointly committing same offence—
Or different offences in course of same transaction—Criminal Procedure
Code, ss. 178 and 184.*

When several persons are accused of jointly committing the same offence or of different offences in the same transaction, they may be charged together at one trial. The relevant point of time that should be considered is that of accusation and not of eventual result.

A PPEAL from a conviction by the Magistrate of Kalmunai.

G. E. Chitty, for accused, appellants.

No appearance for complainant, respondent.

Cur. adv. vult.

November 21, 1945. CANEKERATNE J.—

The plaint was filed against the four accused and on that a charge was framed. According to the charge the first accused is charged with voluntarily causing grievous hurt to one Hendrick Silva. The third and fourth accused were charged with aiding and abetting the first accused. The next charge is that the second accused did voluntarily cause hurt to one Ariyasena, an offence punishable under section 315 of the Penal Code. The last charge is that the second accused caused grievous hurt to one Gunadasa, an offence punishable under section 316 of the Penal Code. The last 2 charges are summarily triable. The first and second are not, but the learned Magistrate had assumed jurisdiction as District Judge and tried all the 4 accused together. The general rule is that there shall be a separate charge for every distinct offence and each charge shall be tried separately—Section 178 of the Criminal Procedure Code. Then there are certain exceptions to this general rule. One is that contained in section 184 of the same Code, which enables more persons than one accused of jointly committing the same offence or of different offences committed in the same transaction, to be joined together. The question whether the relevant point of time is that of the accusation or that of the eventual result has been considered in the case cited by Counsel for the appellant—*Choukhani v. King Emperor*¹. The judgment shows that there was an unbroken series of authorities in the Indian Courts for the former view and their Lordships agreed and came to the same conclusion. The judgment in *43 N. L. R. 284* shows that the different offences must be committed in the same transaction before two or more persons can be tried together.

The convictions in this case are quashed ; the persons before the Court were not accused for jointly committing the same offence or different offences committed in the course of the same transaction. I think there should be a new trial in this case. It is necessary to point out that the case against the first accused is one which is not triable summarily and the Magistrate should keep this in mind when he proceeds to inquire into this matter. The new trial should be before another Magistrate.

Convictions quashed.

¹ (1938) 107 *Law Journal Privy Council* p. 35.