

1942

Present : Hearne J.

ADIHETTY v. SIRISENA.

454—M. C. Gampaha, 12,679.

Causing hurt—Denial of charge by accused—Defence of grave and sudden provocation—Penal Code s. 315.

Where in a charge of hurt it appeared from the evidence that the accused acted under grave and sudden provocation and where the accused denied that he inflicted the injury,—

Held, that, in convicting the accused, the Magistrate was bound to consider all the circumstances appearing in the evidence in which the injury could have been inflicted.

A PPEAL from a conviction by the Magistrate, Gampaha.

L. A. Rajapakse for the accused, appellant.

E. H. T. Gunasekere, C.C., for the complainant, respondent.

Cur adv. vult.

July 28, 1942. HEARNE J.—

The accused was convicted of the offence of having caused hurt to one Cornelis by stabbing him with a sword, an offence punishable under section 315 of the Ceylon Penal Code. At the conclusion of his judgment, the Magistrate states thus :—“ Mr. Perera submits that the accused acted under grave and sudden provocation. He says that from Somawathie’s evidence that Cornelis Perera rushed at the accused’s mother it would appear that there was provocation. But the accused denies that he inflicted the injury. Therefore this defence fails.” The Magistrate has here, I think, misdirected himself. Even if he found as he did and the accused denied that he caused the injury with which he was charged, he must still consider all the circumstances appearing in the evidence in which the injury could have been inflicted. In particular, he should have

taken into account the accused's own evidence, the evidence of Somawathie that she saw Cornelis rushing at the accused's mother and the evidence of the complainant himself in which he admitted that he had refused to give any share to the accused's mother of a house of which she had a $\frac{1}{2}$ share. Having regard to all these circumstances and to the fact that the accused is a first offender and a young man of 20 years of age, I think a fine will meet the ends of justice in this case. I, therefore, sentence the accused to pay a fine of Rs. 25 or one month's rigorous imprisonment in default.

Sentence reduced.

