

1968

Present : Weeramantry, J.

M. R. L. GUNASEKERA *et al.*, Petitioners, and J. WILLIAM
(Inspector of Police), Respondent

S. C. 17/68—Application for Revision in M. C. Gampaha, 14754/A

*Criminal Procedure Code—Section 325—Conditional release thereunder—
Distinction between a verdict of guilty and a finding that the
charge has been proved.*

An offender can be conditionally released by a Magistrate in terms of section 325 of the Criminal Procedure Code only if there is a finding that the charge against him has been proved and not if a verdict of guilty is entered.

APPPLICATION to revise an order of the Magistrate's Court, Gampaha.

H. Rodrigo, for the accused-petitioners.

Lalith Rodrigo, Crown Counsel, for the Attorney-General.

June 12, 1968. WEERAMANTRY, J.—

The learned Magistrate in this case has found the three accused guilty of the charge laid against them, namely, a charge of voluntarily causing hurt to one Lucian Wijetunga. Having so found the three accused guilty, he has proceeded to deal with them without proceeding to conviction by binding them over to be of good behaviour for a period of one year, each entering into a bond in a sum of Rs. 250.

Learned Counsel for the accused draws my attention to the judgment in *Ramasamy v. Sub-Inspector of Police*, where the view has been expressed by this Court that there is a distinction between a verdict of guilty and a finding that the charge has been proved. The appropriate order to be made in a case where the Judge proposes to deal with an accused person under section 325, would, according to this judgment, be that the charge has been proved and not a finding that the accused are guilty of the charge.

¹ (1964) 66 C. L. W. 70.

I therefore delete the finding that the accused are guilty and substitute therefor a finding that the charge has been proved.

Mr. Rodrigo draws my attention to a number of contradictions in the evidence of the prosecution witnesses and submits that in any event a finding against the accused on the facts cannot be sustained. These are however matters of fact which are entirely within the discretion of the learned trial judge and I do not think I should interfere in this case with the trial Judge's findings of fact.

There is however the circumstance pointed out by learned Counsel that the 1st accused is at present a school boy and likely to be affected adversely in his career by the order made by the learned Magistrate. In regard to the 1st accused, I therefore alter the order that has been made and delete the requirement that he should be bound over to be of good behaviour and substitute therefor, in terms of section 325 (1) (a), the requirement that he be given such admonition as the learned Magistrate may think fit. Subject to this the order of the learned Magistrate will stand. The case will be called before the learned Magistrate so as to enable him to administer the admonition in terms of section 325 (1) (a).

Order varied.

