

1944

Present : Jayetileke J.

INSPECTOR OF POLICE *v.* PEDRICK *et al.*867-868—*M. C. Gampaha, 18,577.**Grievous hurt—Injury to bone—No fracture—Penal Code, s. 311.*

An injury caused to a bone by a cut, which does not indicate that the bone was broken or cracked is not grievous hurt within the meaning of section 311 of the Penal Code.

A PPEAL from a conviction by the Magistrate of Gampaha.

S. Saravanamuttu, for accused, appellants.

E. H. T. Gunasekera, C.C., for complainant, respondent.

Cur. adv. vult.

January 12, 1944. JAYETILEKE J.—

The first accused was convicted of voluntarily causing grievous hurt with a knife to one Jayakody and sentenced to six months' rigorous imprisonment. The medical evidence was to the effect that Jayakody had an oblique stab wound $\frac{1}{2}$ an inch long on the left hip cutting into the hipbone.

The learned Magistrate seems to have been of opinion that the injury caused by the first accused amounted to grievous hurt as the bone had been cut. The doctor has not told us to what extent the bone had been cut.

Under section 311 of the Penal Code an injury to a bone would not be considered grievous unless there is a fracture or dislocation of the bone. There is nothing in the medical evidence which suggests any dislocation of a bone in this case.

The only question is whether the injury to the bone is a fracture. In *Maung Po Yi v. Ma E Tin*¹, Spargo J. said:—

“ The primary meaning of the word ‘ fracture ’ is ‘ breaking ’; though it is conceded that it is not necessary in the case of a fracture of the skull bone that it be divided into two separate parts because it may consist merely of a crack; but the point is that if it is a crack it must be a crack which extends from the outer surface of the skull to the inner surface.”

This judgment was followed in *Sheikh Abdullah and others v. Emperor*². Meredith J. said:—

“ Where the evidence is merely that a bone has been cut and there is nothing whatever to indicate the extent of the cut, whether deep or a mere scratch upon the surface, it is, in my opinion, impossible to infer from that evidence alone that grievous hurt has been caused within the meaning of the definition in section 320, Penal Code”.

On the evidence before me I am unable to say that the hip bone of Jayakody was fractured within the meaning of section 311. It may be that the bone was cut to some extent but there is nothing to indicate that it was broken or cracked.

¹ (1937) *A. I. R. Rangoon*, 253.

² (1942) *A. I. R. Patna*, 376.

I am, therefore, of opinion that the first accused could not have been convicted under section 317. I would alter the conviction of the first accused to one under section 315. The sentence imposed on him ought, I think, to be reduced to three months' rigorous imprisonment as the second accused, who has been convicted by the Magistrate under section 315, has been sentenced to that term.

I see no reason to interfere with the conviction of the second accused or the sentence passed on him.

Conviction altered.

