

1947

Present : Dias J.

OLIVER, Appellant, and BORELLA POLICE, Respondent.

*S. C. 1,172—M. C. Colombo, 30,899**Penal Code, s 156—Fighting in public place—self defence—Is it affray ?*

Where a person who is attacked on the public road has to fight in order to defend himself he cannot be said to be guilty of affray, even if the public peace is disturbed.

APPPEAL from a judgment of the Magistrate, Colombo.

E. B. Wickremanayake, for the 1st accused appellant.

V. Thamctheram, C.C., for the Attorney-General.

Cur. adv. vult.

December 2, 1947. DIAS J.—

The appellant, S. M. Oliver, is the owner of a servant's agency. He also owns a "coffin business". It is alleged that one Waragoda has a rival "coffin business" not far distant from the appellant's establishment. The 2nd accused, Podiappu, is the Manager of Waragoda.

The appellant and Podiappuhamy were charged and convicted of committing an affray in breach of section 157 of the Penal Code. They were each fined Rs. 25 and ordered under section 80 (1) of the Criminal Procedure Code to enter into bonds to keep the peace.

It is alleged that on July 24, 1947, the appellant and Podiappuhamy fought on the road and disturbed the public peace. Two witnesses, Arnolis Appuhamy and James Appu, say that they were attracted by a commotion at the junction of Norris Canal Road and Maradana, and when they went out to see what it was all about, they found the two men struggling and exchanging blows. Neither of them can say how the trouble started. They saw a cycle lying on the centre of the road. The wife of the appellant handed a knife to the Inspector of Police who went to the scene.

Podiappuhamy did not give evidence. The appellant, however, did. According to him, he was peacefully cycling along the road when Podiappuhamy abused him and struck him on the abdomen. The appellant then fell off the cycle, whereupon Podiappuhamy took a clasp knife from his waist and tried to open it. The appellant says that in self-defence he struggled with Podiappuhamy and disarmed him.

The Magistrate says that he is not prepared to believe that story, because according to him there is no corroboration of his story. The overturned cycle, and the finding of the knife at the spot are circumstances which support the appellant. Furthermore, it was for the prosecution to prove the guilt of the appellant, and not for him to prove that he is innocent. There is a complete absence of evidence on the part of the prosecution to show that the appellant's story is untrue. There was thus a substantial doubt as to whether the charge had been established. When a man has to fight on the public road to defend himself against the attack of a thug who knocks him down and pulls out a knife, he cannot be said to be guilty of an affray, even if the public peace is disturbed.

The Crown Counsel does not support the reasoning of the Magistrate. The appellant is acquitted and discharged.

Appeal allowed.
