

1962

Present : Abeyesundere, J.

P. SIRIWARDHENA, Appellant, and L. D. C. GOON (Inspector of Police), Respondent

S. C. 1,133 of 1961—M. C. Avissawella, 47,411

Sentence—Assumption of jurisdiction under section 152(3) of Criminal Procedure Code—Incapacity of Magistrate to impose sentence of lashes—Corporal Punishment Ordinance, s. 7(1).

A sentence of lashes under section 7(1) of the Corporal Punishment Ordinance cannot be imposed on an accused person when he is convicted by a Magistrate who has assumed, under section 152(3) of the Criminal Procedure Code, jurisdiction to try summarily an offence which is triable by a District Court.

APPEAL from a judgment of the Magistrate's Court, Avissawella

W. G. N. Weeratne, for accused-appellant.

T. A. de S. Wijesundera, Crown Counsel, for Attorney-General.

March 26, 1962. ABEYESUNDERE, J.—

The appellant appeals from the conviction and sentence in the proceedings in which he was charged with an offence committed under section 317 of the Penal Code by voluntarily causing grievous hurt to K. P. Mendis Appuhamy by means of a corrosive substance, namely acid.

I am satisfied that the findings of the Magistrate on the facts are correct. He has, however, erred in making an order under the Corporal Punishment Ordinance that eight lashes be given to the appellant. Under section 7(1) of that Ordinance it is a District Court which has the power to impose a punishment of whipping in addition to any other punishment to which the convicted person may be liable under the Penal Code. The appellant, although convicted by the Magistrate after he assumed under section 152(3) of the Criminal Procedure Code the jurisdiction to impose any sentence which a District Court may lawfully impose, was not convicted by a District Court.

I affirm the conviction but set aside only that part of the sentence which relates to lashes.

Conviction affirmed.
Sentence of lashes deleted.