Present: Maartensz A.J.

1929.

JOHORAN *v.* SARANELIS.

414—P. C. Kandy, 28,781.

Escape from custody—Lawful arrest—Unlawful gambling—Rules of Village Committee—No charge—Penal Code, s. 219.

Where the accused escaped from the lawful custody of a police officer who arrested him for committing unlawful gambling in his presence,—

Held, that the accused was guilty of an offence under section 219 of the Penal Code.

It is not essential under the section that the person escaping from custody should be charged with an offence at the time of his arrest.

APPEAL from a conviction by the Police Magistrate of Kandy.

Navaratnam, for accused, appellant.

Basnayake, C.C., for the Crown.

August 30, 1929. MAARTENSZ A.J.—

The accused-appellant was convicted of escaping from the custody of a police constable, who had lawfully arrested him on a charge of gambling, an offence punishable under section 219 of the Ceylon Penal Code, and of using force to the constable and causing hurt to him.

Under the rules published in the *Government Gazette* dated February 18, 1927, in pursuance of the powers vested in His Excellency the Governor by section 95 of the Village Communities Ordinance, 1924, any police officer may without a warrant arrest any person who in his presence commits the offence of gambling.

The accused was, according to the evidence, arrested by Police Sergeant Johoran while gambling with eight others and escaping from custody on the way to the police station at Getambe.

I see no reason to dissent from the finding of the Magistrate that the accused was arrested while gambling. The sergeant's evidence has not been rebutted by any evidence for the defence, and there is no foundation for the suggestion that the accused was merely an onlooker.

The main contention in appeal was that the accused was in law not guilty of the offence of escaping from legal custody under section 219 of the Penal Code as he was not at the time he escaped charged with an offence. I was referred in support of this contention to the case of *Nawana v. Fernando*[1] and the *King v. Abubakker et al.*[2]

In the former case, Wood Renton J. held that "A person who having been arrested by a police officer on suspicion of having been concerned in the commission of the offence of theft, escapes from the custody of such police officer, is not liable to conviction under section 219 of the Penal Code." And that "It is only where an accused person has been either charged with, or convicted of, an offence that he comes within the purview of section 219 of the Penal Code."

In the latter case, the headnote is as follows: "On a complaint being made to the Pettah Police by X that he had been stabbed by Y and Z, an Inspector of Police and three constables set out to arrest Y and Z, which they effected at Barber street. While they were being taken to the police station, Y and Z escaped from the custody of the police. When Y and Z were charged under section 219 of the Penal Code with having caused resistance to their lawful apprehension," it was held "that, in the circumstances the conviction under section 219 could not be sustained. It is of the essence of the section that the resistance should be in respect of an offence with which the accused is charged or for which he has been convicted. The words 'any such offence' contained in the latter portion of the section means any offence with which the accused is charged or for which he has been convicted."

I am of opinion, with all due deference, that too narrow a meaning has been given to the words "charged with an offence." And this was the opinion of Bertram C.J., who said in the case of *Obeysekera v. Perera*,[3] " . . . . as at present advised, I am not prepared to hold that the word 'charge' in section 219 refers to a charge before a Police Magistrate. . . . . I am disposed to think that the word 'charge' is used in the same broad sense in which the word 'charge' is used in section 208."

[1] *(1908) 11 N. L. R. 276.* [2] *(1923) 1 Times L. R. 168.*
[3] *(1920) 7 C. W. R. 140.*

1929.

MAARTENSZ A.J.

Johoran v. Saranelis

Section 219 is a verbatim reproduction of section 224 of the Indian Penal Code. Gour (3rd edition, page 1148) on the authority of the decision referred to by him lays down that the word " charged " here has been used in the popular sense as implying an imputation of the alleged offence as distinguished from the judicial, formulated after the recording of evidence in Court. A policeman arresting another on a suspicion of an offence accuses or charges him with an offence, so that this resistance to his apprehension or his escape from custody would constitute an offence punishable under this section. The " charging " must, of course, be by a person duly empowered, and under circumstances justifying it.

Section 225 B of the Indian Code referred to by Wood Renton J. in the case of *Nawana v. Fernando* (*supra*) was according to Gour (page 1159) " enacted in consequence of two cases in which it had been held that a person escaping from custody when being taken before a Magistrate and for the purpose of being bound over to be of good behaviour not being punishable under either section 224 or 225, was not punishable at all."

At page 1160 he says " added to which there may be cases of arrest under civil process, resistance to which would also be punishable under this section. But whatever may have been the occasion for the arrest, two things are essential to make the section applicable —(*a*) that the arrest must be for an *offence* (the italics are mine), and (*b*) that it must be lawful."

These observations apply to an " escape " from custody penalized by the section.

It is clear therefore that section 225 B was not introduced as Wood Renton J. thought for the purpose of meeting a case of the kind that was the subject of the appeal.

Section 225 B has since this judgment been added to our Code as section 220 A by section 4 of Ordinance No. 10 of 1909.

I agree with the view taken in India and hold that the word " charged " has been used in section 219 in the same sense, that is as implying an imputation of the alleged offence as distinguished from the judicial charge formulated after the recording of the evidence in Court.

A point was made by the appellant's Counsel that the rule which made gambling a cognizable offence was not produced at the trial of the accused. I see no reason for interfering on this ground, for the trial which began on April 15 only terminated on June 7 and accused's proctor had ample time to acquaint himself with the grounds on which the accused was charged.

I dismiss the appeal.

Affirmed.