1944 *Present:* **Keuneman J.**

WILBANDA *et al.*, Appellants, *and* KUMARASAMY S.I., Respondent.

31-32—M. C. Kurunegala, 12,888.

Jurisdiction—Charges of robbery and hurt—Conviction of hurt by Magistrate—Village Communities Ordinance (Cap. 198) s. 90.

Where the accused were charged by a Sub-Inspector of Police in the Magistrate's Court under two counts, first under section 380 of the Penal Code with robbery and next of causing simple hurt under section 314 of the Penal Code, and the Magistrate, while acquitting the accused of robbery, convicted them of causing simple hurt.

Held, the Magistrate had jurisdiction to try the case.

A Sub-Inspector of Police is a public officer within the meaning of the proviso to section 90 of the Village Communities Ordinance.

APPEAL from a conviction by the Magistrate of Kurunegala.

R. L. Pereira, K.C. (with him *R. G. C. Pereira*), for accused, appellants.

H. W. R. Weerasooriya, C.C., for respondent.

Cur. adv. vult.

March 7, 1944. KEUNEMAN J.—

In this case these accused were charged under two counts, first under section 380 of the Penal Code with robbery of a purse containing cash Rs. 66 belonging to Appuhamy, and next under section 314 of the Pena

[1] *41 N. L. R. 233.* [2] *16 C. L. W. 83.*

Code with voluntarily causing simple hurt to Appuhamy. The prosecution was instituted by C. Kumarasamy, Sub-Inspector of Police, Kurunegala. The accused were acquitted of the charge under section 380, but convicted of the charge under section 314.

The objection is taken in appeal that as regards the offence under section 314 the Village Tribunal had exclusive jurisdiction, and that the Magistrate had no jurisdiction.

Clearly Wilbawa the place of the offence is outside the Urban Council limits, and within the jurisdiction of the Village Tribunal of Pilessa.

The Magistrate considered this point, and held that, as he did not find the charge of robbery to be false, but merely gave the accused the benefit of the doubt, the jurisdiction of his court was not ousted. This argument cannot be supported. As long as the accused were acquitted of the offence of robbery, it does not matter on what grounds they were acquitted.

Counsel for appellant relied on the case of *Inspector of Police, Negombo, v. Jacolis Silva and others*[1]. In that case the accused appellant and three others were charged by the Inspector under section 380. This count failed, but instead of acquitting the accused, the Magistrate, in spite of objections by accused's counsel, framed a charge under section 314. The accused was convicted of the charge. In this connection Soertsz J. said—

> " But the Magistrate held that he had jurisdiction, because ' this is a Police case '. In my opinion, it is a complete answer to the contention to say that the Police prosecution was one for robbery, not one for causing hurt. The Police would, most probably, not have prosecuted in the Police Court, if the complaint brought to them was one of causing hurt."

Crown Counsel seeks to distinguish this case. In the present case the Police Inspector tendered charges both of robbery and of simple hurt. Both counts were included in the report. Crown Counsel contends that this case falls within the proviso to section 90 of the Village Communities Ordinance (Cap. 198) as amended in 1940.

I think it is clear that the Sub-Inspector is a public officer within the meaning of that Ordinance (see *Siyadoris et al. v. Tamby*[2]). In this case the Sub-Inspector has deliberately included a charge under section 314, and the argument of Soertsz J. does not apply to this case I hold that the Sub-Inspector is not precluded from prosecuting the accused before the Magistrate on this count, and that the jurisdiction of the Magistrate is not ousted.

The appeals are dismissed.

Appeal dismissed.

[1] *C. L. Journal (Notes) p. 44.*

[2] *45 N. L. R. 141.*