

1954

*Present : de Silva J.*

D. H. EKMON, Appellant, and B. W. SUGATHADASA (Inspector of  
of Police), Respondent

*S. C. 679—M. C. Balapitiya, 8,410*

*Grievous hurt—" Potential danger to life "—Not the same thing as endangering life—  
Penal Code, ss. 311, 317.*

An injury which causes " a potential danger to life " is not grievous hurt within  
the meaning of section 311 of the Penal Code.

**A**PPPEAL from a judgment of the Magistrate's Court, Balapitiya.

*K. C. de Silva*, with *M. L. de Silva*, for the accused appellant.

*M. Kanagasunderam*, Crown Counsel, for the Attorney-General.

October 22, 1954. DE SILVA J.—

In this case the accused appellant was charged with causing grievous hurt to one Piyaratne by stabbing him on the left side of his chest with a knife, an offence punishable under section 317 of the Penal Code. After trial the learned Magistrate, who tried the case in his capacity as Additional District Judge, found the accused guilty of the charge and convicted him and sentenced him to one year's rigorous imprisonment, and also ordered him, under section 80 of the Criminal Procedure Code, to enter into a bond in a sum of Rs. 250/250 to keep the peace for a period of six months.

Mr. K. C. de Silva, who appears for the appellant, contends that the prosecution has failed to establish the charge of grievous hurt. He refers to the medical evidence. The doctor has stated that the injury was 1½" long and that the knife had entered the chest cavity. He described the injury as being grievous but he proceeded to state further that the injury brought about " a potential danger to life ". This injury had not caused any damage to any vital organ. In the circumstances of this case it could have been grievous only if it endangered life. A " potential " danger to life is not the same thing as endangering life. For the injury to be regarded as grievous the injured person's life should have been in fact in danger. The word " potential ", according to the Oxford Dictionary, means " capable of coming into being or action " or " in possibility not in fact ". The mere possibility of this injury becoming a danger to life at a later stage is not sufficient to base a charge under section 317 of the Penal Code in respect of that injury. It is clear from the evidence of the doctor that at no stage did this injury in fact endanger the man's life. There was only a possibility of his life being in danger. That possibility was not realised. Accordingly the conviction under section 317 must be set aside.

There is not the slightest doubt that the appellant in fact inflicted the injury in question. Accordingly, I alter the conviction to one under section 315 of the Penal Code and sentence him to six months' rigorous imprisonment, and also direct him under section 80 of the Criminal Procedure Code to enter into a bond in a sum of Rs. 250/250 to keep the peace for a period of six months after the sentence of imprisonment has been served. Subject to this variation the appeal is dismissed.

*Conviction altered.*

