Present : Wood Renton J.

May 17, 1911

ANDRIS *v.* NICHOLAS.

305—*P. C. Tangalla*, 28,763.

Trial by Police Magistrate as District Judge of an offence triable summarily—Irregularity cured by s. 425 of the Criminal Procedure Code—Causing hurt by blunt side of cutting instrument—Offence falls under s. 315 of the Penal Code—Criminal Procedure Code. s. 152 (3).

Where a Police Magistrate, who was also a District Judge, tried as District Judge, under section 152 (3) of the Criminal Procedure Code, an offence which was triable summarily, and convicted the accused and imposed a sentence which a Police Magistrate had jurisdiction to impose (six months)—

Held, on objection taken to the jurisdiction, that section 425 cured the irregularity.

The use of a blunt side of a sharp cutting instrument to cause hurt falls under section 315 of the Penal Code.

IN this case the accused was charged in the Police Court of Tangalla with having caused grievous hurt to one Carolis by means of a *kateriya*, and also with having caused hurt by the same weapon to one Andris. The Police Magistrate tried the case summarily as District Judge under section 152 (3) of the Criminal Procedure Code, and sentenced the accused to undergo six months' rigorous imprisonment on each count—the sentences to run concurrently.

The accused appealed.

A. St. V. Jayewardene, for the appellant.—The learned Police Magistrate had no jurisdiction to try this offence under section 152 (3) of the Criminal Procedure Code ; section 152 (3) applies only to cases which are not triable summarily by the Police Court. The sentence imposed is a heavy one ; the Magistrate would not have imposed this sentence if he knew that the maximum sentence he could impose was only a sentence of six months' imprisonment.

The hurt caused to Andris falls under section 314, and not under section 315 of the Penal Code, as the hurt was caused by the blunt side of the weapon.

Cur. adv. vult.

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The accused-appellant was charged in the Police Court of Tangalla with having caused grievous hurt to one Don Carolis by means of a *kateriya*, and also with having caused hurt by the same weapon to

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one Don Andris. The former of these charges falls under section 316 and the latter under section 315 of the Penal Code. The learned Police Magistrate has convicted him on both, and has sentenced him to undergo six months' rigorous imprisonment on each count, the sentences to run concurrently. I find on the record the following entry by the Police Magistrate : " I consider that this is a case which may conveniently be tried summarily under the provisions of section 152, sub-section (3), of the Penal Code." That section, as we all know, provides that where an offence charged appears to be one triable by a District Court, and not summarily by a Police Magistrate, and the Police Magistrate, being also a District Judge having jurisdiction to try the offence, is of opinion that such offence may properly be tried summarily, he may proceed to try it summarily, and in that case shall have jurisdiction to impose any sentence which a District Court might lawfully impose. The Police Magistrate appears to have thought that he had no jurisdiction to try these charges summarily himself as Police Magistrate. In that, however, he was under a misapprehension ; for under the second schedule to Ordinance No. 1 of 1910 charges under both sections 315 and 316 of the Penal Code are now made triable in the Police Court. Mr. A. St. V. Jayewardene said in the course of his argument that there appeared to be considerable ignorance among the Judges of the courts of first instance of the existence of Ordinance No. 1 of 1910. I quite agree, but that ignorance is not confined to the courts of first instance. It is shared to a considerable extent by the Bar. During the past week, in which I have been sitting in this Court for the purpose of hearing criminal appeals, I have again and again had objections to the jurisdiction of Police Courts taken, not always by junior members of the Bar, which, on reference to the provisions of Ordinance No. 1 of 1910, were seen to be unfounded, and were immediately abandoned. But that by the way. It appears to me that this is pre-eminently a case in which the provisions of section 425 of the Criminal Procedure Code should be applied. The Police Magistrate possessed jurisdiction to deal with both charges. He has not exceeded, in the sentences, the limits of his jurisdiction as Police Magistrate, and the facts of the case, as they appear on the record, by no means entitle the appellant to more indulgent treatment than he has received. There is one point as to which I wish to say a word. At the close of his argument Mr. A. St. V. Jayewardene contended that, as regards the charge under section 315, the evidence established the fact that the injury or injuries complained of were given by a blunt instrument, and that, therefore, the case ought really to have been tried as one of simple hurt under section 314. There are two cases bearing on that point which appear at first sight to be in conflict with each other. I refer to the decisions of Mr. Justice Clarence in *Marihamy v. Robertu*,[1] and

[1] *(1890) 9 S. C. C. 68.*

Mr. Justice Moncreiff in the case of Police Court, Kayts, No. 6,526.[1] I am not sure that the apparent contradiction between these two cases could not be satisfactorily explained. But, if there is any real conflict between them, I prefer to follow the judgment of Mr. Justice Moncreiff in Police Court, Kayts, No. 6,526, to the effect that the use of the blunt side of a sharp cutting instrument to cause hurt falls under section 315 of the Penal Code. It will be observed that that section does not say that the injury caused by the sharp cutting instrument must be injury in the nature of an incised wound, and I am not prepared to read any such limitation of the scope of the section into its provisions. The appeal is dismissed.

Appeal dismissed.