

1969

Present : Tennekoon, J.

H. R. DHARMASENA and another, Appellants, and SUB-INSPECTOR
OF POLICE, KADUGANNAWA, Respondent

S. C. 1161-62/68—M. C. Kandy, 49274

*Criminal Procedure Code, as amended by Act No. 25 of 1961—Section 406 (3)—
Report of a Lecturer in Forensic Medicine—Whether it can be used as
evidence.*

In a prosecution for causing grievous hurt, a medico-legal report of a Lecturer in Forensic Medicine who is not employed under the Government as a medical officer is not receivable in evidence under section 406 (3) of the Criminal Procedure Code in regard to the nature of the injuries in question.

APPEAL from a judgment of the Magistrate's Court, Kandy.

T. W. Rajaratnam, for the accused-appellant.

Kumar Amarasekera, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

May 21, 1969. TENNEKOON, J.—

The two accused were charged and convicted of the offence of voluntarily causing grievous hurt to the complainant, and were each sentenced to three months rigorous imprisonment. The evidence of the complainant and of the other supporting witness was to the effect that the two accused together assaulted the complainant with hands. The complainant sustained some contusions, one of which was on the rear aspect of his right hand at the base of the index and middle fingers. A Medico-Legal Report signed by Dr. H. Ranasinghe, Lecturer in Forensic Medicine, was produced and tendered in evidence. This report discloses that there was a fracture of the second metacarpal bone under the contusion. It hardly requires to be stated that a report of this nature cannot be used in evidence unless there is some special provision of law authorising such use. Under section 406 (3) of the Criminal Procedure Code as amended by Criminal Procedure Code (Amendment Act) No. 25 of 1961—

“.....any document purporting to be a report (other than a report upon a skiagraph) under the hand of a Government medical officer upon any person, matter or thing examined by such Government medical officer, may be used as evidence in any inquiry, trial or proceeding under this Code”.

Sub-section 4 goes on to say—

“The court may presume that the signature of any such document is genuine and that the person signing it held the office he professed to hold at the time he signed it.”

The report that was produced in this case was not signed by a person professing to be employed under the Government as a medical officer. He only claims to be a Lecturer in Forensic Medicine, and there is nothing to indicate that he holds an appointment under the Government. Crown counsel submits that although Dr. Ranasinghe may not be a Government medical officer, he holds very good and probably better qualifications in Medicine than most Government medical officers and that in fact he has taught many of them their medicine. The abundance of academic qualifications cannot however make up for the lack of the legal qualification, i.e. of being a Government medical officer which alone would entitle his report to be used as evidence. The question is not one of weight of evidence but of admissibility. The report cannot accordingly be used in evidence; in the result there is no admissible evidence to prove that the injury received by the complainant was grievous in character. The finding of the learned Magistrate however, that the accused did in fact assault the complainant remains unaffected.

I accordingly set aside the convictions and sentences and substitute therefor the following:—The two accused are convicted of the offence of voluntarily causing hurt punishable under section 314 of the Penal Code and each of them is sentenced to a fine of Rs. 50/- in default 2 weeks simple imprisonment.

Conviction altered.