

1945

Present: **Wijewardene J.**

APPUHAMY, Appellant, and WIJESINGHE, Inspector of Police, Respondent.

745—*M. C. Gampaha, 22,648.*

Punishment—Charge of causing hurt with knife—Accused, a youth—Duty of Magistrate to consider advisability of acting under chapter 26 of the Criminal Procedure Code.

The Magistrate, while sentencing the accused, aged 19, to 3 months' rigorous imprisonment for causing hurt with knife, said, "Of late knifing has increased considerably and it is, therefore, necessary to put it down with a firm hand". The accused's offence fell, in fact, under section 325 of the Penal Code, and not under section 315.

Held, that the Magistrate should have paid heed to the salutary principles underlying the statutory provisions made for the release of offenders on probation under chapter 26 of the Criminal Procedure Code.

A PPEAL from a conviction by the Magistrate of Gampaha.

¹ (1935) 36 N. L. R. 358.

² (1932) 1 C. L. W. 328.

E. B. Wikremanayake (with him *H. Wanigatunge*), for the accused appellants.

E. H. T. Gunasekera, C.C., for the Crown, respondent.

Cur. adv. vult.

February 9, 1945. WIJEYWARDENE J.—

The accused was convicted on charges of causing hurt to one Jamis and committing theft of his purse containing Rs. 60. He was sentenced to three months' rigorous imprisonment for each offence, the sentences being made to run concurrently.

Jamis stated that he was a salesman in the boutique of his brother, Podimatmaya, and that accused came there on the day in question and inquired for Podimahatmaya. On his replying that Podimahatmaya was away at Attanagalla, the accused stabbed him. As he ran towards Heras's boutique, he dropped his purse and the accused who was following him picked it and stabbed him again in Heras's boutique. He suggested that the motive was the accused's belief that he had told Podimahatmaya that the accused had stolen some poultry of Podimahatmaya some days before this incident. Abilinu, a brother of Jamis, gave evidence regarding the stabbing and theft. When questioned about the reason for the stabbing he made the somewhat strange statement, "Accused is an applicant to join the police force; so some people spread the rumour that accused had stolen fowls". Richard, a relation of Jamis, spoke about the stabbing but did not refer to the theft. According to him, Jamis complained to him only about the stabbing.

The accused denied the charge of theft. He said that, as he was passing Podimahatmaya's boutique, Jamis chased after him saying, "You stole the fowls" and struck him on the head, while one of Jamis's brothers assaulted him and that he, thereupon, used his knife.

The Magistrate has not considered the question whether the accused was insulted in the way stated by him. It is difficult to believe that the accused would have walked alone to the boutique deliberately some days after the alleged theft of fowls and stabbed Jamis there in the presence of his brothers. It may be that the accused has given an exaggerated account of the assault on him, but I think the version given by him regarding the circumstances which led to the stabbing is more probable than that given by Jamis. I hold that the accused's offence falls under section 325 of the Penal Code and not under section 315 as found by the Magistrate.

The evidence in support of the charge of theft is not convincing. It is admitted that "the boutique money is usually kept in the drawer" and it does not seem to be likely that a salesman would be carrying so much as Rs. 60 of the boutique money in his waist. Commenting on the charge of theft the Magistrate says, "One is aware of people adding charges of theft to simple cases of assault in order to come into this court instead of going to the Village Tribunal, but this is not such a case.

For a charge of knifing is not triable by the V.T. " The reason indicated by the Magistrate is not, however, the only reason inducing a person to add a false charge of theft to a charge of hurt.

In sentencing the accused, a lad of 19 years, to 3 months' rigorous imprisonment the Magistrate says, " Of late knifing has increased considerably and it is, therefore, necessary to put it down with a firm hand ". I think that in the circumstances of this case the Magistrate should have tempered his determination to put down crime " with a firm hand " by paying heed to the salutary principles underlying the statutory provisions made for the release of offenders on probation.

I set aside *pro forma* the conviction of the accused and direct him to be discharged conditionally on his entering into a recognizance with one surety in a sum of Rs. 150 to be of good behaviour and to appear for conviction and sentence when summoned at any time during a period of two years.

Order made under section 325,

Criminal Procedure Code.
