

1955

*Present: Swan, J.*

HEEN APPU *et al.*, Appellants, and SALIH (Police Sergeant), Respondent

*S. C. 710-714—M. C. Gampolu, 12,377*

*Rural Court—Exclusive jurisdiction—Village Tribunals Ordinance, No. 12 of 1945, ss. 12, 13.*

In a prosecution by a public officer in respect of an offence triable by a Magistrate's Court the accused cannot be convicted of a lesser offence which was not included in the charge and which is exclusively triable by a Rural Court.

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

*Colvin R. de Silva*, with *M. L. de Silva*, for the accused-appellants.

*Shiva Pasupati*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

October 28, 1955. SWAN, J.—

The appellants were charged with (1) criminal trespass and (2) causing grievous hurt to one A. K. V. Daniel. Both charges were framed against the accused on the basis that they had acted in furtherance of a common intention. After trial they were acquitted on count 1, and on count 2 only the 2nd accused-appellant was found guilty. He was convicted and sentenced to a term of six months' rigorous imprisonment, and to pay a fine of Rs. 75 in default to serve a period of one month's imprisonment. The 1st, 3rd, 4th and 5th accused-appellants were found guilty of simple hurt under section 314 of the Penal Code and fined Rs. 50 each.

Learned Counsel for the appellants did not press the appeal of the 2nd accused-appellant. I see no reason to interfere with his conviction or sentence. His appeal is dismissed and the conviction and sentence affirmed.

As regards the 1st, 3rd, 4th and 5th accused-appellants it is submitted that their conviction is bad because the learned Magistrate had no jurisdiction to convict them of simple hurt inasmuch as a charge of simple hurt is exclusively triable by the Rural Court having jurisdiction over the area in which the alleged offence was committed. The only exception is where a public officer prosecutes—vide section 12 of the Village Tribunals Ordinance No. 12 of 1945. But that does not apply in this case as the proceedings initiated by the public officer who prosecuted were in respect of offences triable by a Magistrate's Court. There is a case exactly in

---

point which is reported in *1 Ceylon Law Journal Notes of Cases* at page 44. That was decided under the old Ordinance No. 24 of 1924. But the new Ordinance makes no change.

Immediately the Magistrate found that the 1st, 3rd, 4th and 5th accused-appellants had committed an offence which was exclusively triable by a Rural Court he should have stayed proceedings and referred the parties to the Rural Court having jurisdiction as provided by section 13.

I quash the conviction of the 1st, 3rd, 4th and 5th accused-appellants.

*Appeal of 2nd accused dismissed.  
Convictions of the other accused quashed.*

---