

1948

Present : **Basnayake J.**

ARNOLIS APPUHAMY et al., Appellants, and **MAHIL**
(S. I., POLICE, KOSGAMA), Respondent

S. C. 1,102-1,103—M. C. Avissawella, 41,317

Penal Code—Fracture of bone—Crack not extending right through—Grievous hurt—Section 311.

In order to constitute grievous hurt within the meaning of section 311 of the Penal Code it is not necessary for the fracture of a bone that the crack or break should extend right through it.

Inspector of Police v. Pedrick (1944) 45 N. L. R. 62, not followed.

APPPEAL from a judgment of the Magistrate, Avissawella.

Stanley de Zoysa, for accused, appellants.

R. A. Kannangara, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 21, 1948. **BASNAYAKE J.**—

The learned counsel for the appellants does not canvass the findings of fact, but he submits that the conviction of the first appellant of the offence of causing grievous hurt on grave and sudden provocation is bad in law as the hurt caused by him is not any one of the kinds of hurt enumerated in section 311 of the Penal Code and is therefore not grievous hurt.

The injury in question is thus described by Dr. Tissaweerasinghe : “Linear lacerated wound 1” long × scalp-deep over right side of back of head with linear fracture of bone underneath”. In cross-examination he states : “I cannot say whether the fracture extended to the inner table”.

It is submitted on the authority of the case of *Inspector of Police v. Pedrick*¹ that as there is no proof that the crack in the bone underneath the scalp extended to the inner table there has been no fracture of a bone within the meaning of that expression in Section 311. In the Rangoon case which is followed in the case relied on by counsel, Spargo J. does not give the reason for his statement “that if it is a crack it must be a crack which extends from the outer surface of the skull to the inner surface”. I have great difficulty in accepting his statement as I find myself unable to reconcile it with the meaning of the word “fracture” in medico-legal parlance. It is permissible according to the rules of interpretation of statutes to resort to technical works to ascertain the meaning of technical expressions² because when the Legislature uses technical language in its statutes, it is supposed to attach to it its technical

¹ (1944) 45 N. L. R. 62 ; 26 C. L. W. 96.

² *In re Castioni* (1891) 1 Q. B. 149.

Law Journal Volume LXXIX., page 268, 20. 4. 31.
Dwarris on Statutes, 2nd Edn., p. 578.

meaning unless the contrary manifestly appears¹. For that reason I turn for assistance to the Dictionary of Medico-Legal Terms (Crew & Gibson), where the word “fracture” is defined as “a crack or break in a bone”. “There are several types—

- “ (1) Simple, one in which the periosteum—the covering of the bone—is intact, or in which there is little or no surrounding damage.
- (2) Comminuted, the bone is broken into several pieces.
- (3) Impacted, the ends of the bone are dovetailed and held in position.
- (4) Green stick, one side of the bone is cracked and the other bent like a green twig.
- (5) Compound, one where the bone ends of the fracture have penetrated through the skin and overlying tissues or where there is a wound leading down to the fracture.
- (6) Complete, one where the bone is severed right through.
- (7) Depressed, one where the bone is bulged inwards, a common fracture of the skull.
- (8) Ununited, one in which the ends have not welded together.
- (9) Spontaneous, one occurring at a point weakened by disease such as cancer or syphillis and requiring little or no external force.”

It appears from the above definition and catalogue of the different kinds of fractures that a fracture of a bone is a crack or break which need not necessarily extend right through it. In regard to fractures of the skull, Dr. Kerr observes in his work on Forensic Medicine²:

“When the skull is struck it bends slightly, thus stretching the inner table more than the outer table. The inner table will therefore fracture first, and if the blow is slight the fracture may be confined to a small crack of the inner table, the outer table remaining intact. With slightly greater force both tables are fractured, causing an ordinary fissured fracture.”

It is clear therefore that in medico-legal phraseology the injury described by Dr. Tissaweerasinghe may correctly be called a fracture of the skull bone. As there is nothing in the context of section 311 to exclude its technical meaning the expression “fracture” therein should, according to the canons of construction, be interpreted in the same sense.

Learned Crown Counsel relies on an unreported decision in S. C. Minutes of May 3, 1948, S. C. 253/M. C. Balapitiya, 60,121, wherein it has been held that the chipping off of a piece of bone amounts to a fracture for the purpose of section 311. That question does not arise here, and I prefer to reserve my opinion thereon. The judgment shows that the case of *Inspector of Police v. Pedrick (supra)* was cited but not followed.

The appeals are dismissed.

Appeals dismissed.

¹ *Burton v. Reeve*, 16 M. & W. 309, per Parke, B.

² *Forensic Medicine* by Douglas J. A. Kerr, 4th Ed., p. 115.