

1908.
August 28.

Present: Mr. Justice Wood Renton.

NAWANA v. FERNANDO.

P. C. Colombo, 23,662.

Penal Code, s. 219—Arrest on suspicion—Escape from custody—Criminal Procedure Code, s. 32, sub.-sec. (1) (e).

WOOD RENTON J.—A person who, having been arrested by a police officer on suspicion of having been concerned in the commission of the offence of theft, escapes from the custody of such police officer, is not liable to conviction under section 219 of the Penal Code. It is only where an accused person has been either charged with, or convicted of, an offence that he comes within the purview of section 219 of the Penal Code.

A PPEAL by the accused from a conviction under section 219 of the Penal Code. The facts appear in the Judgment.

Allan Driberg, for the accused, appellant.

August 28, 1908. WOOD RENTON J.—

The accused appellant has been convicted under section 219 of the Ceylon Penal Code of escape from custody, in which he was lawfully detained, and has been sentenced to six months' rigorous imprisonment and to pay a fine of Rs. 25, or in default to undergo a further period of six weeks' rigorous imprisonment. The accused was arrested by a police constable on suspicion of being concerned in theft, and there is no question, in view of section 32, sub-section (1) (e), of the Criminal Procedure Code, that under such circumstances he was in the lawful custody of the police constable who arrested him, but one of the witnesses for the prosecution, Sergeant-Major Borang, said that the police constable who brought the accused-appellant before him told him that he had done so on a charge of theft. The police constable himself does not make the statement, and the learned Magistrate has found as a fact that the arrest was effected only on suspicion. The question, therefore, arises whether in view of the language of section 219 of the Penal Code, which deals first with resistance or illegal obstruction to the apprehension of an accused person "for any offence with which he is charged, or for which he has been convicted," and which then proceeds to attach a punishment to escape "from any custody in which he is lawfully detained for any such offence," the present accused-appellant can be convicted under that section. It has been found necessary in India, for the purpose of meeting difficulties of this kind arising under the analogous section (224) of the Indian Penal Code, to enact a special section (225b) for the purpose of penalizing the escape of an accused person from any custody in which he may be lawfully detained. There are no direct decisions, so far as I am aware, either of the Courts of this Colony or of the Indian Courts on

the point in question in this case. But the cases of *Deo Sahay Lal v. Queen Empress*,¹ and the opinion expressed in *5 Weekly Reporter, Criminal Letters*, p. 9, point strongly to the conclusion that it is only where an accused person has been either charged with, or convicted of, an offence that he comes within the purview of the law embodied in section 219 of the Ceylon Penal Code. I set aside the conviction and the sentence.

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Appeal allowed.

