1931 *Present:* **Macdonell C.J.**

KARUNARATNE *v.* SIYATU.

458—P. C. Gampola, 23,967.

Escape from lawful custody—Meaning of the words "charged with offence"—Must the accused be told the offence?—Penal Code, s. 219.

Where a person is charged with escaping from lawful custody, it is not necessary for the prosecution to prove that the officer arresting him told him what the offence was with which he is charged.

APPEAL from a conviction by the Police Magistrate of Gampola.

H. E. Garvin, for accused, appellant.

M. F. S. Pulle, C.C., for Crown, respondent.

September 8, 1931. MACDONELL C.J.—

In this case the accused was charged and convicted under section 323, the appeal against which conviction was dismissed. But at the same time I reserved the question of whether the conviction for a contravention of section 219, *i.e.*, escaping from custody in which he was lawfully detained, could be sustained. The section reads as follows:—

> "Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or for which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

At one time the tendency was to hold that there could not be a contravention of this section unless the person had actually been charged before a Magistrate. See particularly *Nawana v. Fernando*[1] and *Rex v. Abubakker*[2]. But in *Obeyesekera v. Perera*[3] Bertram C.J. held that the word "charged" in this section must not be restricted to a charge before a Police Magistrate.

The further question arises. To contravene this section must a person have been actually told the offence with which he is charged so as to make his escape from custody punishable under section 219? In the present case the accused was caught while he was unlawfully selling toddy, or at least the very moment after. But there is no evidence that the person arresting him spoke to him any words to acquaint him of what the charge against him was for which he was arrested. It was proved in this case that the arrest was lawful, but there is nothing to show that at the time of the arrest or of the escape from arrest—the whole thing happened in a few seconds—any words had been uttered to show the offence for which

[1] *11 N. L. R. 276.* [2] *1 Times L. R. 168.* [3] *7 C. W. R. 140.*

accused was being arrested. This point, however, seems to have been adequately dealt with by *Gour, 3rd ed., p. 1148:* " The word ' charged ' here has been used in the popular sense as implying an imputation of the alleged offence as distinguished from the judicial charge formulated after the recording of evidence in Court. A policeman arresting another on a suspicion of an offence accuses or charges him with an offence, so that his resistance to his apprehension or his escape from custody would constitute an offence punishable under this section. The ' charging ' must, of course, be by a person duly empowered, and under circumstances justifying it. " The point is put even more tersely by *Mayne, 4th ed., p. 142:* " An arrest of a person by a duly authorized officer is a charging, *i.e.*, an imputation of an alleged offence, though only a *primâ facie* imputation until the case goes before a Magistrate. "

If this be the law, then it is perfectly clear that the accused in this case had contravened section 219 and the appeal on that charge must be dismissed also.

Affirmed.