

1936

*Present : Abrahams C. J.*THE KING *v.* WEERASINGHE.

92—D. C. (Crim.) Colombo, 11,526.

Sentence—Conviction of robbery and hurt—Consecutive sentence unjust—Penal Code, ss. 390 and 392—Criminal Procedure Code, s. 180 (k).

Where an accused is convicted of robbery under section 380 and of causing hurt under section 382, consecutive sentences should not be imposed as hurt punishable under the section is a necessary ingredient of the offence of robbery.

A PPEAL from a conviction by the District Judge of Colombo.

L. A. Rajapakse (with him *Siri Perera* and *Dodwell Goonewardene*), for accused, appellant.

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

Cur. adv. vult.

November 19, 1936. ABRAHAMS C.J.—

This conviction must be affirmed. The learned District Judge believed that the householder and his wife identified the appellant and there is no reason on the record itself to doubt their evidence. They told a circumstantial story, and as the learned District Judge was favourably impressed with their evidence I can see no ground for interference.

A measure of criticism has been directed in this appeal towards a discrepancy between the evidence of the householder's wife's brother, who gave the first information of the burglary to the police, and the statement he made and signed. I do not agree with the learned District Judge's conclusions that this witness must have given certain details of information which the police constable omitted to record and instead of which he actually inserted something else. There is no sacrosanctity about a first information, but it is a document of some solemnity and there should be very strong reasons for a Court to conclude that a repudiation of it is warranted, especially when as in this case, the informant was well acquainted with English and the information was recorded in that language.

I do not think, however, that the veracity of the three prosecution witnesses is seriously impugned by the aforesaid contradiction. A burglary is an exciting episode at any time, and to add to the normal excitement the lady had the unpleasant experience of having an ornament forcibly removed from her neck while she was in bed and suffered a few face injuries from the act of violence. In these circumstances she may have said less to her brother about the burglars than she subsequently thought, but undoubtedly she did tell him she identified one of them.

The appeal is dismissed, but the sentence require some adjustment. Although by virtue of illustration (k) to section 180 of the Criminal Procedure Code separate convictions can be had in respect of joint charges under sections 380 and 382 of the Penal Code, I am of opinion that since the hurt punishable under section 382 is a necessary ingredient of the robbery under section 380 consecutive sentences would be unjust. At the same time the aggregate of the three sentences imposed in this case—9 months—is very light and the appellant should certainly suffer no shorter term of imprisonment. I, therefore, increase the sentence under section 380 to 6 months rigorous imprisonment and direct it to run concurrently with the sentence of 3 months under section 382. The sentence of 3 months imposed under section 443 to be served after the termination of the others.

Sentence varied.
