

1947

Present : Dias J.

ALDIN, Appellant, and SANASGALA (S. I. Police), Respondent.

1,728—M. C. Balapitiya, 56,500.

Sentence—Conviction for causing hurt under Penal Code, s. 315—Hurt not caused by “dangerous knife”—Competency of Magistrate to order whipping—Knives Ordinance (Cap. 20), s. 10.

Under section 10 of the Knives Ordinance, whenever a person is convicted before a Magistrate of an offence under section 315 of the Penal Code, the offender is liable to be whipped, whether the hurt was caused by a “dangerous knife” or not.

A PPEAL against a conviction from the Magistrate’s Court, Balapitiya.

.K. Sivasubramaniam, for the accused, appellant.

Boyd Jayasuriya, C.C., for the Attorney-General.

Cur. adv. vult.

January 13, 1947. DIAS J.—

I see no reason to interfere with the findings of fact of the Magistrate. The appellant who was a baker’s boy failed to deliver bread to the injured man Linton Perera on August 24, 1946. On the following day too Linton Perera got no bread. Therefore when he saw the appellant returning to the bakery after his rounds, Linton Perera accosted the appellant, held the handle bar of his bicycle and asked him why no bread had been delivered. The appellant dismounted, pulled out a knife, stabbed the complainant and took to his heels. The medical evidence shows that Linton Perera sustained a stab wound in his chest 2¼ inches deep. The attack was a wanton one and was inflicted without any justification or provocation.

The appellant who had one previous conviction for causing hurt was sentenced to undergo six months' rigorous imprisonment and to receive 15 strokes with a rattan under the Prohibited Knives Ordinance (Chapter 20). The age of the appellant is twenty-one.

Counsel for the appellant argued that the sentence was excessive, and in particular that the sentence of whipping was illegal. He urged that the Dangerous Knives Ordinance was enacted to prohibit the carrying of "dangerous knives", which by section 15 were defined to mean "any knife . . . the blade of which is more than 3½ inches in length, and is not so rounded or blunted at the point as to be incapable . . . of being used as a stabbing instrument". It is submitted that there is no evidence that the knife used by the appellant was such a knife. As the medical evidence showed that the depth of the wound was only 2½ inches, there was a doubt whether the knife used by the appellant was a dangerous knife. A penal enactment like Chapter 20 should be strictly construed, and there being a doubt, the sentence of whipping cannot stand. That would be a strong argument, but unfortunately for the appellant, this Court on two previous occasions has considered and decided that point against him.

Chapter 20 reproduces the provisions of Ordinance No. 28 of 1906. The editor of the revised edition of the Legislative Enactments, in preparing Chapter 20, altered the sequence of the sections of the Ordinance. The original section 12 now appears as section 10 in Chapter 20.

The preamble to Ordinance No. 28 of 1906 reads as follows :—

"Whereas it is expedient to prohibit the carrying of *certain descriptions of dangerous knives*: Be it therefore enacted, &c." It is, therefore, clear that the Ordinance is one which is designed to prohibit the carrying of certain kinds of knives. The draftsman of the original section 12, however, provided that "Whenever a person is convicted before a Magistrate's Court of an offence under section 315 of the Penal Code, such Magistrate's Court may, in addition to or in lieu of any punishment to which the offender may be sentenced for such offence, order such offender to be whipped in manner prescribed by the Criminal Procedure Code, but the number of lashes or strokes to be inflicted shall in no case exceed the limit prescribed by the Corporal Punishment Ordinance (Chapter 17)." The construction of this section was considered by de Sampayo J. in 529-531 M. C., *Badulla*, 8,612¹. In that case certain persons were convicted under section 315 of the Penal Code for causing hurt and were sentenced to terms of imprisonment and also to receive 24 lashes under this Ordinance. The hurt was *not caused with knives but by means of clubs*.

De Sampayo J. held that the preamble to Ordinance No. 28 of 1906 could not govern or qualify the general language of section 12. "The preamble of an Ordinance is a good means to find out its meaning, and may legitimately be consulted for the purpose of solving any ambiguity; but it cannot control or restrict the actual provisions when they are clear and not open to doubt. The enacting part of an Ordinance is

¹ (1912) 1 *Times of Ceylon* L. R. 213.

not necessarily co-extensive with the preamble, and although a particular mischief is recited, the legislative provisions may, and do often extend beyond it. In section 12 of this Ordinance there is no ambiguity, and I have no doubt that the provisions for whipping *extends to all cases under section 315 of the Penal Code whether the weapon used is a knife or any other instrument*." The same question arose again in *Sellathurai v. Kandiah* where the accused caused hurt under section 315 by pouring *boiling water* on the injured person. A. St. V. Jayewardene J. refused to delete a sentence of whipping imposed under the Dangerous Knives Ordinance following the judgment of de Sampayo J.

These decisions are in point and I feel bound to follow them. Under section 10 of Chapter 20, whenever a person is convicted before a Magistrate of an offence under section 315 of the Penal Code, the offender is liable to be whipped irrespective of whether the hurt was caused by a "dangerous knife" or any other kind of agency. The Magistrate in this case, therefore, had jurisdiction to inflict a sentence of whipping. If the law should be amended that is a question for the Legislature and not for the Courts.

I am, however, of opinion that the sentence appears to be excessive in the light of all the circumstances of the case. I set aside the sentence and direct that the appellant shall undergo rigorous imprisonment for three months and to receive 6 strokes with a light cane or rattan.

The sentence of whipping, of course, will have to be confirmed by His Excellency the Governor in terms of section 316 of the Criminal Procedure Code. Subject to these variations the appeal is dismissed.

Appeal dismissed.
