

1969

*Present : Weeramantry, J.*

S. A. SUMATHIPALA and another, Appellants, and INSPECTOR  
OF POLICE, CRIMES, Respondent

*S. C. 1057-1058/68—M. C. Colombo South, 90707/A*

*Jurisdiction—Robbery on a highway between sunset and sunrise—Not triable by Magistrate's Court—Penal Code, s. 380—Criminal Procedure Code, Schedule I—Legislative Enactments of Ceylon, 1938 Revised Edition—Ordinance No. 19 of 1937, ss. 3, 6 (1), 10—Powers of the Commissioner thereunder—Incapacity of the Commissioner to alter the law.*

The offence of robbery (Section 380 of the Penal Code), when it is committed on a highway between sunset and sunrise, is not triable summarily by a Magistrate's Court even if the value of the property in respect of which the offence is committed does not exceed two hundred rupees. The only Court other than the Supreme Court by which the offence is triable is the District Court.

The alteration effected in the 1938 edition of the Legislative Enactments of Ceylon so as to give jurisdiction to a Magistrate to try a case of robbery committed on a public highway between sunset and sunrise was not based on pre-existing law or on the general powers given to the Commissioner by Ordinance No. 19 of 1937.

Observations on the powers of the Commissioner.

APPEAL from a judgment of the Magistrate's Court,  
Colombo South.

*Mark Fernando*, for the accused-appellants.

*Kumar Amarasekera*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

July 29, 1969. WEERAMANTRY, J.—

The appellants in this case were convicted of robbery after summary trial by a Magistrate.

In appeal the Magistrate's findings of fact have not been canvassed but the point is taken that the Magistrate had no jurisdiction to try this case summarily. This contention is based on the fact that the offence was committed between sunset and sunrise on a highway, circumstances which in the submission of the appellants render the offence triable exclusively by a District Court.

The first schedule to the Criminal Procedure Code as appearing in the current revised edition of the Legislative Enactments (the 1956 edition) contains, in respect of section 380 of the Penal Code, two separate

entries in the Column headed "Offence". The first entry deals with the offence of "Robbery" and the second with the offence of robbery "If committed on the highway between sunset and sunrise". I shall in this judgment refer to these offences as the "first offence" and the "second offence" respectively.

Against the first offence column 7 states that the punishment is rigorous imprisonment for ten years and fine, with whipping in addition, and goes on to state further that if committed on the highway between sunset and sunrise the punishment is rigorous imprisonment for fourteen years. Against these entries column 8 states that the offences are triable by the District Court, or in cases where the value of the property does not exceed Rs. 200, by the Magistrate's Court. These entries would appear to suggest that a Magistrate's Court would have jurisdiction to try a case of robbery even though committed on the highway between sunset and sunrise, if the property does not exceed Rs. 200 in value.

The second entry under section 380 deals exclusively and specifically with the second offence, namely robbery committed on the highway between sunset and sunrise, and provides in column 8 that the offence is triable by the District Court alone.

The learned Magistrate has quite clearly tried this case in reliance on the entries against the first offence under section 380 for he has apparently assumed that his Court has jurisdiction if an offence though committed between sunset and sunrise on the highway, involves property worth less than Rs. 200 in value.

The property in this case has been valued at Rs. 107.75.

The contention for the defence is that the entry to which I have just referred appears against the first offence by error and that against the first offence there should not appear in column 7 any reference to offences committed on the highway between sunset and sunrise.

A perusal of the earlier editions of the Legislative Enactments indicates that the entry we are concerned with appears in its present form for the first time in the 1938 Revision of the Enactments. The earlier edition of the Enactments, namely the 1923 edition, did not contain any words against the entries relating to the first offence indicating any jurisdiction in a Magistrate's Court to try the second offence, the only Court having such power being the District Court, by virtue of the entry relating to the second offence. In the earlier editions in column 7 against the first offence there did not appear any words dealing with the second offence, and indeed it would appear to be out of place for such entries to appear against the first offence, seeing that there is a separate set of entries devoted exclusively and particularly to the second offence. The position was the same in all the earlier editions of the Enactments, and despite general revisions of the Schedule such as that effected by Ordinance No. 1 of 1910, the entries in the 1923 edition under section 380 go all the way back to the actual enactment of the Code in 1898.

It is worth observing, further, that in the Penal Code as contained in the 1923 edition of the Enactments<sup>1</sup>, there is an editors' footnote against sections 380–385 to the effect that they are triable by the Supreme Court and District Court except sections 380 and 381 which are also triable by a Police Court, *unless under section 380 the offence is committed on a highway between sunset and sunrise*. An identical editors' footnote appears in the 1913 edition of the Enactments.<sup>2</sup>

The question then is whether when this alteration was made in the 1938 edition there was any authority for effecting such alteration, whether by virtue of statutory provision altering the law to such effect or by virtue of any power in the Commissioner appointed for the purpose of preparing the revised edition.

Learned Crown Counsel has been unable to point to any statutory provision altering the law so as to give jurisdiction to a Magistrate to try a case of robbery between sunset and sunrise on a public highway; nor have I been able to discover any such. Indeed in the schedule appearing in the 1938 edition the learned Commissioner who prepared the same has made reference to statutory provisions altering the law between the earlier edition and his own and has with reference to section 380 indicated that a change had been effected by Ordinance 13 of 1938. Had there been a statutory alteration of the Schedule giving Magistrates' Courts jurisdiction to try cases of robbery between sunset and sunrise, where the property involved was under Rs. 200 in value, I have no doubt such statute would have been referred to in the Schedule in the same manner as the reference to Ordinance 13 of 1938. I proceed therefore on the basis that there is no statutory provision effecting such an alteration in the law.

Indeed upon a consideration of the matters to which I have referred it appears extremely doubtful that the departure in this respect of the 1938 edition from the earlier editions was deliberate. A further factor indicative of this is the fact that the punishment for the second offence is "rigorous imprisonment for fourteen years, and fine, whipping in addition", whereas in the entry relating to the second offence as appearing against the first offence, the only punishment stated is rigorous imprisonment for fourteen years. If the insertion we are considering had been the result of a conscious and deliberate departure from the earlier editions it is scarcely likely that the editor would have failed to give his mind to this discrepancy.

Whether the alteration be deliberate or accidental the next question then is whether the authority of the Commissioner given to him by Ordinance No. 19 of 1937 was wide enough to empower him to introduce such an alteration into the first schedule.

Section 3 of that statute gave the Commissioner very wide powers in regard to such matters as omission, rearrangement, consolidation, incorporation of subordinate legislation, renumbering of sections, alteration of form or arrangement of sections, insertion of definitions

<sup>1</sup> vol. iv, p. 116.

<sup>2</sup> vol 1, p. 122.

of terms and expressions and the correction of grammatical, typographical and other mistakes. There would appear however to be no provision entitling the Commissioner to effect such an insertion into the schedule, which amounts in effect to an alteration of the pre-existing law. Furthermore, section 6 (1) of the same statute expressly states that the powers conferred on the Commissioner by section 3 shall not be taken to imply any power in him to make any alteration or amendment in the matter or substance of any legislative enactment. It would appear that the alteration effected has precisely this effect. Indeed the same section contains a procedure by which the Commissioner may cause such alterations in the law to be made, for it entitles him if he thinks fit to draft a bill authorising such alterations or amendments for submission to the legislature.

It seems clear therefore that the alteration effected in 1938 was one not based on pre-existing law or on the general powers of the Commissioner.

It is urged on behalf of the Crown that the alteration is rendered valid by section 10 of the Ordinance which provides that upon the passing of a resolution in the State Council authorising him to do so the Governor may by proclamation order that the Revised Edition shall come into force from such date as he may think fit, and also by the provision that from the date appointed in such proclamation the Revised Edition shall be deemed to be and shall be without any question whatsoever in all Courts of Justice and for all purposes whatsoever the sole and only proper statute book of Ceylon in respect of the enactments therein contained. The sub-section goes on to state that the revised edition shall be substituted for previous editions of the Enactments.

It seems clear however that the provision that the Revised Edition shall be substituted for previous editions can only be given effect to in respect of such revisions incorporated therein as have been legally effected. It would be contrary to principle to extend it so far as to give validity to an alteration made in excess of the powers conferred on the Commissioner, and, moreover, such a view is clearly negated by such a provision as that contained in Section 6 (1).

The requirement that the Revised Edition shall without any question be deemed to be the sole and only proper statute book does not take the matter any further in respect of revisions contained therein which are unauthorised by law. Further, the provision that the Governor may by proclamation order that the Revised Edition shall come into force from such date as he may deem fit does not in any way give legislative approval to unauthorised alterations in the revised edition, but is aimed rather at enabling the Governor to fix a date on which the Revised Edition should come into operation. What comes into operation, however, is only the revised edition in so far as it contains law made by the legislature or as revised within the powers given to the Commissioner.

The insertion in column 7, against the first offence, of an indication that the second offence, namely robbery committed on a highway between sunset and sunrise, is triable by a Magistrate's Court if the property does not exceed Rs. 200 in value, is therefore one for which there was no authority in law, and for the reasons I have stated, I uphold learned Counsel's contention to this effect.

It follows that where a robbery is committed on a highway between sunset and sunrise the only Court other than the Supreme Court by which the offence is triable is the District Court.

The trial had before the learned Magistrate being therefore invalid, I quash the convictions and direct a retrial of the accused in accordance with law. The fresh proceedings will be had before another Magistrate.

*Conviction quashed.*

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