

1948

*Present : Howard C.J.*

INDRASENA, Appellant, and WELIKADA  
POLICE, Respondent.

*S. C. 224—M. C. Colombo, 38,069.*

*Sentence—Trivial offences—Previous convictions of accused—Duty of Magistrate—  
Penal Code, Sections 287, 314.*

Where a person is convicted of offences which are trivial in character it is not proper for the Magistrate in passing sentence to take into consideration previous convictions of the accused even though such convictions were of a serious character.

**A**PPPEAL from a judgment of the Magistrate, Colombo.

*H. A. Koattegodda*, for the accused, appellant.

*A. C. Alles, Crown Counsel*, for the Attorney-General.

April 22, 1948. HOWARD C.J.—

The appellant in this case was convicted (1) of using obscene language in a public place to the annoyance of other people and (2) of causing hurt to Kaluaratchige Wijedasa by striking him with hands. The first charge was laid under section 287 and the second charge

<sup>1</sup> (1911) 6 *Criminal Appeal Reports* 253.

<sup>2</sup> (1911) 6 *Criminal Appeal Reports* 285

<sup>3</sup> (1910) 4 *Criminal Appeal Reports* 225.

under section 314 of the Penal Code. The evidence established that the appellant did use filthy language but the language was not used without some provocation. With regard to the charge of causing hurt, the evidence was that the appellant struck the complainant on the chest with his fist.

The Magistrate, after convicting the appellant on both charges sentenced him to 3 months' rigorous imprisonment on the first charge and 6 months' rigorous imprisonment on the second, the sentences to run concurrently. In imposing these sentences the Magistrate seems to have taken into consideration the facts that the appellant admitted three previous convictions, one for causing hurt with a katty, the other for theft of cattle and the third for robbery of a cart and bull. He also may have been influenced by the fact that the appellant took a very good view of himself. I say this because the Magistrate says in giving his reasons. "I have watched the demeanour of the accused in the witness-box. I have not the slightest doubt that he thinks that he is the monarch of all he surveys." The offences of which the appellant was convicted were of a very trivial character and I do not think that in those circumstances it was right or proper for the Magistrate to take into consideration these three other convictions, although those convictions were of a very serious character.

In these circumstances I affirm the convictions but set aside the sentences and impose in place of the sentence of 3 months' rigorous imprisonment on the first charge a fine of Rs. 20 and in place of the sentence of 6 months' rigorous imprisonment on the second charge a fine of Rs. 30. In default of payment of these fines I direct that the accused do undergo 6 weeks' rigorous imprisonment.

*Sentence varied.*

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