

1948

Present : Basnayake J.

FERNANDO, Appellant, and INSPECTOR OF POLICE,
PANADURE, Respondent.

S. C. 937—M.C. Panadure, 47,191.

Criminal Procedure Code—Bond to be of good behaviour—Without proceeding to conviction—Meaning—Section 325.

Conviction within the meaning of section 325 of the Criminal Procedure Code means verdict of guilty recorded under section 188 or 190.

APPEAL from a judgment of the Magistrate, Panadure.

H. V. Perera, K.C., with *S. R. Wijayatilake*, for the accused, appellant.

Boyd Jayasuriya, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 24, 1948. BASNAYAKE J.—

The accused-appellant who was charged with the offence of causing grievous hurt to one P. Simon Salgado was ordered by the learned Magistrate under section 325 of the Criminal Procedure Code to enter into a bond in a sum of Rs. 200 with one surety to be of good behaviour for 2 years and to pay a sum of Rs. 75 as compensation to the injured man.

It has been held in a number of cases, and it may now be taken as settled, that there is no right of appeal from an order under section 325 of the Criminal Procedure Code. This appeal is therefore rejected. Nevertheless I have examined the appellant's case under section 357 of the Criminal Procedure Code in view of his application in that behalf.

The case for the prosecution is that on May 28, 1947, at about 9.30 at night after the doors of the injured man's house had been closed he heard someone outside calling out and asking for ink. He opened the front door and went out followed by his wife. He saw the appellant in the compound with a club in his hand. As soon as he saw the injured man the appellant rushed at him and struck him two blows, one on his arm and the other on his shoulder. Before further blows were struck the injured man managed to get into his house and close the door. His story is corroborated by his wife who

also identified the appellant by the light of the lamp that was burning in the verandah. The appellant in his evidence denied the charge and stated that he was in his boutique that night. He called no witnesses in support. The learned Magistrate who heard and saw the witnesses does not appear to have any doubt as to the truth of the prosecution case. I see no sufficient ground for interfering with his finding.

I observe that the learned Magistrate has in this case recorded the finding against the appellant in these terms: "I find the accused guilty". I am inclined to think that such a finding is not in keeping with the object of section 325 of the Criminal Procedure Code which expressly provides that "the Court may, without proceeding to conviction". In *King v. Ratnam*¹ Garvin J. expressed the view that those words must be construed as meaning "without proceeding to record a conviction". In the case of *Oaten v. Auty*² Avory J. construed the corresponding English provision in the same sense. A conviction in this context means a verdict of guilty recorded under either section 188 or 190 of the Criminal Procedure Code. I therefore delete the offending words and substitute therefor the words "I find the charge proved". Subject to this variation the order of the learned Magistrate is affirmed.

Order varied.
