1931

Present : **Lyall Grant J.**

REX *v.* GUNASEKERE.

132—*D. C.* (*Crim.*) *Matara*, 22.

Joinder of charges—Offence committed in the course of the same transaction—Same time and place—Criminal Procedure Code, s. 180 (1).

Where the accused was charged with others in the same proceeding with being members of an unlawful assembly, the common object of which was to cause hurt and also with causing hurt at the same, time and place to several persons and convicted of simple hurt,—

Held, that there was no misjoinder of charges.

APPEAL from a conviction by the District Judge of Matara.

Hayley, K.C. (with him *Roberts*), for appellant.

Pulle, C.C., for Crown, respondent.

May 21, 1931. LYALL GRANT J.—

The appellant in this case was found guilty of simple hurt and was sentenced in the District Court to pay a fine of Rs. 25. Leave to appeal was refused and accordingly the present appeal is on a point of law only. There is also a petition in revision. The point of law is that there is a misjoinder of charges. The accused was put on his trial before the District Court of Matara on an indictment which contained 17 counts, of which counts 1 to 9 charged the accused with various offences as a member of an unlawful assembly whose common object was to

cause hurt. Counts 10 to 16 inclusive charged all the accused with causing hurt to seven separate persons. The 17th charge was a charge of robbery against the second accused. The learned District Judge found that there was not sufficient evidence of an unlawful assembly whose common object was to cause hurt and he accordingly acquitted the accused of the first nine charges. He convicted the first accused on the 10th count of having caused hurt to one Jayesekere and acquitted him on the other charges. It is argued that the learned District Judge having acquitted all the accused on the unlawful assembly counts, could not have convicted the appellant of hurt and the trial of all the accused together on the remaining counts was irregular, inasmuch as there was a misjoinder of accused persons and of charges.

Another point of law which was taken was that the learned District Judge having acquitted the accused on the first 9 counts, the offences contained in the other counts were exclusively within the jurisdiction of the Village Tribunal and the District Judge should not and could not have assumed jurisdiction. I think the latter point can be shortly dealt with. Section 61 of the Village Communities Ordinance of 1924, which confers exclusive jurisdiction on the Village Tribunal for the trial of certain offences, provides for the trial by a higher Court of such offences where prosecution is by a public officer. In the present case the prosecution was by the Police.

On the question of misjoinder section 178 of the Code provides that separate charges shall be made in respect of distinct offences and every such charge shall be tried separately except in the cases mentioned in sections 179, 180, 181, and 184, which sections may be applied severally or in combination.—Section 180 (1) provides that in the case of one series of acts connected togethet so as to form the same transaction if more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence and in trials before the Supreme Court or District Court such charges may be included in one and the same indictment. In regard to this section it was argued that when the charge of unlawful assembly failed, there was nothing to connect the offences charged in counts 8 to 16. The only connection between them was that they were said to be at " the same time and place ", and the time and place mentioned was at Midigama in the District of Matara on or about February 24, 1930. It was urged that if indictments of this nature were admitted it would be possible to charge a number of different individuals on the same indictment, though different offences were committed at different places and at differnet times, so long as they were committed on the same day and within a certain geographical area. In other words, it was urged that there was nothing to show that the offences were committed in the course of the same transaction. I do not think that one can dissect the indictment in this manner. Section 168 (1) provides that the charges shall contain such particulars as to the time and place of the alleged offence and as to the person (if any) against whom and as to the things (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged and to show that the offence is not prescribed. The essential point is whether the accused had reasonable notice of the charge, and for that purpose I think that one must look at the indictment as a whole. On so doing, one finds that the accused is primarily charged with committing certain offences as a member of an unlawful assembly. Charges 10 to 17 are duplicates of the earlier charges merely omitting the phrase " as a member of an unlawful assembly ". I think it is quite clear from the indictment that these charges relate to the same acts which were specified in the earlier charges.

It is clear that the offences charged in counts 10 to 17 were offences committed at the time and place where it was alleged the unlawful assembly occurred and that they were alternative charges designed to fix guilt upon the accused in connection with the transaction which took place at the spot where they were assembled together, in the event of that assembly not being found to be unlawful. I do not think that the accused was in any way misled as to the charges made against him or that he was in any way inconvenienced by the fact that other charges were made against other persons in the indictment.

Section 180 to 184 read together appear to me to provide for an indictment being drawn in the form of the one which is used here.

On a review of the case in revision and accepting the main findings of fact of the learned District Judge, I think that the accused ought not to have been convicted of hurt. The learned District Judge has found that it had not been proved that the accused incited the others to attack the complainant and he is therefore not liable for the injuries caused by them. He says, however, that the first accused struck Jayesekere a blow. It has been pointed out that there is no evidence that the accused himself caused hurt to Mr. Jayesekere ; one witness says that the blow which he aimed at Mr. Jayesekere missed him altogether and Mr. Jayesekere himself says that it brushed him and he could not say why it did not strike him. It was open, however, for the learned District Judge to convict him under section 343 and the fine might have been extended to Rs. 50. I am not disposed to deal with the case in revision as I think that the first accused acted in a high-handed and illegal manner.

The appeal is dismissed and the application in revison is refused.

Appeal dismissed.