

1930

Present : Lyall Grant J.

AMERETUNGE v. PERERA *et al.*
457-463—*P. C. Gampaha*, 12,539.

Criminal charge—Death of complainant—Do proceedings abate ?

Criminal proceedings which are conducted by the Police do not abate on the death of a complainant.

APPPLICATION for revision of a conviction by the Police Magistrate of Gampaha.

de Zoysa, K.C. (with him *Jayasuriya*), for first appellant.

Jayasuriya, for second to eighth appellants.

September 8, 1930. LYALL GRANT J.—

I am asked to deal in revision with the convictions of two persons. Both accused were convicted of having voluntarily caused hurt to one J. P. Ameretunge, and the first accused having in addition committed mischief.

One ground upon which I am asked to interfere has reference to the procedure adopted. The accused was charged in the original complaint, together with others, of assault, punishable under section 346 ; of theft of a starting handle and of cash, and of mischief by tearing and damaging the hood of a car. That complaint was laid upon February 15 this year when the deposition of the complainant was taken at length, and on February 17 the Police reported to the Court that the same accused caused hurt to Mr. Ameretunge, the first complainant, an offence punishable under section 314, and that they committed mischief by causing damage to the car.

The Police information related to the same transaction as the original complaint.

The journal entry of that date states :—

“ All accused present, except the 8th accused. Private plaint has already been filed in this connection and summons have already been issued for February 21. File this plaint with the private plaint filed. Accused present, warned to attend on February 21.”

On February 21 the first seven accused were present and a charge was framed and explained to them. The charge framed was that the accused assaulted and used criminal force to the complainant J. P. Ameretunge, with intent to dishonour him, an offence punishable under section 346 ; that at the same time and place they committed theft of a starting handle of a motor car valued at Rs. 25 and Rs. 3 in cash, an offence punishable under section 367 of the Penal Code, and at the same time and place they committed mischief by tearing and damaging the hood of the complainant's car and by breaking the door, an offence punishable under section 409 of the Penal Code. The charge, in short, followed the terms of the original complaint.

The accused pleaded not guilty to the charges and a date for trial was fixed for March 7.

On March 7 the trial was adjourned for March 18. The journal entry of March 18 states :—

“ Accused present. Complainant was murdered to-day. As I have filed the plaint I shall not make a final order. Call case on March 25.”

On March 25 the accused were present and were represented by counsel, Mr. Tennekoon, who contended that the complainant was dead and the case must abate. He asked time to cite authorities in support of this contention. On March 29 accused were again present and Mr. Tennekoon for them stated that he had not been able to find any authorities on the point taken by him on the last date, but he cited section 194 of the Criminal Procedure Code. It is not clear whether Mr. Tennekoon pressed the motion. No order appears to have been made upon it.

On this date the Police moved to add a charge against all the accused for causing hurt to Carl Ameretunge as well.

The application was allowed but the Magistrate added that :—“ Carl Ameretunge is absent ; before I frame this charge the evidence of Carl Ameretunge must be recorded. Cite Carl Ameretunge for April 3.”

On April 3 the evidence of Carl Ameretunge was taken in the presence of the accused, and after his evidence was taken the Magistrate framed an additional charge against the accused of causing hurt to Carl Ameretunge under section 314. The trial was then fixed for April 8, and was adjourned as the first accused was said to be ill. The trial was then fixed for April 11, when the first accused was found still to be ill and the trial was fixed for April 26. On April 26 the trial took place and the accused were represented by leading counsel. At this stage no objection was taken to the procedure adopted and the trial proceeded.

On that date the case for the prosecution was closed and on the motion of counsel for the accused the case was

adjourned for the defence to be taken on May 10. On that date it was again postponed for May 31. On that date three of the accused were said to be ill and the trial was again postponed for June 14. On June 14 evidence was called for the defence and the case for the defence was closed. The order of the learned Magistrate was made on June 18.

The principal objections which have been taken on appeal are—

- (1) that it was irregular to file a private complaint together with Police information ;
- (2) that the charges which were found to be proved were charges within the exclusive jurisdiction of the Village Tribunal.

There was also an objection that although the Magistrate refused to allow the deposition of the original complainant to be read at the trial, his judgment shows that he was in fact influenced by the statements made therein.

There was also an objection that the evidence did not disclose mischief.

In regard to the last point, it is sufficient to say that the son, Carl Ameretunge, states that the first accused tore the hood of his father's car. There is therefore evidence to support his conviction under section 409. In regard to the question of jurisdiction, this is obviously an objection which ought to have been taken at the earliest stage possible. I think it is too late to raise it in appeal, after the case has been fully debated, and at a stage when it is difficult to ascertain all the facts which are necessary to enable this Court to decide whether or not the Court had jurisdiction. *Primâ facie* the proceedings were within the jurisdiction of the Court, no objection was taken to the jurisdiction, and I am not satisfied that it acted without jurisdiction. I do not think that the judgment

shows that the Magistrate's decision depended on anything except the evidence led at the trial.

There remains the objection founded upon the death of the original complainant. No express provision is made in the Criminal Procedure Code for such an event. Section 194 deals with a case where a complainant fails to appear. I cannot find that the question of effect of the complainant's death has ever been considered in Ceylon, but in India it has been held on section 247 of the Indian Code that an order of acquittal on the death of the complainant was wholly without jurisdiction, and did not operate as a bar to the trial of the accused on a fresh complaint made on the same facts.

In the present case the charge was framed after complaints had been made both by Mr. Ameretunge and by the Police and one notices that at a later date, after various adjournments, it was the Police who applied for the addition of another charge involving an offence against the boy Carl Ameretunge. No objection was taken by counsel for the accused against the addition of this charge and the objection originally made to the continuation of the case appears to have been abandoned.

I think it must be inferred that this case has been conducted as a Police prosecution and I cannot see any grounds to suppose that even if there has been any irregularity, the accused have thereby been prejudiced. At the trial the accused were represented by experienced counsel and no suggestions were made that the proceedings were not regular or were in any way prejudicial to the accused.

A very clear case has been proved against the accused, and I can see no reason to suppose that they have not had a fair trial.

Acting in revision I am not disposed to interfere with the convictions or with the sentences awarded.

Application refused.