1929

Present : Dalton J.

SETTINAYAKE v. ADIKARAM et al.

848—P. C. Kalutara, 28,308

*Criminal Procedure —Charge laid under section 219 of the Penal
Code—Conviction under section 323—Regularity—Criminal
Procedure Code, s. 182.*

An accused, who is charged under section 219 of the Penal Code
with obstructing a railway policeman in the discharge of his duties,
may be convicted under section 323 of causing hurt to such police-
man in consequence of something done by him in the discharge of
his duty.

APPEAL from a conviction by the Police Magistrate *of
Kalutara.

Deraniyagala, for appellants.

January 22, 1929. DALTON J.—

In the first case the appellants appeal from a conviction on
a charge laid under section 219 of the Ceylon Penal Code.
The offence alleged in the charge is of obstructing a railway police-
man in the discharge of his duties. There is ample evidence to
show that the appellants assaulted the constable, when the first
accused was asked to produce his railway ticket, but it does not
support any charge laid under section 219. There is no evidence
to show that they offered any resistance, in making this assault, to
their arrest, or that they had been charged or were even going to
be charged at the time with any offence. The conviction under
section 219, therefore, cannot stand.

On the other hand, the evidence clearly discloses that the appel-
lants without any justifications at all assaulted the constable. That
seems to have been the chief matter in dispute in the lower Court.
It is the chief question to which both sides have addressed them-
selves, the prosecution witnesses deposing to the assault and the
accused denying it. First accused would purport to make out
that the constable was rude to him and then struck him without
apparently any reason. There is ample evidence to support the
finding of the Magistrate that both accused assaulted the
complainant, and I agree with his conclusion also that they knew the
complainant was authorized to ask for and collect tickets, and
was a public servant acting in the discharge of his duties.

Under these circumstances it seems to me that the provisions of section 182 of the Criminal Procedure Code may be applied. It may well have been in doubt whether the act of the accused constituted an offence under section 219 or under sections 323 or 314 of the Penal Code. It is obvious from the course the proceedings took that the defence has addressed itself to a denial of the assault as the principal part of the case against them. Under the circumstances here, therefore, I am of opinion that the accused may be convicted, under the provisions of section 182, of an offence under section 323. The conviction will therefore be varied, the accused being convicted on a charge of voluntarily causing hurt to a public servant in consequence of something done in the lawful discharge of his duty. I see no reason to vary the sentence passed ; it will therefore stand, the appeals being dismissed.

With respect to the appeal of the witness D. de Silva, he has been fined Rs. 25 for contempt of Court under the provisions of section 440 of the Criminal Procedure Code. That section provided for summary punishment for perjury in open Court. The Magistrate has taken two sentences out of the lengthy evidence of this witness and points out that they are contradictory. This is in my opinion quite insufficient to justify a conviction of perjury. It would seem however from the record that the chief cause for finding fault with the witness is the fact that the Magistrate thought he was under the influence of liquor. The Magistrate should not have confused this with any charge he might bring against accused for perjury under section 440. Whether or not he found accused was guilty of a contempt of Court by being drunk in Court is not clear. What is clear is that he has convicted him for perjury under section 440. That conviction cannot stand, as I have stated, and this second appeal must therefore be allowed.

Appeal dismissed.
Conviction of witness set aside.

1929

DALTON J.

Settinayake
v.
Adikaram