

Present: Bertram C.J.

1920.

GUNAWARDENE *v.* SAMARAKOON *et al.*

46—P. C. Hambantota, 4,070.

False charge of robbery added on to a charge of assault—Refusal of Magistrate to proceed with the case—Case sent back by Supreme Court—Observations on the practice of referring cases to police for report.

The complainant charged accused with having assaulted him and with having committed robbery. The Magistrate was of opinion that the charge of robbery was false, and refused to proceed with the case, on the ground that he would have no confidence under the circumstances in acting on the evidence of the complainant.

Held, that the fact that the complainant embellished his case by introducing a charge of robbery was not a sufficient reason for not inquiring into the charge of assault.

When a case of assault and robbery comes before a Magistrate it is most desirable that he should inquire into the matter at once before either side has had time to fabricate evidence.

It is not desirable that a case of this sort should be referred to the police for report.

THE facts appear from the judgment.

E. W. Jayawardene, for the appellant.

February 11, 1920. BERTRAM C.J.—

This is a case in which the charges are, firstly, assault; and, secondly, robbery. The Magistrate who tried the case in his capacity as a District Judge took certain steps to satisfy himself as to the nature of the case, and, having formed the opinion that the charge of robbery was probably annexed to the charge of assault without foundation, thought it not worth while to proceed with the case on the ground that he would have no confidence under the circumstances in acting on the evidence of the complainant. The assault took place three months ago, and it would certainly be very difficult, after this long interval, to ascertain the truth. Nevertheless, one of the fundamental rights of the individual has been violated. Somebody had assaulted him, and there was at the time

1920.

BERTRAM

C.J.

Gunawardene
v. Samarakoon

adequate material for an investigation of the assault. Peaceable citizens must be protected from such assaults. We know it often happens that where there is a disturbance the complainants seek to embellish their case by introducing a charge of robbery. In such cases the Courts very often, where they consider the evidence of robbery unsatisfactory, deal with the case simply as an assault case. But I do not think that it would be a safe rule simply because a Magistrate suspects that a case has been so embellished to decline to go into the question of assault. I regret that it should be necessary to send back this case, but where a person claims the protection of the law, he is entitled to receive it even though his conduct may excite suspicion, if it does appear that some substantial harm has been done to him. Here a report was made almost immediately to a police officer. Another police officer on the Magistrate's own request investigated the case within a day or two, and there were witnesses whom the complainant had vouched. I think that the case must go back for investigation, and, under the circumstances, I feel sure that the learned Magistrate, as he has already formed an opinion adverse to the complainant, would prefer that arrangements should be made for its trial by another Magistrate.

I should further like to make this observation with regard to cases of this kind. Where a case of assault and robbery comes before a Magistrate, it is most desirable that he should inquire into the matter at once, before either side has had time to fabricate evidence. As soon as cases of this sort, arising out of personal quarrels, are brought, the imagination of both sides becomes most active. What is wanted is that the statements should be taken down at once. I, therefore, feel that it is very desirable in these cases, even where it may not be possible to go into the matter at once, that the Magistrate should take down statements from witnesses who are available at the time when the complaint is brought.

It is not desirable, I think, that a Magistrate should refer a case of this sort to the police for report. The police in reporting on the case to the Magistrate are very properly forbidden to express an opinion. The only object of a police report is to assist the Magistrate in the investigation of the case. It is much better, therefore, that the Magistrate should take the matter in hand himself, and ascertain by inquiry what is the material which is available for the investigation of the case. To send the case for inquiry to the police may lead, though I do not say it led in this case, to a Magistrate delegating the function, which the law intends him to exercise, to a police officer. While I do not say that there may be occasions where a police report may justifiably be requested for the assistance of a Magistrate, I think that the practice ought to be carefully watched. The case will go back for further investigation.

Sent back.