1930

Present : Akbar J.

PAULIS APPU *v.* DON DAVIT.

816-819—*P. C. Gampaha*, 14,748.

Information book—Use by Magistrate—Arrive a decision—Irregularity.

Where at the close of a case, the Police Magistrate reserved judgment, noting that he wished to peruse the information book,—

Held, that the use of the information book for the purpose of arriving at a decision was irregular.

APPEAL from a conviction by the Police Magistrate of Gampaha.

Deraniyagala, for first accused, appellant.

De Zoysa, K.C.(with him *Deraniyagala*). for third accused, appellant.

November 12, 1930. AKBAR J.—

There is really no appeal on the facts in this case, but when Mr. Deraniyagala developed the point of law on which he relied I saw at once that it was necessary to deal with this case on the facts and that is why I have dealth with this case by way of revision.

There were four very serious charges against these accused. The first was house trespass at 7.30 P.M. Then mischief, in that the accused broke chairs, lamps, &c., thirdly, the first accused alone was charged with causing hurt to one Pablis, and fourthly, the first accused alone with theft of cash. The Police Magistrate has convicted these accused only on the first charge and acquitted them on all the other charges. As he thought it was a bad case of house trespass he sentenced the first accused to one month's rigorous imprisonment, and all the other accused to three weeks' rigorous imprisonment each.

When the evidence was being read I found very grave doubts about the truth of the prosecution case. The Magistrate in his judgment has not touched on the weaknesses in the defence case. If the prosecution is to be believed it is very extraordinary that four able-bodied men have been attacked by an old woman of 50 years armed with a knife and routed. There is no doubt at all that the first and second accused were injured—the first accused receiving a very serious injury which necessitated his stay in hospital for 19 days.

The case for the prosecution is that all the injuries were caused by an old woman of 50 years. Then it is very strange that the son-in-law Pablis should have been absent at that time and yet should have managed to run across these accused when they were beating a retreat with two of the accused injured in order that he also may be assaulted by the accused. The strange feature is this—that, if the prosecution story is to be believed, they made no attempt to complain to a responsible police officer but remained in the house, until the police officer had come there at 11.30 P.M., at the instance of the accused. The prosecutrix stated she went in search of the headman and made her complaint to him, but that he did not record it. No attempt was made to call this headman. Then she said that she went in search of the Vidane Arachchi, who too was away. The whole prosecution case, as I have said, appears to be artificial. On the other hand the accused's story is that only the first and second accused, as they, went by, were assaulted by complainants party including the son-in-law. They denied that they committed house trespass. It is these two stories that should be contrasted.

The conviction is further vitiated by what I think is a very serious fault on the part of the Magistrate. After the case was closed on August 26, the Magistrate deferred judgment, noting down that he wished to peruse the information book. In my opinion it was a mistake on the part of the Magistrate to have looked at the information book to enable him to come to a decision in the case. There are two cases which I must cite, namely, the case of *Wickremasinghe v. Fernando*[1]. Mr. Justice Jayewardene there quotes a Privy Council case in which it was held that under the corresponding section of the Indian Code the diary may be used " to assist the Court which tries the case by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justice between the Crown and the accused, but not as containing entries which can themselves be taken to be evidence of any date, fact, or statement contained in the diary ". Mr. Justice Jayewardene also stated that it has been held that the facts and statements written in the police diaries cannot be used as materials to help the Court to come to a finding on the evidence, and that what the Court should do with the police diaries is to discover out of them any matter of importance bearing upon the case and then call for the necessary evidence to have the matter legally proved. Then there is the case of the *King v. Soysa*[1] where reference is made to another Privy Council case.

I think this use of the information book must have had a decisive effectt in helping the Magistrate to arrive at a decision in this case, and this is the very point which has been condemned in the cases I have mentioned. On this one point alone, irrespective of the weight of evidence, the conviction should be set aside. I get aside the conviction and acquit the accused.

Set aside.

[1] 29 *N. L. R.* 403.

[1] 26 *N. L. R.* 324.