

1943

*Present : Jayetileke J.*YOOSOOF, Appellant *and* FERNANDO, *et al.*, Respondents.95—*M. C. Nuwara Eliya*, 5,903.*Village Tribunal—Rules of Criminal Procedure—Powers of arrest—Rule 6.*

The expression “in the presence of” in rule 6 of the Rules of Criminal Procedure for Village Tribunals and Village Committees means that the Police Officer must be in such a position as to be able to see.

Whether or not the offender noticed the presence of the Police Officer is immaterial.

A PPEAL from an acquittal by the Magistrate of Nuwara Eliya.

E. L. W. Zoysa, C.C., for the complainant, appellant.

L. A. Rajapakse for the 3rd accused, respondent.

Cur. adv. vult.

May 25, 1943. JAYETILEKE J.—

This appeal raises a short point on the construction of the expression “in the presence of” in rule 6 of the Rules of Criminal Procedure for Village Tribunals and Village Committees.

The rule reads as follows:—

“Any Police Officer or Headman appointed by a Government Agent to perform police duties may without an order from a President of a V. T. or Chairman of a V. C. and without a warrant arrest any person who in his presence commits any offence mentioned in schedule II hereto or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned.”

¹ 6 *Bal. Notes* 46.

² (1937) 39 *N. L. R.* 73.

³ 2 *Matara Cases* 112.

The facts are that on receipt of information that there was gambling in the first accused's house four police officers went there to raid it. They reached the house at about midnight and found the doors closed and a light burning inside. They peeped through the plank shutters in front of the house and found the first and second and third accused and several others seated on a mat and playing the game of cards called "Baby" for stakes. On hearing the sound of the back door being opened they went to the back of the house and rushed inside to arrest the gamblers. They were thereupon obstructed and assaulted by the accused.

In the plaint that was filed against the accused there are six charges under sections 183, 220, 323, 315, and 380 of the Penal Code.

The Magistrate was of opinion that the charge under sections 315 and 380 were not proved and that the charges under the other sections could not be maintained as there was no evidence that the 1st, 2nd, and 3rd accused gambled knowing that the police officers were watching.

The appeal is with the sanction of the Attorney-General from the acquittal on the first three charges. There can be no doubt that the Magistrate has taken a mistaken view of the meaning of the expression "in the presence of". That expression means no more than that the police officer must be bodily in such a position as to be able to see. If a police officer sees a person committing an offence mentioned in schedule II he would have the right to arrest him under rule 6. Whether or not the offender noticed the presence of the police officer seems to me to be immaterial.

I would set aside the order of acquittal and direct the Magistrate to convict all the accused under section 183 and the second, third and fifth accused under section 323 of the Penal Code and pass such sentences on them as he thinks fit.

Set aside.
