THE KING *v.* TAJUDEEN.

D. C., Colombo, 72,917.

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Duty of a Judge trying several persons to consider the case of each separately—Dangerous weapons in the hands of the man arrested—Right of person arresting him to remove such weapons—Joint attack on a man—Liability of all persons attacking for grievous hurt caused by one of them—Fracture of rib by use of clenched fist.

When a number of persons are tried together, it is the duty of the Judge to consider and weigh the evidence separately as against each, and arrive at a finding consistent with the evidence.

When a person charged with an offence has in his hands dangerous weapons, it is right on the part of the person arresting him to remove them from him.

When several constables engaged in arresting a person prod him with batons and beat him with fists, and in the common pursuit of such assault he sustains a fracture of a rib, all those who took part in the assault are equally guilty of grievous hurt.

At the time of the assault they may not have had in their mind an intention to cause grievous hurt, but they must be deemed in law to have intended the likely result of their acts.

Where, in response to a signal for assistance from a constable, other constables were sent to aid him, and he charged a person with assault and called upon the other constables to arrest him, it is not their duty to satisfy themselves as to the truth of the charge, but to assist their comrade in taking the man to the station.

IN this case five police constables were indicted and tried in the District Court of Colombo by the Additional District Judge, sitting without assessors, on the charge of having caused grievous hurt to one Allis Appu by fracturing his rib.

It appeared that all these constables were attached to the police station at Wellawatta, and that while one of them, Tajudeen, the first accused, was on duty in the streets of Wellawatta, he endeavoured to arrest a man for brawling, who struck him in the face and ran away. The first accused blew his whistle, which was heard by the sergeant at the police station, who sent out the other four accused to the assistance of their comrade. On their coming up, the first accused pointed out a man name Allis who was standing at a boutique, and charged him with being the man who had assaulted him and run away. He seized him and requested his comrades to assist him in taking him to the police station. Allis protested that there was a mistake, and that he had done nothing, but in spite of his protests he was taken away to the police station. There Tajudeen charged him with being drunk and disorderly, and with having attempted to stab him with a knife. Allis complained that he had been severely beaten, and the sergeant sent him to the hospital, where he was examined by the Judicial Medical Officer, and it was found that one of his right ribs was fractured.

The Additional District Judge sentenced the first accused to nine months' rigorous imprisonment, the second and fourth to eight months' rigorous imprisonment, and the third and fifth accused to four months' rigorous imprisonment.

They appealed.

Bawa, for appellants.—It was legal to arrest and remove the man who had created the brawl and assaulted the first accused to the police station. The first accused might have been mistaken in believing that Allis was the offender, but the other accused, who had been sent from the police station to help their comrade, were bound to arrest the man whom the first accused pointed out. All the accused acted in good faith, and believed themselves justified in making the arrest. Section 72 of the Penal Code protects them. They have all been held guilty of causing the fracture of the rib, but there was no evidence led to show who caused the fracture. Some force was necessary to arrest the breaker of the peace, and even if the accused used their fists on him, they could not have intended to break his rib. The conviction for grievous hurt is therefore not good.

Fernando, C.C., for the respondent.—There was no necessity to strike the man at all. He was willing to go to the station. They had no reason to arrest him, and even if he resisted, he was within his right to do so. When five men belabour an unoffending man

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and one of them causes grievous hurt, they are all guilty of the offence, both as principals and abettors. Prodding a man in the ribs with a baton and striking him in the side with clenched fists cannot but break the rib bone. The result is one to be reasonably expected.

29th January, 1902. BONSER, C.J.—

In this case I am sorry to say that I have not had that assistance from the judgment of the Additional District Judge which this court has a right to expect. When a number of men are tried together it is most important that the evidence against each should be considered and weighed separately, else there is a danger of one man's case being confounded with that of another; and if the evidence against the majority is found to be conclusive, there is a danger that the others may be involved in the same condemnation. If the case were tried by a judge with a jury, the Judge would analyze the evidence applicable to each prisoner, and tell the jury that they must consider each man's case separately, and point out to them what each witness said against each prisoner. Now, when a District Judge tries a number of men he ought, in his judgment, to adopt the same course. It seems to me that, if that course had been adopted in the present case, all these men would not have been convicted. The result has been that in this Court we have been obliged to analyze the evidence for ourselves.

Now, it appears from the evidence of the sergeant that Allis, when brought to the station by the accused, complained of having been assaulted by three of them, viz., the first, the second, and the third accused. The sergeant said he made no complaint against the fourth and the fifth accused, although they were present. A number of witnesses were called for the prosecution, persons of different nationalities, who had no connection with Allis apparently. He seems to have been a stranger both to the witnesses and to the police constables. Now, one of these witnesses only speaks to the first accused as prodding the man with his baton. Another man, a Moorman, a boutique-keeper, who was looking on, only speaks of the first accused. The next witness, Don William, says that he saw the second and fourth accused striking the man with their clenched fists. Peter, the next witness says the same. B. Silva says the same. One witness, Fernando, and one witness only, says that he saw No. 5 strike Allis, as well as No. 4. So we have four witnesses who speak to Nos. 2 and 4 as having struck the man with fists, and only one witness as to No. 5. Not one witness speaks of having seen No. 3 commit any

assault, and it seems to me that in the circumstances it is highly improbable that No. 3 should have committed any assault.

Allis is a carpenter, and was carrying a plank and some chisels, and the evidence of some of the witnesses is that they saw No. 3 take away the chisels from Allis, which in itself was a very proper thing to do. When you are arresting a man you ought not to leave dangerous weapons in his hands.

Peter says that what he saw was this: When the four constables were taking away Allis to the station, Anthony, No. 3, was about a fathom in advance, carrying the chisels and the plank, and therefore it seems to me that it is highly probable that Allis was mistaken when he charged Anthony, because there is no witness who corroborates him, while, according to one of the witnesses, that was highly improbable, because his hands were otherwise engaged, carrying these chisels and this plank.

So that, I think, if the District Judge had analyzed the evidence, he must have acquitted No. 3, and No. 3 will be acquitted accordingly. Then, as regards No. 5, it will be observed that no charge was made against No. 5 at the police station by Allis, and only one witness speaks as to No. 5. It seems very probable, therefore, that the witness was mistaken in his identity of No. 5. I think that No. 5 ought to have been acquitted, and he will be acquitted accordingly.

Then, as regards the others, there is sufficient evidence against them that they did beat Allis on the way to the Station, Nos. 2 and 4 with their fists and No. 1 by prodding him with his baton. There is no evidence as to which blow fractured the man's rib. But if three men are engaged in the common pursuit of assaulting a man and beating him, and in that assault he sustains an injury, they are all equally guilty. Therefore it seems to me that all these three men were rightly convicted of fracturing this man's rib.

But it was urged that they did not intend to break the man's rib and, therefore, they could not be convicted of grievous hurt. No doubt, they had not in their mind at the time they struck him with their baton and with their fists any definite idea that they were going to break his ribs or any particular rib; but when people cause injuries to a man, their intent must be judged by the result of their action. They must be deemed in law to have intended what they did. It cannot be said that striking a man with clenched fists in the ribs is not likely to break his rib. Of course, if the result were so improbable and such that no man could reasonably expect that a man's ribs would be broken by the act, then it may be argued, and possibly argued successfully, that

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there was no intent, either actually or in law. But fracturing a rib is by no means an unlikely result of striking a man with clenched fists in the side, and therefore, as I say, I think these men were rightly convicted of causing grievous hurt. At the same time, the manner in which the injury is caused must be taken into consideration, and grievous hurt produced in this way, by a blow of the fist, is not to be punished so severely as grievous hurt caused by a dangerous weapon.

The District Judge does not seem to me to have distinguished between the cases of these men as he might have done, and as he ought to have done. He says: "In the first place there was no justification for taking Allis into custody." Now, as regards No. 1, that may possibly be true, but as regards the other two men, that was not the case at all. They were sent out by their sergeant, knowing nothing of what had happened, to the assistance of their comrade, who had given the usual signal for assistance by blowing his whistle. Their comrade points out to them a man as having committed an assault on him, and proceeds to arrest him and calls on these men to assist him. They were bound to assist him. They could not stop to inquire into the case, as to what evidence there was, or as to whether this was the right man or the wrong man. Their duty was to assist their comrade and take the man up to the station, where the matter would be inquired into. Therefore, there was no blame attaching to them so far as the arrest is concerned.

As regards No. 1, I said that it was possible that blame might attach to him for the arrest, but at the same time it looks to me rather like a case of mistaken identity even as regards him (No. 1), for there is no suggestion that No. 1 knew anything of Allis beforehand, or had any grievance against Allis which he wished to vent upon him, and Allis' arrest is only referable to a mistake on his part as to identity. But first accused, who is said to be only nineteen years of age, is evidently a precocious scoundrel, for, having arrested him, it may be, under a mistake as to his identity, he tacks on a false charge of attempted assault with a knife, and produces a knife to the sergeant as the knife used by Allis, which knife is proved to be one belonging to a fellow constable. His comrades are not shown to have taken any part in this false accusation, and the blame must therefore rest on him alone. The offence of which they have been convicted is that of doing violence to a prisoner in their hands without any justification.

Now, it seems to me that violence used by a police constable, the abuse of his powers, when it is proved, ought to be severely

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punished. It is very difficult to bring home such a case against police constables, for the tendency of Courts and their own officers is to support the police in the performance of their duties; and the public, too, are very unwilling to come forward, as a rule, against police constables, unless it is a very clear strong case.

As regards Tajudeen, I can see no mitigating feature in his case. I think that in his case the sentence of nine months' rigorous imprisonment was amply deserved. As regards the other two men, the second and the third accused, who have been sentenced to undergo eight months' rigorous imprisonment, their case is very different from that of the first accused; but as I have already pointed out, the abuse of his powers by a police constable is not to be lightly dealt with. I think that under the circumstances a month's rigorous imprisonment will suffice in their case.