1947 *Present :* Soertsz S.P.J.

ALWIS APPU *et al.*, Appellants, *and* BANSAGAYAH (P. S. 1399), Respondent.

S. C. 959–960—M. C. Kalutara, 45,455.

Penal Code—Robbery—Voluntarily causing hurt—Sentence on both counts—Legality of sentence—Sections 379 and 67.

Hurt is an integral part of the offence of robbery and an accused who is sentenced on a charge of robbery cannot be given a sentence on a charge of causing hurt.

APPEAL from a judgment of the Magistrate, Kalutara.

U. A. Jayasundara, for the accused, appellant.

Boyd Jayasuriya, C.C., for the Attorney-General.

October 20, 1947. SOERTSZ S.P.J.—

The appellants in this case were charged, first, with committing robbery of a *Hercules* cycle valued at Rs. 150 from one R. F. Daniel and, secondly, with at the same time and place voluntarily causing hurt to

[1] *3 Burge (1st Ed.), 1059.*

the said R. F. Daniel by assulting him with hands. The learned Magistrate after trial convicted the two accused on both charges framed against them and sentenced them as follows : The 1st accused to 6 month's rigorous imprisonment on charge 1, and 2 weeks' rigorous imprisonment on charge 2, the sentences to run concurrently, and the 2nd accused to 6 months' rigorous imprisonment and a fine of Rs. 50 or a further one month's rigorous imprisonment on charge 1, and 2 weeks' rigorous imprisonment on charge 2, the sentences to run concurrently.

In regard to the convictions entered against the accused, on the facts they are amply justified and Counsel for the appellants did not seriously challenge the finding of the learned Magistrate in that respect. In regard to the sentence although Counsel made the submission to me that the sentence of 6 months' rigorous imprisonment in respect of the first charge was excessive in the case of the two accused, I do not think so at all. I see no reason to interfere with the conviction or sentence on charge 1 of either of the accused.

Then there arised another question which is of a substantial character and that is whether the learned Magistrate was acting within his powers when he went on to impose on the second charge, in regard to the 1st accused, 2 weeks' rigorous imprisonment and in regard to the 2nd accused, 2 weeks' rigorous imprisonment. Now, in my opinion, the learned Magistrate had no power to do that. Section 67 of the Penal Code provides as follows :—

> " Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided."

Now, the section under which the first charge was preferred against the two accused is section 380 of the Penal Code and the defining section is section 379. Section 379 says :

> " In all robbery there is either theft or extortion. Theft is " robbery " if, in order to the committing the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause to any person death or hurt or wrongful restraint &c."

So that it is prefectly clear that in a case of this kind the robbery is made up of the theft plus hurt. Therefore, the charge of robbery preferred against the two accused in respect of charge 1 comes within the words of section 67 which says that " where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided." Here, in the result, the offender has been punished for the offence of robbery and is also punished for the offence of hurt, that being an integral part of the offence of robbery. That is not allowed by law.

Learned Crown Counsel submitted that really no hardship was involved in this instance because the sentence imposed in respect of the second charge is a sentence made to run concurrently with the sentence passed

in respect of the first charge. But I do not think that that submission is entitled to any weight because an accused person is entitled to say that he does not desire to have even a conviction entered against him upon a charge although that conviction does not result in any physical hardship or in the payment of any additional fine.

I, therefore, set aside the convictions entered against the two accused in respect of the charge of hurt and also delete that part of the sentence which imposes upon them separate sentences in respect of the second charge. Otherwise, the appeals are dismissed.

Sentence on second charge deleted.