

Present : Garvin J.

1925.

MENDIS v. ZOYSA.

597—P. C. Balapitiya, 6,447.

Village Tribunal—Jurisdiction to try offence under s. 315 of the Penal Code—Ordinance No. 9 of 1924.

A Village Tribunal has no jurisdiction to try an offence under section 315 of the Penal Code.

APPEAL by the complainant from an order of the Police Magistrate of Balapitiya referring his complaint to the Village Tribunal.

Zoysa, for appellant.

October 27, 1925. GARVIN J.—

This is an appeal by the complainant from an order of the Police Magistrate referring his complaint in the first instance to the Village Tribunal. The evidence shows that the complainant had been the victim of a very severe assault, and that this assault was committed with an oar. He had a contused wound $2\frac{1}{2}$ inches long, going down to bone on the left side of his head, which necessitated his entering hospital and remaining there for a period of nineteen days. Except in the technical sense the complainant has been grievously injured. These facts disclose an offence punishable under section 315 of the Penal Code, for the weapon with which the injury was inflicted was one which, when used as a weapon of offence, was likely to cause death. The question, however, arises whether even upon this assumption the order of the Police Magistrate is not a correct one. The jurisdiction of the Village Tribunal is exclusive, and if offences punishable under section 315 are within the jurisdiction of the Village Tribunal, then this case must be referred to that Tribunal for trial. The Village Communities Ordinance, No. 9 of 1924, in setting out the limits of the criminal jurisdiction of Village Tribunals declares that it shall extend to the trial of all offences enumerated in the schedule to the Ordinance, and that schedule includes the offence of voluntarily causing hurt as defined by section 312. It is contended that the specific mention of section 312 must be held to exclude section 315 which is treated in the Penal Code as a distinct and

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specific offence. There is another possible view. Section 312 is a definition section. It defines the offence of voluntarily causing hurt. That offence is made punishable by two sections, one is section 314 and the other is section 315. The higher punishment prescribed by section 315 is designed to meet the case where a lethal weapon is used in committing the offence. The lesser punishment prescribed by section 314 is to meet cases in which the weapon does not fall within that category. The question for decision is which of these two views is the correct one. There is nothing in the provisions of the Village Communities Ordinance of 1924, which is of itself decisive of the question, nor is there anything in the Penal Code which can confidently be made the basis of a decision. In these circumstances one must have regard to the history of the legislation on the point. The Village Communities Ordinance, No. 24 of 1889, which was superseded by the Ordinance now in force, gave the Village Tribunal a similar jurisdiction in almost identically the same terms, but subject to the important qualification that "the offence is of such a nature that it may be adequately punished by no higher punishment than a fine of Rs. 20." These words exclude from the jurisdiction of Village Tribunals any offence which fairly comes within the provisions of section 315, and indeed a very considerable portion of the offences punishable under section 314 as well. These qualifying words do not appear in the new Ordinance. Was it intended by the omission to enlarge the jurisdiction of Village Tribunals so as to include the offence punishable under section 315? Had this been the purpose of the Legislature it would have been reasonable to expect a corresponding increase in the powers of punishment of Village Tribunals. The object was, I think, a different one. Before the repeal of Ordinance No. 24 of 1889 much uncertainty prevailed as to the Court to which resort should be had, in the first instance, in cases falling under section 314, which it was thought could not adequately be punished by a Village Tribunal. This uncertainty gave rise to much inconvenience. Under the new Ordinance there is no such uncertainty. All offences under section 314 which are in other respects triable by Village Tribunals must be instituted in the Village Tribunal and not in the Police Court.

This, it seems to me, was the purpose of the amendment and not any desire of the Legislature to extend the jurisdiction of Village Tribunals to try offences under section 315.

The question is a difficult one, but I do not think that any intention to enlarge the jurisdiction of Village Tribunals to the exclusion of the ordinary Police Courts can fairly be gathered from the language of the legislation bearing on the point. For

these reasons, I think, that this case which discloses an offence under section 315 should be tried by a Police Court and not by a Village Tribunal.

The order of the Magistrate referring it to the Village Tribunal is set aside, and the case sent back to the Magistrate to be tried and disposed of in due course.

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Set aside ; case remitted.
