

SIRINERIS v. JAMES.

1901.  
April 23

P. C., Galle, 10,068.

*Robbery with hurt—Penal Code, s. 380—Magistrate's disbelief of robbery—Conviction under s. 315—Want of jurisdiction—Criminal Procedure Code, s. 192.*

A lesser offence cannot be selected for trial, while the evidence discloses a graver one.

If, on a complaint of robbery with hurt, a Police Magistrate disbelieves the robbery, it is not open to him to try the accused summarily for causing hurt. The proper course is to discharge the accused as regards the robbery, and then proceed afresh summarily.

THE complaint in this case was that the accused demanded of the complainant some money to drink, and on being told that he had none, the accused seized him by the waist cloth and robbed him of Rs. 10.20 and a letter, and also beat him with his hand and stabbed him on the cheek.

The medical officer found the wound to be an incised superficial wound, one-fourth of an inch long on the left cheek.

After hearing several other witnesses, the Police Magistrate (Mr. H. R. Freeman) convicted the accused of voluntarily causing hurt and sentenced him to a fine of Rs. 60, of which Rs 35 was made payable to the complainant, and in default to three months' rigorous imprisonment. As to the charge of robbery, the Police Magistrate found "the accused was drunk, and the charge is probably exaggerated."

The accused appealed.

*Bawa*, for appellant.—Only a Court of competent jurisdiction can deal with this offence. The original charge discloses robbery, which is only triable by a Court higher than the Police Court. This case commenced as a preliminary inquiry, and then the Magistrate disbelieved the robbery and tried the accused for hurt with knife only, and convicted him under section 315. It is not open for the Police Magistrate to proceed against the accused for a lesser offence when the charge alleges a greater. The Magistrate's disbelief of the robbery does not finally dispose of the charge of robbery, which can only be dealt with by the Supreme Court. That charge, therefore, still hangs over the accused's head. No subsequent charge was framed, and presumably the trial went on the original charge of robbery. [MONCREIFF, J.—But the summons to accused only mentions hurt with knife.] That does not materially

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alter the state of affairs. The original charge by the complainant has not been finally disposed of. The Magistrate is not obliged to frame a special charge, but if he does not, the charge he proceeds on is the original charge in the complaint. (In *Wikramasuriya v. Appusinho*, 1 N. L. R. 298), the Chief Justice says that it is not open for a Police Magistrate to try for a lesser offence when a greater is disclosed, and while the graver charge is still hanging over the accused. Had the Magistrate discharged the accused on the graver charge of his own judgment, or by order of the Attorney-General, the charge would have been done with, but the Magistrate's mere disbelief does not dispose of it. He has no jurisdiction to exercise his belief or judgment on the matter, but he may conclude that the evidence is so very meagre that the accused is entitled to a discharge, and discharge him. Here he has not discharged the accused on the graver charge, which, therefore, still stands. *Saram v. Weera*, 1 N. L. R. 98; *Hendrik v. James*, 1 C. L. R. 21; *Mathes v. Samsudin*, 2 C. L. R. 161 all bear out the contention that a lesser offence cannot be selected for trial while a graver is disclosed or alleged. While the graver charge has not been disposed of, the accused was at no stage told he was being tried summarily. [MONCREIFF, J.—Suppose a man was charged with an offence triable by a Police Magistrate, and in the course of the evidence the Police Magistrate found the witnesses deposing to a more serious offence not summarily triable by him, is it your contention that the Police Magistrate should stop, proceed non-summarily, and forward the case to the Attorney-General?] Yes, the moment a non-summary offence is alleged the Police Magistrate has no summary jurisdiction. Section 192 (2) says so. As soon as a non-summary offence is disclosed the Magistrate can only do either of two things: discharge the accused on the charge, or refer the case to the Attorney-General, if a *prima facie* case is made out. The more serious charge is still undecided (the disbelief is not a legal decision), and the accused cannot be tried for the lesser offence before that is tried. [MONCREIFF, J.—I think you are right.]

MONCREIFF, J.—

The conviction is quashed. The case is remitted to the Police Magistrate to be dealt with as a non-summary charge, not triable by his Court.

