

Present: Akbar J.

1929.

INSPECTOR OF POLICE *v.* DE ZOYSA.

245—P. C. *Balapitiya*, 12,131.

*Jurisdiction—Accused charged with two offences at one trial—Punishment—
Power of Police Magistrate—Penal Code, s. 67.*

Where an accused person was charged in the Police Court with two offences at one trial, viz., with voluntarily causing hurt to the complainant under section 314 of the Penal Code and with assaulting the complainant with intent to dishonour him under section 346 of the Penal Code,—

Held, that the Police Magistrate had no power to inflict a more severe sentence than that which the Court could inflict for one of the offences.

A PPEAL from a conviction by the Police Magistrate of *Balapitiya*.

Rajapakse, for accused, appellant.

Ilangakoon, C.C., for the Crown.

May 27, 1929. AKBAR J.—

The accused in this case was charged on two counts, namely, with voluntarily causing hurt to Sub-Inspector Tillekeratne of the Kosgoda Police Station by striking him with a chair, thereby

¹ (1912) 15 N. L. R. 257.

² (1913) 17 N. L. R. 29.

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committing an offence punishable under section 314 of the Ceylon Penal Code, and with assaulting Sub-Inspector Tillekeratne with intent to dishonour him without any grave and sudden provocation, an offence punishable under section 346 of the Ceylon Penal Code.

The circumstances are admitted by the accused, but the appeal is made on the ground that the sentence of six months' rigorous imprisonment on each count to run consecutively is too severe. It is true that an assault on an Inspector of Police by an accused whom he is going to charge in Court is a serious offence and deserves to be punished severely, but at the same time these two charges are so connected together that I think the first charge is included in the second and that the two counts have been brought in merely to get the double punishment which the Court can award under section 17 of the Criminal Procedure Code. Under that section, when a person is convicted at one trial of any two or more distinct offences; in the case of a Police Court the punishment cannot exceed twice the amount of punishment which it is competent to inflict. So that it is under that section that the Police Magistrate apparently horrified at the enormity of the offence, committed within the precincts of the Police Court, has sentenced the accused to a year's rigorous imprisonment.

It was a foolish act of the accused, and he stated to the Court that he was provoked because he was assaulted by eight of them, meaning thereby, I suppose, that he was assaulted by the constables at the Police Station. But whatever that may be, under section 67 of the Penal Code there is a distinct injunction that where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender is not to be punished with a more severe punishment than the Court which tries him could award for any one of such offences. Now, the Police Court could not award more than six months' rigorous imprisonment for each one of these counts. I, therefore, think that the punishment should be reduced from twelve months' rigorous imprisonment to six months' rigorous imprisonment on each count to run concurrently.

In other respects I affirm the conviction.

Varied.

