

1929.

*Present: Lyall Grant J.*

SILVA *v.* NONIS.

614—P. C. Gampaha, 9,260.

*Arrest without sufficient ground—Order for compensation—Proof—Criminal Procedure Code, s. 253 (c).*

Before an order for compensation is made against a complainant under section 253 (c) it must be clearly established that there was no sufficient ground for causing the arrest.

**A** PPEAL from an order of the Police Magistrate of Gampaha.

*Rajapakse*, for appellant.

*Deraniyagala*, for respondents.

November 13, 1929. LYALL GRANT J.—

This was a case brought by the Police against two accused persons. The first accused was charged with causing hurt with a cutting instrument, viz., a mamoty, to one Sooriya Wijeratne, and the second accused was charged with having at the same time and place caused hurt to one Thomas Caldera with a manna knife. The learned Magistrate acquitted the accused at the close of the case for the prosecution and he called upon the informant, Silvester Silva, to

show cause under section 253 (c) of the Criminal Procedure Code why he should not be ordered to pay compensation to the first accused for causing a Peace Officer to arrest him on a charge of causing hurt with a mamoty when there was no sufficient ground for causing such arrest. When he was called upon, the informant, Silva, said "The complaint made is true." Thereupon the Magistrate convicted him under section 253 (c) and ordered him to pay to the first accused Rs. 20 as compensation and in default of payment to undergo two weeks' simple imprisonment. The Magistrate then called upon one Sebastian Perera to show cause under the same section why he should not be ordered to pay compensation to the second accused for causing a Peace Officer to arrest him on a charge of causing hurt to one Thomas Caldera with a manna knife when there was no sufficient ground for causing such arrest. Perera when called upon said "I did not make a false complaint." Thereupon he was convicted under the same section and ordered to pay to the second accused Rs. 20 as compensation and in default of payment to undergo two weeks' simple imprisonment. Against these orders Silva and Perera appeal.

The learned Magistrate gives as his reasons for these convictions that the medical evidence clearly establishes the fact that the injured men could not have received the injuries in the manner deposed to by them. In the case of the second complainant the Magistrate says that the doctor's evidence clearly shows that he could not have received the injury he found on him by a manna knife.

I do not think, however, that the medical evidence is so completely incompatible with the complainant's stories as the learned Magistrate thinks. In examination-in-chief the District Medical Officer stated that Silva had an angular lacerated wound at the root of the left big toe caused by a cutting instrument with a blunt edge. He says that it could have been caused with the blade of a mamoty. He stated that Thomas Caldera had a punctured wound  $\frac{3}{4}$  in. by  $\frac{1}{4}$  in. by the outer border of the back of the left forearm a little above the wrist which had been caused by a pointed weapon. He says it could have been caused by a manna knife. In regard to the latter injury the Medical Officer varied a good deal in his evidence, because in cross-examination apparently he said that it could not have been caused by a manna knife, but it is quite clear that his reason for this variation was that in his opinion it must have been caused by a sharp pointed weapon. No knife has been produced, and there is nothing in the evidence to show that the so-called manna knife may not have had a sharp point. The learned Magistrate has clearly over-estimated the weight of the medical evidence as against that of the informant. The doctor was of opinion that it was not probable that the injury could have been self-inflicted.

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The only point taken by the Medical Officer against the description by the first complainant as to how he received his injury was that if the parties had been standing in the way described by him the skin would have been cut or lifted towards the assailant, instead of which the skin was cut and lifted towards the injured man's body.

Against the theory of the self-infliction of these injuries is the fact that immediate complaint was made to the headman of the injuries suffered, and that both Silva and Perera made their complaints against the first and second accused respectively.

The story of the informants is further supported by two eye-witnesses, one of whom says that he saw Silva being cut with a mamoty by the first accused and that he heard Thomas Caldera crying out that he had been cut by the second accused. Silva appears to have been rather seriously injured, as this witness says "we brought him to Perera's house." The other witness corroborates the fact that the first accused cut Silva with a mamoty and that the second accused cut Thomas Caldera with a manna knife.

Before a complainant can be convicted under section 253 (c) it must be clearly established that there was no sufficient ground for the complainant causing the arrest. Here it has certainly not been proved that the injuries were self-inflicted, and all the evidence goes to show that they were inflicted by the persons charged. Even if the Magistrate thought that the case was not proved beyond reasonable doubt, he was not in my opinion justified in coming to the conclusion that the evidence establishes the fact that there was no sufficient ground for causing the arrest. In regard to the medical evidence, I have already pointed out that, so far as the Medical Officer's opinion as to the use of the manna knife is concerned, it is by no means conclusive as against the second informant. In regard to the use of the mamoty, the Medical Officer's opinion, even if it is correct, merely relates to the precise manner in which the injury was inflicted. It is quite possible that the injury was inflicted by the first accused and yet that it was not inflicted in the precise manner described by the informant. The informant may have given a perfectly honest account of what in his opinion happened, but his observation in the course of a rough-and-tumble struggle may not have been quite accurate. That is a very different thing from bringing a totally false charge.

On the question of conflict between the Medical Officer's opinion and the evidence of the witnesses as a ground for conviction and compensation, I would refer to a judgment of Wood Renton C.J. in the case of *King v. Appuhamy*.<sup>1</sup> In the case of *Richard v. Peter*<sup>2</sup> Ennis J. pointed out that the fact that the Magistrate was unable

<sup>1</sup> *Balasingham, Notes of Cases, p. 8.*<sup>2</sup> *Wijewardena, Reports, 48.*

to place reliance on the evidence called is not a sufficient ground for inflicting a fine under section 54 of the Police Ordinance for bringing a false and frivolous charge. There it did not transpire that the witnesses were not speaking the truth, and their statements were not contradicted by any witnesses whose evidence had been recorded. That, I think, is substantially the state of affairs in the present case. The appeals are allowed and the convictions quashed.

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*Appeal allowed.*

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