

1943

Present : Wijeyewardene J.

JAMES, Appellant, and SILVA, Respondent.

94—M. C. Balapitiya, 44,739.

Jurisdiction—Charges of robbery and causing hurt—Acquittal on charge of robbery—Conviction of causing hurt.

Where the accused was charged with causing hurt and with robbery and convicted only of the charge of causing hurt and where it appeared that the complainant had tacked on the charge of robbery to evade the jurisdiction of the Village Tribunal,—

Held, that the Magistrate had no jurisdiction to try the case.

A PPEAL from a conviction by the Magistrate of Balapitiya.

L. A. Rajapakse, for accused, appellant.

M. C. Abeywardene, for complainant, respondent.

Cur. adv. vult.

April 15, 1943. WIJEYWARDENE J.—

The complainant in this case made a complaint to the Police Inspector, Ambalangoda, that he was "assaulted and robbed" by the accused. The Inspector made an investigation under Chapter 12 of the Criminal Procedure Code and forwarded a report to the Magistrate's Court under section 131 that the Police were not "proceeding with the case" as "there seemed to have been no robbery committed". Thereafter, the complainant instituted proceedings in the Magistrate's Court charging the accused with committing robbery of Rs. 4, and causing hurt to him. The Magistrate after hearing evidence acquitted the accused on the charge of robbery but found him guilty on the charge of causing hurt and sentenced him to pay a fine of Rs. 30. It was contended unsuccessfully in the lower court that the Magistrate had no jurisdiction to try and convict the accused on the second charge in view of his finding on the first charge, as the Village Tribunal had exclusive jurisdiction to try an offence of hurt.

In acquitting the accused on the charge of robbery the Magistrate said :

“Complainant states that he had the money in his waist and it is quite possible either that the accused took the money or that the money dropped from complainant’s waist.

There is just this little doubt in my mind and I will give the benefit of such doubt to the accused. I don’t hold that the allegation of theft is untrue.

“I give the accused the benefit of the doubt.”

It is somewhat difficult to understand what the Magistrate meant to convey by that statement. But the fact remains that the Magistrate acquitted the accused on the charge of robbery. Such an order of acquittal could be entered either because the Magistrate disbelieved the evidence of the prosecution or was not satisfied beyond reasonable doubt as to the truth of the charge against the accused. In either case it would mean that the prosecution has failed to satisfy the court as to the guilt of the accused on the charge of robbery. This taken in connection with the fact that the Police refused to institute proceedings on the ground that no robbery appears to have been committed seems to me to justify the suggestion made by the Counsel for the accused-appellant that the complainant tacked on a charge of robbery to the charge of hurt in order to oust the jurisdiction of the Village Tribunal.

Following the decisions of *Nadar v. Fernando*¹ and *Weerakkody v. de Silva*² I quash the conviction of the accused.

Quashed.

