

THE QUEEN v. SIMANCHI.

D. C. (Criminal), Colombo, 1,526.

1898.  
May 10.

*Criminal Procedure Code, s. 351—Accused incapable of understanding proceedings through deafness—Duty of District Judge trying case.*

A District Judge or a Magistrate who finds an accused convicted by him to be incapable of understanding the proceedings should not pass sentence on the accused, but forward the proceedings to the Supreme Court under section 351 of the Criminal Procedure Code.

THE accused was indicted under section 317 of the Ceylon Penal Code for voluntarily causing grievous hurt to one John with a knife. The District Judge (Mr. Pagden) found the accused guilty on the indictment. He was of opinion that the accused, though not insane, could not be made to understand the proceedings properly owing to extreme deafness. He therefore ordered the proceedings to be forwarded to the Supreme Court under section 351 of the Criminal Procedure Code. Upon this order being made, it was suggested for the prosecution that the Court should pass sentence upon the accused. The District Judge thereupon recorded that he was doubtful whether he should sentence the accused, but in case it was necessary his sentence on accused was twelve months' rigorous imprisonment and fifteen lashes. This was explained to the accused, but he said he did not seem to hear the finding or sentence.

The proceedings were ultimately forwarded to the Supreme Court.

10th May, 1898. BONSER, C.J.—

In my opinion the Court below ought not to have sentenced the man, but should have left that to be done by this Court. Let the man be brought before Mr. Justice LAWRIE, who will deal with the case.

LAWRIE, J.—

I take for granted that the accused cannot read.

I think the best course is for the accused to appeal against the conviction and sentence, when the whole matter will come before the Supreme Court.

The record was sent to us the day after the trial. I think it most likely that the accused would appeal if he understood that he had been convicted and sentenced to a year's rigorous imprisonment and fifteen lashes.

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The learned District Judge has forwarded to this Court the record of this case in which he has convicted the prisoner of voluntarily causing grievous hurt with a knife and sentenced him to twelve months' rigorous imprisonment and to receive fifteen lashes, because he considers that it was his duty to do so under section 351 of the Criminal Procedure Code, inasmuch as the prisoner was unable by his extreme deafness to understand the proceedings properly. I find there is record made of only one question in cross-examination by him of the witnesses for the prosecution, and I conclude he was offered the opportunity and only once exercised it. He was not defended by counsel. He made a statement having been informed of his right to give evidence, and named his mother as a witness for him, and she was examined doubtless, by the District Judge. Sentence was passed on the prisoner at the request of prosecuting counsel. The District Judge had desired only to record his conviction, and in this, we consider, he was right, for it is for this Court "to pass such "order as it thinks fit."

Assuming that the inability of the accused to hear the evidence given against him was as patent to the Magistrate who committed him for trial as it was to the Judge who tried him, it has to be pointed out that the proceedings should, under the section in question, have been referred to this Court before the accused was committed for trial. It is to be regretted that this was not done, as it appears at present to be possible that the accused might never have been committed for trial upon this charge of grievous hurt to John; for, according to the evidence, Selanchy, the father of John, or some member of his family, blocked with thorns that morning a passage from the land of Ungohamy, prisoner's cousin or wife's sister, with whom he lives, which was their means of exit from the land. Prisoner and Selanchy, if not others also, quarrelled over that fact, and prisoner assaulted Selanchy, who was knocked down unconscious and had his head "broken" by a blow from a mamoty. John at the alarm came up and prisoner and he fought, with the result that John when examined by the medical officer had seven cuts varying from one to seven inches in length; had amongst other injuries two contusions on his head, one of which exposed the bone, and two front teeth dislocated. The questions, therefore, would be: (1) Did prisoner assault Selanchy, and how far was he excusable by provocation? and (2) How far is John excusable for provocation for his assault on prisoner, or how far is prisoner exculpated by his having acted in self-defence? John's evidence

is that he chased prisoner, who fell on some logs of wood, and when holding prisoner was cut by him. He is unable to account for the wounds on the prisoner, save by injuries in falling. Prisoner's mother deposes that John hit prisoner inside Ungohamy's house, and when prisoner was escaping John chased him, and Appuhamy prevented him from seizing him. I notice that the acting village sergeant, in his report to the Magistrate, says : " Blood was largely found in the compound and in the house where " it was alleged the quarrel took place and the house of Simanchi " (prisoner)."

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John, by provocation of the injury to his father, may be excused for having entered the house and assaulted prisoner in a desire to arrest him there, although he ought to have sent for the headman and had prisoner arrested there, that is, in the house where he generally stayed. At all events to the extent that he would not have been prosecuted. But I would desire that the District Judge should ascertain from the sergeant's evidence whether there had been truly a row in the house itself, and whether, in view of the injuries prisoner received, he is to be excused for having cut in self-defence in view of any apprehension of further hurt being occasioned to him, it being remembered that as between the parties the prisoner was on his own land and in his own house, and that both quarrels occurred there. I therefore set aside the conviction and sentence and remit the prosecution for further trial to acquittal or conviction only, after which the District Judge will again remit them to this Court.

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