

1942

*Present : Howard C.J.*SILVA *v.* GUNASEKERE *et al.*

251—M. C., Matara, 40,503.

*Grievous hurt—What constitutes grievous hurt—Penal Code, s. 316.*

The mere fact that a person has been in hospital for twenty days is not sufficient to prove that he is suffering from a grievous hurt.

There must be further proof that during that time he was unable to follow his ordinary pursuits.

**A**PPEAL from a conviction by the Magistrate of Matara.

A. H. C. de Silva, for the complainant, appellant.

L. A. Rajapakse (with him M. Ratnam), for the accused, respondents.

May 27, 1942. HOWARD C.J.—

In this case, the accused were charged with, (1) voluntarily causing grievous hurt and thereby committing an offence under section 316 of the Penal Code, (2) voluntarily causing simple hurt and thereby committing an offence under section 314 of the Code, (3) wrongful restraint, contrary to sections 332 and 333 of the Code. After hearing the evidence for the prosecution, the Magistrate stated that he did not believe the evidence of wrongful restraint. He also held that the hurt was not grievous. He, therefore, discharged the accused as the case was one under section 314 and exclusively triable by the Village Tribunal. The complainant appeals against this decision on the ground that the evidence establishes that the offence of voluntarily causing grievous hurt had been committed.

The question whether an offence under section 316 had been committed depends on the evidence of the District Medical Officer, Matara, Dr. G. P. de Silva. After detailing the injuries, which were seven in number, he states that the complainant was 26 days in hospital. This stay was necessary. The complainant was not able to carry on his ordinary occupation for over 26 days. In cross-examination, he states that one or two head wounds turned septic. If the injured man was a boutique-keeper or trader in copra, he could have attended to his work in 15 days. In re-examination, he stated that he did not discharge the injured man till his wounds were completely healed.

The mere fact that a man has been in hospital for twenty days is not sufficient to prove that he is suffering from a grievous hurt. It must be proved that during that time he was unable to follow his ordinary pursuits. An injured man may be quite capable of following his ordinary pursuits long before twenty days are over and yet for the sake of permanent recovery or greater ease or comfort be willing to remain as a convalescent in a hospital. In this case, the doctor's evidence indicates that for greater security he remained in hospital over twenty days. He did so in order that the wounds might be completely healed. The appeal is on the facts from an acquittal and before I can allow it I must be satisfied that no other conclusion was reasonably possible but that the accused were guilty or that the Magistrate did not apply his mind to the whole evidence in the case. (*Vide Fernando v. Peiris*<sup>1</sup>). I am satisfied that the Magistrate has given careful consideration to the whole evidence in the case. I am also satisfied that the conclusion at which he arrived was, on the doctor's evidence, reasonably possible.

In these circumstances the appeal is dismissed.

*Appeal dismissed.*

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