

1970

Present: Samerawickrame, J.

THE ATTORNEY-GENERAL, Petitioner, and
N. EDIN SILVA, Respondent

S. C. 604/70—Application in Revision in M. C. Kalutara, 43578

Criminal Procedure Code—Section 152 (3)—Assumption of jurisdiction thereunder to try an offence of attempted murder—Invalidity.

Where the statements made to the police and the medical evidence disclose *prima facie* an offence of attempted murder, a Magistrate must not assume jurisdiction under section 152 (3) of the Criminal Procedure Code in order to try the offence summarily.

1897 Probate 77.

APPPLICATION to revise an order of the Magistrate's Court, Kalutara.

V. S. A. Pullenayegum, Senior Crown Counsel, with *Faisz Musthapha*, Crown Counsel, for the petitioner.

G. D. C. Weerasinghe, for the respondent.

Cur. adv. vult.

September 27, 1970. SAMERAWICKRAME, J.—

The Attorney-General has made this application asking that the order of the learned magistrate made on 2nd June, 1970, be set aside and that a direction be given that non-summary proceedings should be had upon a charge of attempted murder.

The accused-respondent had the following charges preferred against him in the Magistrate's Court of Kalutara :—

“(1) That on 12.3.1970, at Etagama, Paiyagala, within the jurisdiction of the said court, he did voluntarily cause grievous hurt to Mawatage Emalis Medonza of Etagama by stabbing him with a pointed knife and thereby committed an offence punishable under section 317 of the Penal Code.

(2) That at the same time and place as aforesaid and in the course of the same transaction the accused-respondent did voluntarily cause hurt to Mawatage Piyasena Medonza of Etagama by stabbing him with a pointed knife and thereby committed an offence punishable under section 315 of the Penal Code.”

The medical evidence disclosed that Mawatage Emalis Medonza had suffered a serious injury in the abdomen which endangered life. The lower part of the left lobe of the liver was almost completely severed and part of the left lobe of the liver and part of the stomach, portion of the large intestine and about 3 ft. of the small intestine were protruding out of the injury. The stomach was perforated and some blood vessels supplying blood to the stomach were cut. A large vein situated deeply on the right side of the abdominal cavity was also cut. The medical evidence indicated that but for the prompt surgical treatment received by the injured man he would have succumbed to his injuries.

On 2nd June, 1970, the learned magistrate who had assumed jurisdiction under s. 152 (3) of the Criminal Procedure Code, proceeded to try the accused-respondent. The accused-respondent tendered a plea of guilty and the learned magistrate records :—

“The accused states ‘I am guilty under provocation’. The accused had suffered injuries. I. P., Noordeen for the prosecution concedes the facts as mentioned by defence. I hold that there was grave provocation and the accused acted in self defence.”

The magistrate proceeded to convict the accused on the first count of having committed grievous hurt under grave and sudden provocation and on the second count of having caused hurt under grave and sudden provocation. He imposed a fine of Rs. 20/- in respect of the charge on the first count and warned and discharged him in respect of the charge on the second count.

The statements made to the police, which I have examined, disclose allegations of two fairly serious incidents of stabbing. It is also correct that they disclose that the accused had injuries. The observations of the police sergeant is as follows :—

“ I find the index finger and the middle finger of the left hand of the suspect bandaged with a piece of cloth. No other visible injuries on him.”

The report of the doctor was that the accused had an incised wound of the middle finger and the middle phalanges $\frac{1}{2}$ " in length and superficial. The presence of these superficial injuries on the accused appears to me insufficient by itself to show grave and sudden provocation or self defence. It was not implicit in the allegation in respect of the hurt caused to Emalis Medonza that there was provocation.

Learned Senior Crown Counsel submitted that the medical evidence disclosed an offence of attempted murder. Learned counsel for the respondent submitted that as one of the categories of grievous hurt was causing hurt which endangers life, the magistrate was correct in taking the view that the offence disclosed was that of grievous hurt. He submitted therefore that the magistrate had acted legally. While I agree that the mere fact that an injured person's life was in danger is insufficient to establish the offence of attempted murder or attempted culpable homicide, it is an important element in doing so if it is combined with other circumstances which taken together point to the necessary intent or knowledge.

In regard to the injuries caused on Emalis Medonza which was the subject of the first charge there was not any material in the police statements of the witnesses that showed provocation. The injuries caused were serious and according to the doctor would have resulted in death but for prompt surgical treatment. In those circumstances the order accepting the plea of causing grievous hurt under provocation, before the circumstances of provocation had been shown by evidence, and the imposition of a fine of Rs. 20/- which in the circumstances was a trifling penalty appears to me unjustified and mistaken. It is an order which is likely to cause the injured party to feel that he has failed to obtain redress from Court. Orders of this kind may well result in injured parties losing confidence of obtaining redress from the Courts and taking the law into their own hands. Such an order therefore is calculated to lessen the confidence that people have in the administration of justice and cannot therefore be allowed to stand.

On the allegations made by the statements appearing in the police information book I should have thought that the charge to be made is attempted culpable homicide but the learned Attorney-General appears to take the view that it should be that of attempted murder. I am disposed to order an inquiry on that charge. No doubt when the facts are gone into the proper charge on which to put the accused-respondent on trial will become apparent.

I accordingly quash the proceedings in this case, set aside the convictions and the sentences imposed on the accused-respondent and send the case back with a direction for an inquiry under Chapter 16 of the Criminal Procedure Code upon a charge of attempted murder, before another magistrate.

Proceedings quashed.

