

1946

Present : Soertsz A.C.J.

UPARIS, Appellant, and POLICE, Respondent.

819—*M. C. Matugama, 984.**Criminal procedure—Jurisdiction—Charge of escaping from lawful custody—
By what Court triable—Penal Code, s. 219.*

A Magistrate's Court has no jurisdiction to try a case where the accused is charged under section 219 of the Penal Code with the offence of escaping from lawful custody, if the custody into which the accused had been taken was on a complaint of an offence which was not cognizable by a Magistrate's Court.

A PPEAL against a conviction from the Magistrate's Court, Matugama.

Accused-appellant in person.

E. P. Wijetunge, C.C., for the Attorney-General.

Cur. adv. vult.

July 26, 1946. SOERTSZ A.C.J.—

The appellant had been taken into custody on a complaint of rape made against him. Rape is a cognizable offence and arrest without a warrant was lawful and, consequently, the custody was lawful. It has been established that he escaped from that custody and he was liable to be charged as he was under section 219 of the Penal Code. The only question is whether the Magistrate was competent to try that case in his capacity of Magistrate. Column 8 of the First Schedule appended to the Code of Criminal Procedure answers that question. The offence of rape not being cognizable in a Magistrate's Court the charge of escaping from the custody in which the appellant was in respect of a complaint of such an offence was also not cognizable.

I set aside the conviction and remit the case for inquiry or for trial under section 166 of the Criminal Procedure Code.

Case remitted.
