1936 *Present :* **Abrahams C.J.**

MARSHALL *v.* VEERO.

529—P. C. Kurunegala, 48,718.

Causing hurt—Using the handle of a closed clasp knife—Sharp-cutting instrument—Penal Code, ss. 314 and 315.

The offence of causing hurt with the handle of a closed clasp knife is punishable under section 314 of the Penal Code.

The handle of a closed knife is not an instrument for cutting within the meaning of section 315 of the Penal Code.

APPEAL from a conviction by the Police Magistrate of Kurunegala.

J. R. Jayawardene, for accused, appellant.

Cur. adv. vult.

October 9, 1936. ABRAHAMS C.J.—

The appellant was convicted of the offence of voluntarily causing hurt with a sharp-cutting instrument, to wit, the handle of a clasp knife, under section 315 of the Penal Code, and was sentenced to pay a fine of Rs. 50 or in default to suffer two months' rigorous imprisonment. He appeals on the ground that an injury caused by the handle of a closed clasp knife is not punishable under section 315 but under section 314, and he also complains that the sentence is excessive in the circumstances. The assault appears to have been entirely unprovoked, and the injuries, four, inflicted on the head are not in themselves serious. Nevertheless they were inflicted on a part of the human person where a comparatively slight blow may result in a serious injury, and were therefore some indication of a malicious intent. I think, then, that the sentence is not excessive.

As regard the section under which the offence falls, the Magistrate followed S. C No. 102—P. C. Colombo (Itinerating) No. 47,571, which he treated as conclusive on the point. That case undoubtedly cannot be distinguished from this, and there Dalton J. said, "After hearing part of the evidence the Magistrate came to the conclusion that the injury was caused probably by a knife which was closed at the time of the offence. He then goes on to hold that a closed clasp knife cannot be said to be an instrument for cutting. I am quite unable to agree with him. Whether a clasp knife is closed or opened it is still a knife, and one of the primary uses of the knife is for the purpose of cutting".

With all due respect, I regret I am unable to agree with the learned Judge and I have not the slightest doubt that it would be a serious misconstruction of section 315 to hold that the handle of a closed knife was an instrument for cutting. To follow such a construction to its logical outcome would be to convict of causing hurt by means of an instrument for shooting a person who struck another on the head with the butt end of a revolver. In my opinion the section means to penalize those persons who employ instruments intended or adapted for shooting, stabbing, or cutting, in the way in which they were intended or adapted for use. It would appear as if unconsciously the prosecution in this case followed this view by the manner in which the charge was actually drafted, the error in the charge being that the wrong section was quoted.

Another and a closer way of looking at the true construction of this section, is by analysis of the word "instrument". The actual instrument for cutting is that part of the knife which actually inflicts the cut, namely, the blade.

My attention has been directed by Counsel for the appellant to section 61 of the Village Communities Ordinance, No. 9 of 1924. The offence of voluntarily causing hurt is in fact triable by a Village Tribunal, and as the offence was committed within the jurisdiction of a Village Tribunal it should have been tried by that Tribunal. But under the proviso to that section, jurisdiction was given to the Police Magistrate by the action of the Police Officer who prosecuted this offence in his Court. Council submits that the Police officer did so because he was of the opinion that the case fell under section 315 and was therefore cognizable by the Police Court to the exclusion of a Village Tribunal. It may be so, but the fact remains that jurisdiction was given to the Police Court, and was lawfully given. If any injustice had been done in the sentence I would have rectified it myself, and therefore no useful purpose would be served by remitting the case for trial to the Village Tribunal. In fact, as I do not consider the sentence excessive, it might very well be that the Village Tribunal would inflict a sentence which, in my opinion, would be inadequate. It is desirable, however, that the appellant should have recorded against him a conviction for the offence which, in my opinion, he committed, and not that which, in my opinion, he did not commit. I therefore allow the appeal by altering the conviction from one of voluntarily causing hurt under section 315 to one under section 314. I dismiss the appeal against the sentence.

Conviction altered.