

1921.

Present : De Sampayo J.

RATNAIKE v. BANDA.

1,089—P. C. Gampola, 4,318.

*Unqualified admission of guilt—Criminal Procedure Code, s. 188.*

The second accused in answer to the charge said: "I plead guilty. If Appavu states I took part, I can only plead guilty." Appavu did not give evidence in the case. The Magistrate convicted the accused on his own plea.

*Held*, that this was not an unqualified admission of guilt, and that the case should have been heard against him on the footing that he did not plead guilty. The evidence led in the case against the third accused after the conviction of the second cannot be taken into consideration as against the second accused.

THE facts appear from the judgment.

*Bartholomeusz*, for appellant.

December 14, 1921. DE SAMPAYO J.—

I am afraid the conviction of the second accused cannot stand. The three accused in the case were charged with having robbed one Appavu Kangany of a sum of Rs. 971, and with having caused hurt to the kangany in the course of the robbery. At first only the first and second accused appeared, and when called upon to plead, the first accused pleaded guilty, and the second accused pleaded as follows: "I plead guilty. If Appavu Kangany states I took part, I can only plead guilty." The Magistrate at once convicted the first and second accused on their pleas of guilty. The case then proceeded against the third accused, and certain evidence was called, with the result the third accused was acquitted for want of proper evidence of identification. It was then pointed out by the proctor for the second accused that the second accused's plea did not amount to an unqualified admission of guilt, and that his conviction was therefore wrong. The Magistrate, however, did not make any alteration in his proceedings or in the verdict, and remarked that the condition mentioned in second accused's plea was amply satisfied by the evidence heard against the third accused. I do not think this as an answer to the objection. The case should have been heard against the second accused on the footing that he did not plead guilty in the sense of the provision in the Criminal Procedure Code. Moreover, Appavu Kangany was not called at any stage of the proceedings, and I cannot understand how the qualified statement of the second accused can be said to have been satisfied in the absence of Appavu Kangany as a witness.

The conviction of the second accused is set aside, and the case sent back for further and proper proceedings.

*Set aside.*