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HARI PAL AND ANOTHER

v.

REGINAM

B [SUPREME COURT, 1967 (Mills-Owens C.J.), 21st April, 16th May]

Appellate Jurisdiction

Criminal law—parties—common intention—aiding and abetting—doing grievous harm—Penal Code (Cap. 8) ss.253, 270.

C The complainant was assaulted by the two appellants but the evidence showed that the grievous harm which he suffered, resulting in the loss of an eye, was inflicted by the first appellant only.

Held: In the absence of evidence of any antecedent common design to do violence, or of some act done or words spoken in the course of the D incident manifesting an assent on the part of the second appellant to the infliction by the first appellant of grievous harm, the second appellant was not guilty of the offence of doing grievous harm. The appropriate conviction in the case of the second appellant was one of common assault.

Appeal from a conviction in the Magistrate's Court of doing grievous harm contrary to section 253 of the Penal Code. The appeal is reported only on the question of the responsibility of different parties to an assault E and only the portion of the judgment relating to that aspect of the matter is set out below. It contains a sufficient statement of the relevant facts.

S. M. Koya for the appellants.

T. U. Tuivaga for the respondent.

F MILLS-OWENS C.J., (in part): [16th May 1967]—

The only matter which causes me concern in the whole of the case is whether the 2nd appellant ought properly to have been convicted of common assault rather than as a principal on the joint charge. The incident may be viewed in stages. First the 2nd appellant called the victim to the car and offered him a lift; there is no evidence from which to infer, without doubt, that he had any other motive at that point. The G alleged loud tone of voice used by the 2nd appellant did not deter the victim from approaching him. Then the 1st appellant got out of the car and knocked the victim to the ground; it is not suggested that grievous harm was caused at this stage. Then the 2nd appellant got out of the car and as the victim lay on the ground he kicked him, without however, according to the facts as the Magistrate accepted them, using much force. At that point the 2nd appellant was guilty of an assault and no more. H Thereupon, however, the 1st appellant seized the victim and, holding him with one hand, delivered a forceful blow or blows to the face causing the grievous harm charged. In those circumstances, did the 2nd appellant aid and abet, or counsel or procure, an assault involving the infliction

of grievous harm; can his assault, following on an assault by the 1st appellant, be said to have brought about the second, more serious and felonious, assault by the 1st appellant? There was no evidence of a preconcerted plan to attack the victim, nor of any words of encouragement spoken by the 2nd appellant during the incident. To hold the 2nd appellant guilty of being a principal in the offence of doing grievous harm it would be essential, in my view, to prove either an antecedent common design to do violence or some act done or words spoken in the course of the incident manifesting an assent on his part to the infliction by the 1st appellant of grievous harm. The circumstances do not, in my view, afford such proof, although I ought to add this matter has not been fully argued. The 2nd appellant ought therefore, as I find, to have been convicted of common assault, contrary to section 270 of the Penal Code. Accordingly in his case I substitute a verdict of guilty of that offence and impose a substituted sentence of a fine of £20, in default two months' imprisonment. The appeal of the 2nd appellant is therefore allowed to that extent; the appeal of the 1st appellant is dismissed.

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Appeal of first appellant dismissed; appeal of second appellant allowed.