

Present: Akbar J.

1929.

KING v. KARUPPEN.

38—D. C. (Crim.) Avissawella, 18,956.

Appeal—Point of law—Certificate by proctor—Criminal Procedure Code, ss. 335 and 338.

An Advocate or a Proctor who certifies a point of law under section 340 of the Criminal Procedure Code pledges his professional reputation to the propriety of the appeal.

That the sentence passed is excessive is no point of law unless a statutory provision regarding the sentence has been violated.

**A** PPEAL from a conviction by the District Judge of Avissawella.

No appearance for the appellant.

Ilangakoon, C. C., for the respondent.

July 10, 1929. AKBAR J.—

The accused was convicted in this case on a charge of using criminal force to a girl to outrage her modesty, an offence punishable under section 345 of the Penal Code, and was sentenced to three months' rigorous imprisonment. Mr. J. H. Rasiah Joseph appeared for the accused in the District Court, and I see from the record that he asked for leave to appeal against the conviction and sentence and that it was refused. Under section 335 there is only an appeal on a point of law from a conviction in a District Court where a punishment does not exceed three months without any other punishment. Under section 339 an appeal on a matter of law has to be certified by an Advocate or Proctor that the matter of law is a fit question for adjudication by the Supreme Court. The importance of this provision of the law was pointed out by the draughtsman of the Code in the case of *Gunawardene v. Alexander*<sup>1</sup>; Bonser C.J. made the following remarks:—"No appeal lies in this case except on a matter of law. To prevent frivolous appeals being lodged, the Code requires that an appeal on a matter of law be certified by an Advocate or a Proctor, who thereby pledges his professional reputation to the propriety of the appeal. I am sorry to say that this petition is a frivolous one, and I am driven to the conclusion either that the Proctor who signed the petition is incompetent or that he has trifled with the Court." So much is the importance attached by the Supreme

<sup>1</sup> (1901) 4 N. L. R. 98

1929.  
 AKBAR J.  
 King v.  
 Karuppen

Court to this certificate of appeal that the Supreme Court held in *Lienard v. Abdul Rahim*<sup>1</sup> that the Counsel for the accused could not raise any point of law even though it may be a good point which was not stated in the certificate of the Advocate or Proctor. I may also refer to the following cases:—*Horan v. Caffoor*,<sup>2</sup> *Nagalingam v. Jayasinghe*,<sup>3</sup> the case reported in 1 Balasingham, Notes of Cases, page 27, and *V. Veerasinkam v. K. Katiresu*,<sup>4</sup> and also the cases reported in Vanderstraaten's Reports, pages 56 and 42.

The petition of appeal contains eight grounds of appeal on the facts, which are of course clearly irregular as the accused, as I have stated, has no appeal on the facts. The Proctor has certified three points of law, which are as follows:—

- (a) The sentence passed on the appellant is very excessive.
- (b) In the circumstances of the case the application made under section 325 of the Criminal Procedure Code must have been allowed and acted upon.
- (c) In view of the fact that the learned District Judge says that this case is not altogether a false case, the benefit of all doubt must be given to the accused-appellant and he must be discharged.

The ground of appeal (c) is not an appeal on a point of law but on facts. The other two points certified by the Proctor are in my opinion not matters of law. As pointed out by Browne C.J. in *Queen v. Daniel*,<sup>5</sup> there is an appeal on a point of law regarding the punishment when the trial Judge has clearly erred in law by awarding a punishment which he has no power to give, or when a minimum amount of penalty is prescribed and the Judge has not imposed it. I do not think that there is an appeal from the sentence on the ground that it is excessive under section 338 of the Criminal Procedure Code, because that section states that a party dissatisfied with any judgment or final order passed by a Criminal Court can only prefer an appeal for any error *in law or in fact*. Further, this section is subject to section 335 of the Code. In my opinion the points of law certified by the Proctor are not points of law at all, and I dismiss the appeal.

*Affirmed.*

<sup>1</sup> (1901) 4 N. L. R. 25.

<sup>2</sup> 1 Car. L. Reports 3.

<sup>3</sup> (1913) 5 C. W. R. 45.

<sup>4</sup> (1901) 3 Browne's Reports 99.

<sup>5</sup> 1 N. L. R. 87.