

[COURT OF CRIMINAL APPEAL.]

1941

Present : Howard C.J., Soertsz and Hearne JJ.

THE KING *v.* RANKIRA.2—*M. C. Matala*, 5,239.

Sentence—Discretion of Judge will not be interfered with—Discretion exercised on wrong principle—Power of Court of Criminal Appeal

The Court of Criminal Appeal will not interfere with the judicial discretion of a Judge in passing sentence unless that discretion has been exercised on a wrong principle.

Where the sentence passed by the Judge ignored the verdict of the jury and in no way reflected that verdict,—

Held, that the Judge had exercised his judicial discretion on a wrong principle.

THE accused was charged with attempted murder and the jury found him guilty of attempted homicide not amounting to murder on the ground that he had committed the act under grave and sudden provocation. They also found that he was exercising the right of private defence which he had exceeded.

The Judge in passing the maximum sentence stated that he did so, as the accused might have been found guilty of attempt to commit murder.

J. E. M. Obeysekere (with him *S. S. Kulatileke*), for accused, appellant.—The Court of Criminal Appeal would not usually interfere with a sentence except where the presiding Judge had proceeded upon a wrong principle—*Squire Sidlo*¹; *James Nuttall*². In this case the Judge passed a sentence which involved the rejection of the jury's verdict. When a Judge differs from the jury, he should pass such a sentence as he would have passed had he agreed with the jury—*Queen v. S. G. Mustaffa*³.

Nihal Gunesekera, C.C., for the Crown.—In imposing sentence the Judge must accept the jury's finding—*Frederick Marshall*⁴; *Charles Roper*⁵.

Cur. adv. vult.

January 27, 1941. HOWARD C.J.—

Like the Court of Criminal Appeal in England this Court is very reluctant to interfere with the judicial discretion of a Judge in passing sentence. That judicial discretion is one vested in him by law. This Court will only do so when it is apparent that that discretion has been exercised on a wrong principle.

In this case the appellant was charged with attempted murder. The jury found him guilty of attempted homicide not amounting to murder on the ground that he had committed the act under grave and sudden provocation. They also found moreover that he was exercising the right of private defence which he had exceeded.

¹ 1 *Cr. App. R.* 28.

² 1 *Cr. App. R.* 180.

³ 3 *Sutherland's W. R.* 29 (*Criminal Rulings.*)

⁴ 12 *Cr. App. R.* 208.

⁵ 16 *Cr. App. R.* 195.

In passing th maximum sentence the learned Judge stated as follows:—

“ Maximum punishment that I can inflict on you is one of seven years’ imprisonment (rigorous) and I give you that as I think that you may have been found guilty of attempt to commit murder ”.

The jury have definitely found that the appellant was not guilty of attempted murder for reasons stated by them. Those were facts which were in the jury’s province alone to decide. The sentence passed by the learned Judge therefore ignored the verdict of the jury and in no way reflected that verdict. It is not merely a question that we consider that we ourselves, if we had been trying this case, would have passed a less severe sentence. That in itself would not justify us in modifying the sentence. We think, however, that the Judge has passed this maximum sentence as the result of exercising his discretion on a wrong principle. We, therefore, substitute for the sentence of seven years’ rigorous imprisonment one of four years’ rigorous imprisonment.

Sentence reduced.

