

1950

[ASSIZE COURT]

Present : Gratiasn J.

REX v. JAYASENA

S. C. 22—M. C. Avissawella, 48,531

Sentence—Case of juvenile delinquency—General considerations—Children and Young Persons Ordinance, No. 48 of 1949 (not yet proclaimed), Section 21—Criminal Procedure Code, Sections 325 (2), 326 (2) (c).

The accused, who was 10 years and 6 months old, was charged with having murdered a child aged 8. At the trial he tendered a plea of guilt on the lesser count of wrongful confinement punishable under section 433 of the Penal Code, and this plea was accepted.

Held, that as no "Approved School" or Government Reformatory School was available and it was undesirable to send the accused to the Certified Industrial School at Maggona, the principle adopted by the Legislature in passing section 21 of the un-proclaimed Children and Young Persons Ordinance should always guide Courts in dealing with cases of juvenile delinquency : in the circumstances, orders should be made under sections 325 (2) and 326 (2) (c) of the Criminal Procedure Code.

ORDER made at the conclusion of a trial before a Judge and Jury.

A. C. Alles, Crown Counsel, for the Crown.

Frederick W. Obeyesekere, with S. T. K. Mahadeva, for the accused.

November 24, 1950. GRATIAEN J.—

The accused in this case is 10 years and 6 months old. He was charged before me and an English speaking jury with having murdered a child aged 8 on February 3, 1950. Pending his trial, the learned Magistrate remanded the accused to custody in the Jayasekera Home in Colombo which he regarded as less unsatisfactory for the purpose than any other available institution. I am glad to learn from the Probation Officer that those in charge of the Jayasekera Home have done their best to protect the accused from undesirable association with older delinquents during the period of over 9 months which has unfortunately lapsed before the accused was brought to trial in this Court. Nevertheless, the absence in Ceylon of a single Remand Home reserved exclusively for the detention of young persons awaiting trial is greatly to be deplored.

At the trial, the charge of murder failed; nor did the evidence disclose that the lesser offence of culpable homicide not amounting to murder had been committed. Indeed, if the testimony of Dr. Abeywardena and Dr. Tisseveerasinghe had been led with greater precision in the non-summary proceedings on the vital issues relating to the charge of homicide, I am satisfied that commitment to this Court on this grave charge would have been found unnecessary. The case against the accused might well have been disposed of summarily on charges within the jurisdiction of the Magistrate. Dr. Tisseveerasinghe's evidence in this Court proved conclusively that the unfortunate boy alleged to have been murdered by the accused had, in fact, died by misadventure, and Dr. Abeywardena's evidence proves that the accused, in any event, did not possess sufficient maturity of understanding to realise that his conduct, wicked and reprehensible though it undoubtedly was, was likely to cause his victim's death. It is right that these facts should be placed on record in view of the publicity which this case has received, particularly in the neighbourhood in which the accused and his parents reside. The jury was satisfied, the Crown has now conceded, and I am convinced that no criminal responsibility attaches to the accused for the tragic death of young Rupasinghe.

The accused tendered a plea of guilty on the lesser count of wrongful confinement punishable under section 333 of the Penal Code. This plea was very properly accepted by the Crown and by the Jury. The accused is a lad of tender years and the question of sentence has caused me grave anxiety. After the trial, I adjourned proceedings until today in order that I might have the assistance of some official evidence in order to determine the punishment most appropriate to the case.

The evidence led before me today brings home once more the inadequacy of Institutions established for the treatment of young delinquents in this country. The accused was barely 10 years old when he committed this crime in circumstances which shew that he is possessed of much wickedness and considerable cunning. On the other hand, he is bright and intelligent, and, in the opinion of Dr. Abeywardena and of the Probation Officer, he is co-operative and amenable to discipline. Under proper guidance of competent persons, there would be good reason

to hope that he can be diverted from his present evil propensities and that he may in due course become a decent citizen. If, however, he is left in an environment in which the unjustifiable reproaches of his fellow villagers and his school friends that he is a murderer will take some time to die down, I fear that he is almost certain to develop into a danger to society. It is desirable that he should be given the opportunity of starting a new life in new surroundings where the stigma attached to the crime is less likely to be felt. He is too young to qualify for admission in a Borstal Institute.

The Children and Young Persons Act which was enthusiastically enacted by the Legislature 12 years ago was specially designed to deal with cases of this sort, but administrative difficulties, which I trust will one day be overcome, have so far prevented the Ordinance being brought into operation. The ideal solution of sending the accused to an "Approved School" is therefore not available. Similarly, it is admitted that no Government Reformatory School exists to which this lad of tender years can be sent under the provisions of the Youthful Offenders' Ordinance. The Probation Officer is of opinion that it is undesirable to send the accused to the only Certified Industrial School in Ceylon which is functioning at Maggona. I am therefore left to devise some other means of dealing with the present case.

Section 21 of the Children and Young Persons Ordinance declares that "Every Court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training". Although the Ordinance is not yet in operation, the underlying principle adopted by the Legislature in passing section 21 must and should always guide Courts in dealing with cases of juvenile delinquency. The sad inadequacy of the machinery of the unproclaimed Ordinance prevents me today from making an entirely appropriate order in this case. In the circumstances in which I am placed, I think the best I can do in the interests of the accused and the society is to make an order under section 325 (2) of the Criminal Procedure Code in the following terms:—

"I discharge the accused conditionally on his entering into a recognizance with his father as surety in the sum of Rs. 25 to be of good behaviour and to appear in this Court when called upon at any time within three years from today."

For the purpose of securing that the accused shall be assisted to lead an honest and industrious life, I further make order under section 326 (2) (c) of the Criminal Procedure Code that the recognizance entered into by the accused shall contain the following conditions:—

- (a) that the accused shall throughout the prescribed period of 3 years be placed under the supervision of the Probation Officer for the time being in charge of the Colombo Probation Unit ;

- (b) that he shall as soon as arrangements be made for the purpose reside and receive his education and treatment at the Child Protection Society Home in Maharagama, or should this arrangement prove impracticable at any future date at such other similar Institution as the Probation Officer in charge of the accused shall select with approval of the Court ;
- (c) that he shall attend the Government Child Guidance Clinic in Colombo for such treatment as the Officer in Charge of the Clinic shall notify the Probation Officer to be necessary and desirable;
- (d) that he shall obey all such orders or directions as may be issued to him by the Probation Officer for the purpose of securing his good conduct and welfare. ”

I further direct that should the Probation Officer at any time consider that, in the interest of the accused and of society, the present order should be varied or modified in any way he should refer the matter to this Court for further directions.

It was brought to my notice that there are technical difficulties which prevent me from making the appropriate order under the Probation Offenders' Ordinance, No. 42 of 1944, the chief difficulty being that, when the present offence was committed, Avissawella had not been proclaimed a "Judicial Division" for the purposes of that Ordinance. Nevertheless, I express the hope that, for all financial purposes, the order which I make today shall be regarded as a probation order so as to permit the expenses involved in maintaining the accused at Maharagama or in any other Institution will be met from public funds.

Accused conditionally released.
