

## [COURT OF CRIMINAL APPEAL.]

1944 Present: **Howard C.J., Hearne and Keuneman JJ.**

THE KING v. D. BABANIS.

9—M. C. Dandagamuwa, 12,624.

*Murder—Conflicting passages in summing-up—Murderous intention or merely knowledge—Verdict of culpable homicide not amounting to murder substituted.*

Where, in a charge of murder, it is impossible to say, owing to conflicting passages in the summing-up, whether the jury, if properly directed, would have come to the conclusion that the accused had a murderous intention or merely the knowledge that he was likely to cause death,—

*Held*, that a verdict of culpable homicide not amounting to murder should be substituted for that of murder.

**A** PPEAL against a conviction by a Judge and Jury before the Western Circuit.

S. C. E. Rodrigo, for the applicant.

E. H. T. Gunasekera, C.C., for the Crown.

*Cur. adv. vult.*

<sup>1</sup> 4 Cr. App. R. 225.

<sup>3</sup> 41 N. L. R. 433.

<sup>2</sup> 6 Cr. App. R. 285.

February 14, 1944. HOWARD C.J.—

At the outset of the summing-up in this case, the learned Judge made the following statement:—

“ Of course if a person knows that the injury which he is inflicting is likely to kill, then he intends to kill. ”

That statement is obviously not in accordance with the law. Again a little further on he stated:—

“ It is murder if it is done with the intention of causing such injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. ”

Of course, if this statement has reference to a case which came under the second paragraph of section 294 of the Penal Code, no exception can be taken, but this is not such a case. It, therefore, seems to us that that statement is also open to question. It is true that the learned Judge at the end of his summing-up stated:—

“ It is not contested that any ordinary person would know that to give any woman or any man a beating is to run risk of killing. If that is so, it would be culpable homicide not amounting to murder, but if you go further and say he intended to kill that woman, he would be guilty of murder. ”

That is a correct statement of the law, but it is impossible to say whether the Jury, in coming to a decision, would be more influenced by what they heard at the end of the summing-up as compared with what the learned Judge told them when he commenced his charge. In these circumstances, it is impossible to allow the verdict of murder to stand. We, therefore, set aside the conviction of murder and substitute a verdict of culpable homicide not amounting to murder, as it is impossible to say whether the Jury, if properly directed, would have come to the conclusion that the appellant had a murderous intention or merely the knowledge constituting the offence of culpable homicide not amounting to murder. We substitute for the sentence of death a sentence of 10 years' rigorous imprisonment.

*Conviction varied.*

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