[COURT OF CRIMINAL APPEAL]

1950 *Present:* **Jayatileke C.J. (President), Gratiaen J. and Pulle J.**

PONNAMBALAM *et al.*, Appellants, *and* THE KING, Respondent

APPEALS 49-50 WITH APPLICATIONS 92-93 OF 1950

S. C. 16—M. C. Jaffna, 18,500

Court of Criminal Appeal—Evidence—Two accused charged with murder—Absence of proof of pre-arranged plan—Liability of one accused for injuries caused by the other.

The two appellants were convicted of murder. The convictions were based on the evidence of a witness who said that the deceased told him that the two appellants stabbed him. The medical evidence showed that the deceased had two stab injuries one of which was necessarily fatal and the other sufficient in the ordinary course of nature to cause death. On the deceased's statement it was not possible to say which injury was caused by each appellant.

Held, that, in the absence of evidence of a pre-arranged plan on the part of the appellants to inflict the injuries on the deceased, the appellants could only be convicted of voluntarily causing grievous hurt.

APPEALS, with applications for leave to appeal, against two convictions in a trial before a Judge and Jury.

M. M. Kumarakulasingham, with *K. A. P. Rajakaruna*, for the accused appellants.

H. A. Wijemanne, Crown Counsel, with *A. Mahendarajah*, Crown Counsel, for the Crown.

Cur. adv. vult.

November 17, 1950. JAYETILEKE C.J.—

The appellants were convicted of murder and sentenced to death.

The case for the prosecution rested on the evidence of one Sinnan and on a statement alleged to have been made by the deceased to one Andy Arumugam. The learned Judge in his summing-up indicated to the jury that the evidence of Sinnan was unreliable and that it would not be safe for them to base their verdict upon it. We do not know what view the jury took of Sinnan's evidence but in view of the observations made by the learned Judge it would be safe to assume that they did not act on it. Andy Arumugam said that the deceased told him that Ponnambalam, the son of Kidnar, and Kanagasabai, the son of Ponnu, stabbed him. The medical evidence shows that the deceased had two stab injuries one of which was necessarily fatal and the other sufficient in the ordinary course of nature to cause death. On the deceased's statement it is not possible to say which injury was caused by each appellant. The verdict indicates that the jury held each appellant responsible for the acts of the other. They could have done so only if there was evidence of a pre-arranged plan on the part of the appellants to inflict the injuries on the deceased. There was no such evidence. In the circumstances we are of opinion that the conviction must be set aside and the appellants convicted of voluntarily causing grievous hurt. We would sentence each of the appellants to undergo rigorous imprisonment for a period of seven years.

Conviction altered.