

[IN THE COURT OF CRIMINAL APPEAL]

1964 Present : Basnayake, C.J. (President), Abeyesundere, J.,
and Sri Skanda Rajah, J.

THE QUEEN *v.* D. K. DHANAPALA

APPEAL No. 17 OF 1964, WITH APPLICATION No. 18

S. C. 159/63—J. M. C. Colombo, 26274

Criminal Procedure Code—Sections 181 and 182—Charge of abetment of attempted murder—Conviction, without separate charge, for causing simple hurt—Illegality.

A person indicted on a charge of abetment of attempted murder cannot be convicted, without a separate charge, of voluntarily causing simple hurt.

APPEAL against a conviction in a trial before the Supreme Court.

Colvin R. de Silva, with *Mangala Munasinghe* and *D. G. Jayalath* (assigned), for 2nd Accused-Appellant.

V. S. A. Pullenayegum, Crown Counsel, for Attorney-General.

May 4, 1964. BASNAYAKE, C.J.—

The 1st accused Lekamwasam Newton Siriwardene was indicted on a charge of attempted murder and the 2nd accused Don Karunasekera Dhanapala on a charge of abetting the offence of the 1st accused. In the course of his charge to the jury the learned Commissioner expressed the view that the evidence was insufficient to establish the offence of abetment, and he directed the jury that it was open to them to return a verdict of voluntarily causing simple hurt.

On the first day of the hearing of this appeal we dismissed the appeal of the 1st accused and gave counsel time to address us on the question of law as laid down by the learned Commissioner. He said—

“ My own view is that there is an insufficiency of evidence to hold that he was abetted. Assuming that you are satisfied that he did assault him, it must be in connection with the act of the first accused. So much for that. If you take that view, you will of course have to acquit the second accused of the charge of abetment. But that does not conclude the matter. It is open under a provision of our law—if you hold that the second accused did assault Hassen, that it has been proved to you beyond reasonable doubt that he did so—to find him guilty of simple hurt. I will not worry you with the law. That is my interpretation of section 182 of the Criminal Procedure Code. ”

Learned Crown Counsel sought to support the learned Commissioner's view that under section 182 of the Criminal Procedure Code it was open to the jury to return such a verdict.

We are unable to agree with his submissions. The Court may, under section 182, convict an accused person without a charge of an offence for which he might have been charged in the circumstances mentioned in section 181. That section deals with the case of a single act or a series of acts of such a nature that it is doubtful which of several offences the facts which can be proved will constitute. The instant case does not come within the ambit of section 181.

As the direction of the learned Commissioner is in our opinion wrong in law, the conviction of the 2nd accused must be quashed. We quash the conviction of the 2nd accused and direct that a judgment of acquittal be entered.

2nd accused acquitted.
