

[COURT OF CRIMINAL APPEAL.]

1947 Present : Howard C.J. (President), Keuneman and Cannon JJ.

THE KING *v.* PREMARATNE.

Application 12 of 1947

S. C. 95—M. C. Panadure, 40,687.

Charge of murder—Evidence suggestive of offence of culpable homicide not amounting to murder—Duty of Judge to give directions to jury on the lesser offence.

Where in a trial for murder the evidence is such as might satisfy the jury that the elements were present which would reduce the crime to culpable homicide not amounting to murder it is the duty of the trial Judge to include in his summing-up to the jury observations on the subject of culpable homicide not amounting to murder.

A PPLICATION for leave to appeal against a conviction in a trial before the Supreme Court.

H. V. Perera, K.C. (with him *K. A. P. Rajakaruna* and *Siri Perera*), for the accused, applicant.

T. S. Fernando, C.C. (with him *E. L. W. de Zoysa, C.C.*), for the Attorney-General.

Cur. adv. vult.

March 3, 1947. HOWARD C.J.—

The applicant was found guilty of the offence of murder by a majority verdict of five to two. Mr. H. V. Perera on his behalf, whilst not complaining that the Jury have rejected the plea put up by the applicant at his trial that he was exercising the right of private defence, maintains that the learned Judge has not properly put before the Jury the defence that the applicant committed the act when he had lost the power of self-control by reason of grave and sudden provocation. The learned Judge before dealing with the facts in this particular case dealt with the possible defences available to the applicant. On page 9 of the record he says that "it may be urged that it is possible to say in this case that there was grave and sudden provocation". On page 10 he again refers to this defence and again on page 13. The learned Judge then goes on to deal with the facts in the case, and having done so asks the Jury to consider those facts so far as the defence based on the exercise of the right of private defence is concerned. The Jury, however, is not asked to consider the facts and decide whether a defence based on the fact that the applicant had lost his power of self-control by reason of grave and sudden provocation. In *Mancini v. Director of Public Prosecutions* (28 *Criminal Appeal Reports* p. 73) Viscount Simon, L.C. states as follows:—

"To avoid all possible misunderstanding, I would add that this is far from saying that in every trial for murder, where the accused pleads Not Guilty, the Judge must include in his summing-up to the jury observations on the subject of manslaughter. The possibility

of a verdict of manslaughter instead of murder only arises when the evidence given before the jury is such as might satisfy them as the judges of fact that the elements were present which would reduce the crime to manslaughter, or at any rate might induce a reasonable doubt whether this was, or was not, the case".

The Crown in this case put before the jury the evidence of two eye-witnesses, Eradias and Rodrigo. Eradias, a boutique-keeper, stated that it was a moonlight night and the applicant was seated in his boutique when the deceased came in and addressed the applicant saying "Are you Banda?". Eradias told the deceased not to have any discussion in the boutique. The deceased left the boutique and the applicant followed and said something which could not be heard. The deceased then came close to the applicant saying "Tho—what did you say?". The deceased raised his hand but before he could hit the applicant, the latter stabbed him with a knife several times. The evidence of Eradias was corroborated by that of Rodrigo, who also stated that the deceased when he came into the boutique approached the applicant who was seated, in a threatening manner. The majority of us consider that the evidence of these two witnesses is such as might satisfy the jury as the judges of fact that the elements were present which would reduce the crime to culpable homicide not amounting to murder. In these circumstances we set aside the conviction for murder and substitute a conviction for culpable homicide not amounting to murder. In respect of this offence we pass a sentence of 15 years' rigorous imprisonment.

Conviction altered.
