

Present: Lyall Grant J.

1927.

DON CORNELIS *v.* PERERA.

58—*P. C. (Itg.) Colombo, 47,689.*

Sentence—Crimes of common occurrence—Conviction rare deterrent punishment.

Where it is difficult to secure a conviction in a class of crime, which is of frequent occurrence in a district, the imposition of a heavy sentence in the nature of a deterrent is justified.

APPEAL from a conviction by the Itinerating Police Magistrate of Colombo. The facts appear from the judgment.

J. S. Jayewardene, for accused, appellant.

February 28, 1927. LYALL GRANT J.—

The accused in this case has been convicted of the theft of a calf of the value of Rs. 10, and he has been sentenced to three months' rigorous imprisonment and a fine of Rs. 25, or in default an additional month's rigorous imprisonment.

28/28

1927.

LYALL
GRANT J.*Don*
Cornelis v.
Perera

On appeal it was not disputed that the Magistrate was entitled to convict him, but it was argued that in the circumstances the sentence is too severe. The accused is a man of about 35 years of age and no previous convictions have been proved against him. The reason given for the severity of the sentence is that crimes of this nature are common in the district. I was referred to a case *appu Singho v. Uduma Lebbe*¹ in which an accused had been given the maximum sentence for obstructing a public officer in the execution of his duty. No circumstance of aggravation was found in the evidence and that appeared to be his first offence. The Magistrate gave the maximum sentence because offences of that sort frequently came before him. Mr. Justice Ennis said that he did not consider that as a sufficient reason for imposing the maximum sentence. The reason given by the Magistrate here, however, is a little different. The reason given is that crimes of this nature are common in the district but convictions are rare. One knows that certain types of crimes may be prevalent, but that it may be difficult to secure a conviction, and I think it is a recognized principle of criminal administration that in such circumstances it is sometimes necessary to impose a rather heavier sentence than one otherwise would in order to deter others from committing such crimes. No doubt the most satisfactory thing is that all criminals should be apprehended, and as far as possible an exact measure of punishment should be given to meet the gravity of the offence, but where by the nature of the case it is difficult to apprehend the criminal it sometimes becomes necessary for the Court to impose a rather heavy penalty in order to act as a deterrent.

I think, however, in this case that, in view of the small value of the animal stolen and in view of the accused's previous good conduct, it is possible to reduce the sentence in some degree. I reduce the sentence to two months' rigorous imprisonment, and remit the fine.

Conviction affirmed; sentence varied.

¹ *Balasingham's Notes of Cases*, p. 33.