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Present : Macdonell C.J.

KING v. ABDUL RAHIMAN.  
44—D. C. (Crim.) Kegalla, 2,500.

*Preventive detention—Proof that the accused is leading persistently a dishonest or criminal life—Habitual associate of criminals—Prevention of Crimes Ordinance, No. 2 of 1926, s. 10 (1), (2) (a) (iii.).*

Before a sentence of preventive detention is imposed upon an accused person under section 10, sub-section (1) and (2) (a) (iii.), of the Prevention of Crimes Ordinance, it must be proved that he is getting his living by dishonest or criminal means or that he is a habitual associate of criminals so as to raise the inference that he is earning his livelihood by dishonest or criminal means.

**A** PPEAL from a conviction of the District Judge of Kegalla.

*Gratiaen*, for accused appellant.

*Wendt, C.C.*, for the Crown.

<sup>1</sup> (1918) 21 N. L. R. 36.

July 20, 1932. MACDONELL C.J.—

In this appeal everything that can be said has been put very well to the Court on behalf of the appellant. There are two things in this case that one has to be careful about. There is the natural dislike of cutting and stabbing cases, which offences one knows are too prevalent, and secondly, one has to be careful to see that this man is not condemned on his character, which happens to be a very bad one. But really it appears to be a plain question of fact. The medical evidence left open, as medical evidence is apt to do, the question of accident or purpose. Two witnesses made it clear that these certainly small wounds were inflicted with a purpose, one of those witnesses being sufficiently fair-minded to minimize one of the three or four cuts or stabs which he received. The Judge had the witnesses before him and he accepted their evidence and rejected the defence of the accused. It is pointed out that the accused was not cross-examined, but it seems to me that the Judge has sufficiently directed himself on that aspect of the case by finding, as he does, that the accused's evidence is untrue, a story which he has no hesitation in rejecting. As to the sentence: people really must be taught that they cannot resist lawful authority in this way, still less use a knife as part of that resistance. I do not think I ought to interfere with the sentence of eighteen months' rigorous imprisonment, and though I am very sorry that the accused had been on remand for three months in regard to the other charge, still I am afraid it would not be a right principle for that reason to interfere with the sentence of imprisonment which has been passed in this case.

The sentence of preventive detention stands on quite a different footing. Section 10, sub-sections (1) and (2) (a) (iii.), of the Prevention of Crimes Ordinance as amended in 1928, makes it quite clear that before a person can be convicted as habitually addicted to crime so as to make it lawful to impose on him a sentence of preventive detention, it must be proved "that he is leading persistently a dishonest or criminal life". Due attention must be given to this provision of the law on all indictments for being a habitual criminal. The evidence must show either that the person charged is getting his living by dishonest or criminal means or it must be shown at the very least that he is a habitual associate of criminals so as to raise the inference that he is earning his livelihood by dishonest or criminal means. I cannot say that the evidence of the Vidane Arachchi on page 36 of the record is sufficient to comply with this requirement of the law. The order for preventive detention must, therefore, be formally set aside and the case remitted to the District Judge with directions to try the case on this indictment under Ordinance No. 27 of 1928 with particular reference to the section which has been quoted above. The learned Judge's attention is also drawn to sub-section (6)

of the same section which shows that evidence as to character and repute of the accused is admissible upon an indictment for being a habitual criminal and that the accused may tender similar evidence.

The appeal must be dismissed and the case remitted for the above purpose.

*Sent back.*

