

[COURT OF CRIMINAL APPEAL.]

1946 *Present* : Howard C.J. (President), Jayatileke and Canekeratne JJ.

THE KING *v.* W. F. FERNANDO.

APPEAL No. 25 OF 1946.

S. C. 39—M. C. Chilaw, 23,029.

Court of Criminal Appeal—Sentence—Reduction—Verdict of Jury should be given effect to.

The Court of Criminal Appeal will reduce the sentence passed on an accused where such sentence does not give effect to the verdict of the Jury and is excessive.

A PPEAL, with leave obtained, against sentence.

S. Sivasubramaniam, for the appellant.

T. S. Fernando, C.C., for the Crown.

June 10, 1946. HOWARD C.J.—

In this case the appellant was charged with the offence of murder and was found guilty by the Jury of culpable homicide not amounting to murder. After this verdict had been recorded, the learned Commissioner put certain questions to the Foreman of the Jury. The first question was "Was it in self-defence or under grave and sudden provocation?" The Foreman answered "Self-defence". The learned Commissioner then put the question "Did he exceed his right?". Apparently there was no answer to that question, but it must be assumed that the Jury brought in the verdict they did on the ground that the appellant had been attacked and had used his knife in the exercise of the right of private defence but had exceeded that right. I would further observe that before he passed sentence the learned Commissioner addressed the prisoner as follows:—"You are a very lucky man. My own view is that you are guilty of murder. Still the Jury are the judges of facts. They have taken a merciful view of your case". The learned Commissioner then proceeded to pass a sentence of 10 years' rigorous imprisonment.

We think that the learned Commissioner has erred in not giving effect to the verdict of the Jury. The verdict of the Jury indicates that they, generally speaking, accepted the appellant's story. We think that a sentence of 10 years' rigorous imprisonment, having regard to the acceptance of that story, is excessive. In these circumstances we reduce the sentence to one of 5 years' rigorous imprisonment.

Sentence reduced.
