

[IN THE COURT OF CRIMINAL APPEAL]

1959

*Present : Basnayake, C.J. (President), Pulle, J., and
H. N. G. Fernando, J.*THE QUEEN *v.* J. A. ALPIN SINGHO

Appeal No. 122 of 1958, with Application No. 168

*S. C. 2—M. C. Colombo, 5,809**Emergency (Miscellaneous Provisions and Powers) Regulations of 1958—Regulation 22
—Sentence for offence thereunder—Public Security Ordinance, No. 25 of 1947,
s. 5.*

In a case where the Judge decides to impose the punishment of imprisonment instead of death for an offence against Regulation 22 of the Emergency (Miscellaneous Provisions and Powers) Regulations published in *Gazette* No. 11,321 of 27th May, 1958, he may impose a sentence short of imprisonment for life.

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

*Nimal Senanayake (Assigned), for the Accused-Appellant.**V. S. A. Pullenayegum, Crown Counsel, for the Attorney-General.**Cur. adv. vult.*

January 13, 1959. BASNAYAKE, C.J.—

The only question that arises for determination on this appeal is whether in a case where the Judge decides to impose the punishment of imprisonment instead of death for an offence against Regulation 22 of the Emergency (Miscellaneous Provisions and Powers) Regulations published in *Gazette* No. 11,321 of 27th May, 1958, he may impose a sentence short of imprisonment for life.

The material portion of that regulation reads:—

“ 22. (1) Any person who

(a) does, with fire or any combustible matter

(b) commits theft of any article

(c) does any act intending

(d) commits any offence

(e) is a member of an unlawful assembly

shall be guilty of an offence against this regulation and, notwithstanding anything in the Penal Code or in these regulations, shall, on conviction thereof before the Supreme Court, be liable to suffer death or imprisonment of either description for life.”

The learned Commissioner has construed the regulation as making it obligatory on him to impose imprisonment for life. In construing identical words in regulation 27D (1) (b) of the Emergency Powers (Defence) Acts, 1939 and 1940, this Court in the case of *The King v. Punchi Banda*¹ construed the words "be liable to suffer death or imprisonment for life" as enabling the trial Judge to impose a term of imprisonment short of life imprisonment. It is a well-established rule of construction of statutes that "where an Act of Parliament has received a judicial construction putting a certain meaning on its words, and the Legislature in a subsequent Act *in pari materia* uses the same words, there is a presumption that the Legislature used those words intending to express the meaning which it knew had been put upon the same words before; and, unless there is something to rebut that presumption, the Act should be so construed, even if the words were such that they might originally have been construed otherwise." (*Mersey Docks and Harbour Board v. Cameron*²; *Royal Court Derby Porcelain Co. v. Russell*³.)

The learned Commissioner of Assize should therefore have construed the words in the sense in which they were construed in *Punchi Banda's* case (*supra*) and considered what term of imprisonment was appropriate for the offence committed by the appellant.

We are of opinion that, having regard to the circumstances of the case, a term of ten years' rigorous imprisonment on each of the counts 1 and 2 would meet the ends of justice. These sentences and the others imposed by the learned Commissioner of Assize under section 437 of the Penal Code, and count No. 4, should run concurrently.

Subject to the above variation in the sentence imposed on counts 1 and 2, the appeal is dismissed and the application refused.

Sentence varied.

¹ (1942) 44 N. L. R. 327.

² (1864-65) 11 H. L. C. 443 at 480.

³ (1949) 2 K. B. 417 at 429.