

[COURT OF CRIMINAL APPEAL.]

1940

*Present : Moseley S.P.J., Soertsz and de Kretser JJ.*THE KING *v.* JAN SINGHO *et al.*24—*M. C. Gampaha, 2,333.*

Common intention—Charge of murder against three persons—Conduct of second and third accused consistent with innocence—Penal Code, s. 32.

The case for the prosecution was that the deceased was shot by the first appellant and that the second and third appellants were in his company and were acting in furtherance of a common intention.

The evidence was that second and third accused were running away from the scene of the incident and that they were subsequently not seen in their homes.

Held, that the facts did not lead irresistibly to the inference that such a common intention existed on the part of the second and third accused, that their actions were capable of an innocent explanation and that they were not guilty of the offence.

A PPEAL from a conviction for murder before the Western Circuit. The appeals were on grounds of law.

H. V. Perera, K.C. (with him *S. P. C. Fernando*), for the first accused, appellant.

H. V. Perera, K.C. (with him *A. H. C. de Silva*), for the second accused, appellant.

J. W. R. Ilangakoon, K.C., Attorney-General (with him *E. H. T. Gunasekera, C.C.*), for the Crown.

Cur. adv. vult.

July 29, 1940. MOSELEY J.—

The three appellants were charged with the murder of one Charles Peter Subasinghe. They were convicted and sentenced to death on June 27, 1940, by Mr. Justice Cannon.

Each of the three appellants has appealed on ground of law and each has filed an application for leave to appeal on questions of fact. The case for the prosecution, briefly, was that the deceased was shot by the first appellant and that the second and third appellants were in his company and were acting in furtherance of a common intention.

In regard to the first appellant we do not think that any of the questions of law upon which the application is based has any substance. Moreover we are satisfied that the verdict in this respect is justified by the evidence. His appeal therefore fails.

The cases of the second and third appellants have a different complexion. The evidence against them was that they were seen in company with the first appellant at the time of or immediately after the incident; that they were running away from the scene of the incident and that they subsequently were not to be found at their respective homes. From these circumstances the jury were invited by the prosecution to draw the

inference that they were acting in concert with the first appellant and that the common intention of all was to bring about the death of the deceased:

It does not seem to us that these facts lead one irresistibly to the inference that such a common intention existed on the part of the second and third appellants. Their actions are capable of innocent explanations even though no such explanation was given by either of them. There was no evidence of ill-feeling between the second appellant and the deceased and evidence only of a very slight motive on the part of the third appellant. There was evidence that the second appellant had on previous occasions been in the company of the first appellant who at the time was armed with a gun. There was, therefore, nothing extraordinary in the fact that the two were in company at the time of the incident, nor was there any reason why the third appellant who was a first cousin of each of them should not be with them.

On the hypothesis that the first appellant was acting independently of the others when he fired the fatal shot at the deceased, it would be quite natural for the second and third appellants to take to their heels. Similarly, if they were aware that they had been seen in the company of the first appellant it would not be unnatural, though perhaps unwise, that they should deem it advisable to absent themselves from their homes.

To put it shortly it seems to us that the facts are equally consistent with the innocence as with the guilt of the second and third appellants, and that for that reason the verdict cannot be supported having regard to the evidence.

In these circumstances their appeals are allowed and the convictions and sentences are set aside and a judgment of acquittal is entered.

Appeal allowed.
