

1946

Present : Keuneman S.P.J. and Wijeyewardene J.

THE ATTORNEY-GENERAL, Petitioner, and FERNANDO,
Respondent.

36—*Application to enhance the sentence in D. C. (Crim.),
Nuwara Eliya, 244/4,948.*

Plea of guilt—Accused influenced by remarks made by Court—Validity of plea.

Where the accused tendered a plea of guilt in consequence of certain remarks made by Court to the effect that the case was not one where a sentence of imprisonment was called for even if the accused was found guilty after trial—

Held, that the plea of guilt could not be regarded as an unqualified admission of guilt.

A PPLICATION to enhance a sentence passed by the District Judge of Nuwara Eliya.

J. A. P. Cherubim, C.C., in support.

G. P. J. Kurukulasuriya, for the accused, respondent.

September 11, 1946. KEUNEMAN S.P.J.—

Although this matter started as an application for enhancement of sentence on the part of the Crown, certain facts have come to our notice as a result of which we are inclined to think that the plea of guilt in the case of both indictments tendered by the accused was not an unqualified plea of guilt. The accused himself in his affidavit states that whilst the first witness for the prosecution was giving evidence a suggestion was thrown out by the learned District Judge that on the facts and circumstances of the case he was disposed to deal with the accused as a first offender or impose a nominal fine if he tendered a plea of guilt. The learned District Judge to whom this affidavit was submitted does say that it is incorrect that he said that he would deal with the prisoner leniently if he pleaded guilty, but on the other hand the District Judge does also say that before adjourning for lunch he mentioned from the Bench that judging from the facts and circumstances of the case as revealed by the evidence of the witness he felt that this was not a case where a sentence of imprisonment was called for even if he found the accused guilty after trial. We are disposed to accept the explanation of the District Judge, but even accepting that explanation there can be little doubt that the remarks made by the District Judge may have influenced the accused to tender a plea of guilt although the accused felt and maintained that he was not guilty. In this state of things I think it would be unfair to the accused to uphold his plea of guilt. In the circumstances I order that the pleas of guilt be not regarded as an unqualified admission of guilt and that the conviction entered on the

pleas be set aside. The cases will be sent back to be heard by another District Judge. It is to be clearly understood that no inference unfavourable to the accused should hereafter be drawn in consequence of the mere fact that the accused tendered a plea of guilt in the manner in which he did.

WIJEYWARDENE J.—I agree.

Case sent back for re-trial.

