[COURT OF CRIMINAL APPEAL.]

1942 **Soertsz, Hearne and de Kretser JJ.**

THE KING *v.* JAMIS SINGHO.

93—M. C. Gampáha, 11,597.

Court of Criminal Appeal—Leave to add new grounds of appeal—Exceptional circumstances—Substantial point of law—Delay in application—Sufficiency of excuse.

The Court of Criminal Appeal will not entertain additional grounds of appeal except in very exceptional circumstances, such as when a substantial question of law is seen to arise.

Where the delay was due to the fact that a copy of the evidence and of the charge of the Judge was obtained only a few days before the statement containing the additional grounds of appeal was tendered,—

Held, that the excuse was not sufficient.

APPLICATION for leave to appeal from a conviction by Judge and Jury before the Western Circuit, 1942.

C. Suntheralingam, for the applicant.

H. W. R. Weerasooriya, C.C., for the Crown.

Cur. adv. vult.

December 8, 1942. SOERTSZ J.—

On October 23, 1942, the appellant gave notice of an application for leave to appeal against the conviction entered against him and stated the grounds on which he based his application.

Almost a month later, namely, on the 21st of November, Counsel for appellant tendered another statement setting forth four additional grounds of appeal said to "involve questions of law alone".

This Court has repeatedly laid down that it will not entertain additional grounds of appeal, except in very exceptional circumstances, when a substantial question of law is seen to arise. We, accordingly, desired that Counsel for the appellant should satisfy us, in the first place, that there was good reason for the delay that had occurred and that the questions of law raised were of a substantial nature.

His explanation of the delay was that he obtained a copy of the evidence and of the charge of the Judge only a few days before he tendered the statement containing the additional grounds of appeal. But as was pointed out in the case of *Cairns*[1] and in other cases, that is not a sufficient excuse. Counsel appearing for a prisoner—and in capital cases Counsel always appear—should be aware of any matter of substance calling for consideration and should be able to advise the prisoner regarding it. It is, however, said that, in many cases, only assigned Counsel appear for the prisoner. If that is meant to imply that assigned Counsel take no interest in the case of the prisoner once the verdict has been entered, we are unable to agree to that. Our experience informs us differently.

If, however, Counsel for the appellant here meant that without the notes of evidence and of the charge he had no opportunity to subject the charge to a microscopic scrutiny, that is a matter that does not deserve any encouragement. The words of Lord Coleridge J., in *Rex v. Wyman*[2], are very apposite in that matter. He said:

"Some learned person, who, having the transcript of the shorthand-notes of the evidence and of the summing-up directed such ingenuity and industry to picking out . . . . a number of small points, most of which are frivolous. On these we are asked to upset the conviction if we can find any possible oversight or error of statement or some inference to be possibly drawn from a chance phrase or possible immaterial misconstruction of evidence. The Court does not deal with matters of this kind. We are here to deal only with substantial points of misdirection."

[1] *20 Cr. App. R. p. 44.*

[2] *13 Cr. App. R. p. 184.*

It is for this reason that we requested Counsel for the appellant to satisfy us that the additional grounds raised questions of substance. But, after hearing him, we were definitely of opinion that grounds 1–3 were without any real substance and we refused to allow him to argue those questions any further.

In regard to ground 4, which says—

> "it is respectfully submitted that His Lordship the presiding Judge did not direct the Jury adequately on the defence of grave and sudden provocation,"

although we were of opinion that the question of misdirection was not properly raised in that form, in that particulars are not given of the inadequacy alleged, we gave Counsel leave to argue that question mainly because it was raised in another form in the original notice. After full consideration of the submissions made to us, we are of opinion that there was a sufficient direction on that point.

We dismiss the appeal and refuse the application.

Appeal dismissed.