

(COURT OF CRIMINAL APPEAL)

1941

Present : Howard C.J., Nihill and Cannon JJ.THE KING *v.* CHARLIS SINGHO *et al.*27—*M. C. Matara, 35,251.*

Verdict—Charge of attempted murder and causing hurt as member of unlawful assembly—Ambiguity of verdict—Conviction quashed.

The second and third accused were charged, firstly with being members of an unlawful assembly, in the course of which they committed the offence of the attempted murder of a Sub-Inspector, and also being members of an unlawful assembly, with voluntarily causing hurt to a police constable.

The Jury found that the charge of unlawful assembly was not established. They then proceeded to find the first accused guilty of attempted murder and the second and third accused guilty of voluntarily causing hurt.

The findings did not specify whether the second and third accused were found guilty of causing hurt to the Sub-Inspector or to the police constable.

Held, that the conviction of the second and third accused was bad, owing to the ambiguity of the verdict.

CASE heard before the Judge and Jury at the Southern Court.

L. A. Rajapakse (with him *Mackenzie Pereira*), for accused, applicants.

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

Cur. adv. vult.

December 15, 1941. HOWARD C.J.—

In this case Mr. Rajapakse, who appears for the appellants, does not press the case with regard to the first accused. There is no doubt that the first accused was convicted on substantial evidence; the finding and sentence in his case are, therefore, affirmed.

With regard to the second and the third accused, it appears that they were charged, firstly, with being members of an unlawful assembly, in the course of which they committed the offence of the attempted murder of Sub-Inspector Grenier, and, secondly, again, as being members of an unlawful assembly, with voluntarily causing hurt to police constable Zain. The Jury found that the charge of unlawful assembly was not established; they then proceeded to find the first accused guilty of attempted murder, and the second accused guilty of voluntarily causing hurt, and the third accused also guilty of causing hurt. These findings do not specify whether the second and the third accused were found guilty of causing hurt to Sub-Inspector Grenier, to police constable Zain, or to both of them. It was open to the Jury to find the second and the third accused guilty of causing hurt to either Grenier or Zain. There is, therefore, an ambiguity in the verdict which, in our opinion, cannot be cured. If we were to say that the offence of causing hurt to either Grenier or Zain had been established, we would be arrogating to ourselves the functions of the Jury. In these circumstances, the appeal must be allowed with regard to the second and the third accused, and the verdict and sentence set aside.

We have given careful consideration to the question as to whether there should be a new trial. The offence took place some time ago, and the trial has had a chequered career. Proceedings, first of all, were taken in a summary manner, and then the course of the Crown was changed, and non-summary proceedings were taken. We do not, in these circumstances, think that this is a case in which a new trial should be ordered.

Verdict set aside.

