

1908.
April 1.

IN THE PRIVY COUNCIL.

On Appeal from the Supreme Court of Ceylon (Criminal Jurisdiction).

Present: The Lord Chancellor, Lord Ashbourne, Lord Macnaghten, Lord Robertson, Lord Atkinson, and Lord Collins.

LOKU NONA and two others *v.* THE KING.

P. C., Negombo, 8,151.

Special leave to appeal to the Privy Council—Conviction for murder—Mitigation of punishment pending the hearing of the appeal—Application to the Government of Ceylon or the Supreme Court.

The Judicial Committee of the Privy Council accorded special leave to appeal from a judgment of the Supreme Court, in its Criminal Jurisdiction, upholding a conviction and sentences in a trial for murder.

Their Lordships were of opinion that any application for mitigation of punishment, pending the appeal, or for the admission of the accused to bail, ought to be addressed to the Ceylon Government or the Supreme Court.

THIS was a petition for special leave to appeal from a judgment of the Supreme Court of Ceylon in its Criminal Jurisdiction of December 11, 1907, upholding a conviction and sentences in a trial for murder heard before Mr. Justice Wood Renton in November.

(*See 11 N. L. R. 4.*)

April 1, 1908, Sir Robert Finlay, K.C., Mr. F. H. M. Corbet, and Mr. E. W. Jayewardene (of the Ceylon Bar) appeared for the petitioners. 1908.
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The petition stated that the petitioners are Loku Nona, the wife of Migel Mudalali; her sister, Punchi Nona, an unmarried woman, 23 years of age; and Kaitan, a boy of 14, who was a servant in Loku Nona's house. They were charged with having, on or about July 31 last, at Talahena, in Ceylon, murdered a female servant called Carlina. After magisterial proceedings they were committed for trial, and were tried at the Colombo Criminal Sessions before Mr. Justice Wood Renton, with a jury of seven persons, four of whom were Europeans and three natives. The trial lasted from November 11 to 22, and the jury, by a majority of six to one, found the prisoners guilty, but recommended them to mercy. They were sentenced to death. The prisoners' counsel applied to the Judge, under the provisions of the Criminal Procedure Code, to reserve certain questions for the consideration of the Collective Court, which he agreed to do. The case reserved came up for argument before Chief Justice Hutchinson and Justices Wendt and Middleton, who upheld the conviction. The sentences had since been commuted to twenty years' rigorous imprisonment. The case for the prosecution was that on the night of July 31, at about 10 o'clock, the first accused, Loku Nona, with a club handed to her by Peregrino (a servant), struck her servant Carlina, a girl of about 18 years of age, on the head; that Carlina fell, crying "amma" (mother); that Punchi Nona, the second accused, put her hand over Carlina's mouth to stop further cries; and that Loku Nona then told Jane, a servant girl about 14 years of age, to bring a knife. (Jane was the principal witness in the case. She was the only eye-witness.) The prosecution went on to allege that Jane brought a knife from the kitchen and gave it to Loku Nona, who handed it to Punchi Nona, saying "Cut her throat"; that while Kaitan, the third accused, held his hand over Carlina's mouth, Punchi Nona with the knife brought by Jane, inflicted a cut upon Carlina's throat; that Carlina then lay still, apparently dead; and that shortly afterwards, on the orders of the Mudalali (the husband of the first accused), Carlina was carried away towards the shore, to be thrown into the sea. According to the medical evidence "the cut on the throat was not fatal," and "the cause of death was concussion of the brain, due to contusions caused by some blunt instrument like a club." Four distinct contusions upon the head were found by the doctor who made the *post-mortem* examination. Jane spoke of one blow only. There was no evidence that the blow alleged by Jane to have been inflicted by the accused was the cause of death or by what agency the other contusions were caused. The petitioners submitted that the conviction and sentences were wrong and ought to be set aside, and the proceedings quashed owing to misdirections by the learned Judge.

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The petitioners, therefore, asked for special leave to appeal from the judgments, convictions, and sentences, and that, until the hearing and disposal of the appeal, the sentences should not be carried into effect.

Sir Robert Finlay, in addressing the Board in support of the petitions, said the case for the prosecution rested entirely on the evidence of a native servant girl called Jane, who was 14 years of age, and who alone deposed to having seen the alleged assault and murder of her fellow-servant. She was known to have a dislike to her mistress and her sister, who were native Roman Catholic ladies, and who had punished her for her laziness and other faults, and also a dislike to the lad Kaitan, who had struck her on one occasion. Jane's evidence was open to the criticisms that she was, on her own showing, an accomplice; that her statements were unconfirmed, and in fact rebutted on material points, and that she had grossly contradicted herself. At first she had stated that on the night of the alleged murder about 1 A.M. she was awoke by hearing Carlina, who slept in the hall, cry out, and that she heard people moving about, but that she did not herself move or go to see. A week later she professed to have been an eye-witness of the attack on Carlina, and described how at 10 P.M. she saw Loku Nona strike Carlina on the head, how she herself brought a knife, how she saw Carlina's throat being cut, and how she heard Migel Mudalali order Carlina to be thrown into the sea. There was not a vestige of corroboration of these contradictory statements. What was the alleged motive for this brutal murder, if murder it was? Jane asserted that she and Carlina had seen Punchi Nona, their mistress's unmarried sister, misconducting herself with her betrothed husband, with the result that she became pregnant, and was then removed to Colombo for abortion to be procured. Upon this point Dr. Garvin, the Medical Officer at the Government General Hospital at Colombo, and another medical witness of position gave emphatic testimony that the young woman, Punchi Nona, was *virgo intacta*.

The Lord Chancellor said there was very strong medical evidence to falsify what had been alleged against Punchi Nona, and if that were so, the absence of motive and the mendacity of Jane were important factors in the consideration of the matter.

Sir Robert Finlay submitted that the medical evidence utterly destroyed the credit of the witness Jane, on whose testimony the whole charge of murder rested. Others who were said to have been eye-witnesses of the crime, such as Peregrino, the male servant, were not called by the Crown, and the evidence of Jane was, in fact, all that was produced against the accused. Instead of directing the jury as to the absence of corroboration, the Judge made the general remark that, if juries were to throw up a case on account of contradiction and falsehoods, there would be an end to the criminal law of the Island. On these and other grounds *Sir Robert*

Finlay submitted that special leave to appeal to the Judicial Committee from the sentences should be granted.

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The Lord Chancellor said their Lordships would humbly advise His Majesty to accord special leave to appeal.

Sir Robert Finlay applied that, as the accused persons were now undergoing rigorous imprisonment, the hearing of their appeal should be expedited, and in the meantime that either the severity of the punishment should be relaxed or even that bail should be allowed them. Replying to Lord Ashbourne, he said the arguments against the conviction would virtually be the same as those to which their Lordships had just listened, but the Crown, or the Supreme Court, would possibly be represented when the appeal came on for decision.

The Lord Chancellor said their Lordships would be ready to hear the appeal as soon as it could be presented to them. In regard to the application as to the mitigation of punishment pending the appeal, or to the admission of the accused to bail, it ought to be addressed either to the Ceylon Government or to the Supreme Court.

Special leave to appeal was accordingly given.
