

APPEAL against a conviction at a trial before the Supreme Court.

G. E. Chitty, Q.C., with *Michael Wannappa, M. A. Manisoor* and *K. Kanag-Iswaran* (assigned), for the accused-appellant.

V. S. A. Pullenayegum, Senior Crown Counsel, with *Kosala Wijayatilake*, Crown Counsel, for the Crown.

Cur. adv. vult.

November 24, 1969. SIRIMANE, J.—

The appellant who was about 18 years of age at the time of this incident had inflicted eleven stab wounds on a six-year old girl. She had not been molested, and the killing was purposeless and without reason.

Though the plea of insanity was not raised at the trial, the circumstances disclosed in the evidence indicated that the killing had been done by a person of unsound mind. Had these circumstances struck the trial Judge in the same manner as they did this Court, he may very well have directed the Jury to consider the question whether the appellant was of unsound mind when he committed this act.

When this appeal first came up for hearing, as it appeared that there might have been a miscarriage of justice when the appellant was sentenced to death on being found guilty on the capital charge, this Court adopted the somewhat unusual procedure of placing the appellant under observation at the Mental Hospital, and directed that he be subjected to psychiatric examination. The hearing of the appeal was adjourned.

The report of the Board of Psychiatrists now before us, clearly shows that it is most probable that the appellant was of unsound mind when he committed the act.

The learned Senior Crown Counsel submitted that despite the report of the Psychiatrists (which is not challenged) the appeal should be dismissed, and cited the case of *Rex v. Dashwood*¹. In that case the defence of insanity was not raised "at the express desire, indeed, with the avowed determination of the appellant". The facts in that case also showed a carefully planned robbery with violence for the purpose of stealing jewellery. There was apparently nothing in the evidence led at the trial to indicate that the appellant may have been of unsound mind. It was in these circumstances that an application to lead evidence of the mental condition of the appellant at the hearing of the appeal was refused.

¹ (1943) 1 K. B. D. 1.

The fact here are different ; for, it cannot be said that the question of unsoundness of mind did not arise on the evidence led at the trial. The report of the Board of Psychiatrists which we now admit in evidence is in reality further evidence of a matter that did arise on the evidence at the trial.

We are of the view that the provisions of Section 6 (4) of the Court of Criminal Appeal Ordinance are wide enough to enable this Court to act in a case of this nature.

Acting under that Section, we quash the sentence passed at the trial, and order the appellant to be kept in the safe custody of the Superintendent of the Mental Hospital, and report the case for the orders of the Minister of Justice.

Case reported to the Minister of Justice.

