[COURT OF CRIMINAL APPEAL.]

1944 *Present:* **Howard C.J., and Soertsz and Hearne JJ.**

THE KING *v.* N. J. RANASINGHE *et al.*

18—M. C. Gampola, 6,461.

Court of Criminal Appeal—Evidence of witness—Two views possible—Proper directions to Jury—Refusal to interfere with verdict.

Where there has been a proper direction to the Jury regarding the value to be attached to the evidence of a witness and two views are possible with regard to such evidence, it is not the usual practice of the Court of Criminal Appeal to interfere with the verdict.

APPEAL against a conviction by a Judge and Jury before the Third Midland Circuit, 1943.

R. L. Pereira, K.C. (with him *M. M. Kumarakulasingham* and *H. Wanigatunge*), for both appellants who are also applicants.

E. H. T. Gunasekera, C.C., for the Crown.

Cur. adv. vult.

February 28, 1944. SOERTSZ J.—

We took time to consider the case of the second accused because we desired to examine the evidence regarding his complicity in the offence more carefully than we were able to examine it during the argument when Counsel read portions of the evidence to us.

After careful consideration of all the evidence and of the charge by the Judge, the majority of us are of opinion that we shall not be justified in interfering with the conviction entered on the verdict returned by the Jury. We were addressed strongly regarding the unsatisfactory nature of the evidence of the principal witness, Ranasinghe, so far as the case against the second accused is concerned. But those matters were, we find, submitted to the Jury in the course of the trial both by Counsel and by the presiding Judge and were, we doubt not, considered by them. It is impossible for us to hold that Ranasinghe's evidence was such that the Jury acted unreasonably in acting upon it. There is good circumstantial corroboration of his evidence. The two accused are brothers living in the same house near the scene of the attack. According to Ranasinghe, it was the second accused who held his father, the deceased, and enabled the first accused to run down the hill and stab the deceased. The report of the Government Analyst said that human blood was found on the second accused's clothes, and these were "drop stains" such as would result from blood spurting, not "smears" as would occur in the case of leech or insect bites as Counsel suggested in explanation.

In the case of *Isaac Schrager*[1] the Lord Chief Justice declared "When there has been a proper direction to the Jury it is not the usual practice of this Court to interfere with the Jury's verdict and to re-try the case". The Court, however, interfered in that instance, because there were "very peculiar circumstances".

[1] *6 Cr. App. R. 253.*

It was a case in which the identity of the assailant was involved in great doubt in view of the description of the clothes in which the witness stated his assailant was clad at the time of the assault being at variance with the clothes which the accused was found to be wearing at the time of his arrest shortly afterwards. A change of clothes in the interval was most unlikely. Moreover, it was a case in which the Chairman of the Bench and all the Magistrates on the Bench thought that the evidence did not justify the conviction. In the case of *John Alfred Bradley*[1] the Court interfered because it appeared probable from the notes of the case that the Jury believed that consent was not a defence to a charge of rape. The case of *John Reuben Parker*[2] was also a singular case. The identification of the accused by the prosecutrix was extremely doubtful and in spite of a strong warning by Pickford J. the Jury convicted, as the Lord Chief Justice observed, because " the girl was very respectable and had been badly outraged and they may have been carried away by the feeling that, for the honour of their town, somebody ought to be punished for it ". Similarly, in all the English cases noticed in the local case of *The King v. Andiris Silva* [3], the Court interfered in very exceptional circumstances. We do not see any such circumstances in this case and were we to interfere it would not be possible for us to say any more than that, two views of the value of Ranasinghe's evidence being possible in regard to the second accused's complicity, we prefer the view that did not commend itself to the majority of the Jury. That would be in derogation of the meaning and purpose of trial by Jury.

Appeal dismissed.