

[COURT OF CRIMINAL APPEAL]

1969 Present : Sirimane, J. (President), Alles, J., and Weeramantry, J.

M. K. FERNANDO *et al.*, Appellants, and THE QUEEN,  
Respondent

C. C. A. APPLICATIONS Nos. 64-65/69

S. C. 220/68—M. C. Colombo, 41338

*Criminal law—Offence of voluntarily causing grievous hurt—Penal Code, s. 317—  
Sentence of imprisonment mandatory—Power of Court of Criminal Appeal  
to impose such sentence in first instance—Court of Criminal Appeal Ordinance,  
s. 5 (3).*

Where, at a trial before the Supreme Court, the accused is convicted of voluntarily causing grievous hurt under section 317 of the Penal Code, a sentence of imprisonment is mandatory. If the trial Judge fails to impose it, the Court of Criminal Appeal may, acting under section 5 (3) of the Court of Criminal Appeal Ordinance, impose such sentence if there is an appeal.

**A**PPPLICATIONS against two convictions at a trial before the Supreme Court.

*K. D. P. Wickramasinghe, with L. F. Ekanayake (assigned), for the accused-appellants.*

*E. R. de Fonseka, Senior Crown Counsel, for the Crown.*

June 24, 1969. SIRIMANE, J.—

In the course of this trial in which the 1st and 2nd accused were charged with attempted murder and abetment respectively, the 1st accused pleaded guilty to the offence of causing grievous hurt and the 2nd accused to the abetment of that offence. The learned Commissioner sentenced the 1st accused to pay a fine of Rs. 1,000 in default two years' rigorous imprisonment and the 2nd accused to pay a fine of Rs. 2,000 in default two years' rigorous imprisonment.

The injured person in this case was a young woman 21 years of age. According to the evidence there had been some displeasure between the family of the 2nd accused and that of the injured girl. The 2nd accused had come there in the afternoon with the 1st accused and pointed out the injured girl's house. Thereafter the two accused with some others had thrown stones, entered the house and damaged the furniture. The 2nd accused had dragged the injured girl out of the house by her hair and the 1st accused had stabbed her on her back. According to the evidence of the doctor recorded in the Magistrate's Court the injured girl had a stab wound which had been inflicted with a pointed knife on the back of her chest; the injury had penetrated into the chest cavity and caused a collapse of the lung and bleeding. It was an injury which in the ordinary course of nature would have resulted in death. The 2nd accused, whom the learned Commissioner has referred to as the "prime mover in this episode", is an uncle of the 1st accused.

The offence of voluntarily causing grievous hurt is punishable under Section 317 of the Penal Code and the punishment prescribed for that offence is that the offender—

"shall be punished with imprisonment of either description for a term which may extend to ten years, *and shall also be liable to fine*; and if the person to whom the grievous hurt is caused shall be a woman or child, may in addition be punished with whipping."

For an offence under this section, a sentence of imprisonment is, in our opinion, mandatory. It is clear from the punishments prescribed for offences of a less serious nature that the legislature intended that a term of imprisonment must be imposed on a conviction under Section 317. If one looks, for an example, at the punishments prescribed for offences like voluntarily causing hurt under Section 314, or voluntarily causing hurt with a dangerous weapon under Section 315, one finds that sentences of imprisonment or fine may be imposed. The sentences imposed in this case are not warranted by law.

Acting under Section 5 (3) of the Court of Criminal Appeal Act, we quash the sentences passed by the learned Commissioner and substitute therefor sentences which we think ought to have been passed in the circumstances of this case. We sentence the 1st accused to two

years' rigorous imprisonment. The 2nd accused is sentenced to two years' rigorous imprisonment and in addition to a fine of Rs. 2,000 in default one (1) year's rigorous imprisonment. If the fine is paid, a sum of Rs. 1,000 will be paid to the injured girl as compensation.

*Sentence altered.*

