

[COURT OF CRIMINAL APPEAL]

1966 *Present* : Sansoni, C.J. (President), H. N. G. Fernando, S.P.J., and Abeyesundere, J.

THE QUEEN *v.* D. D. GINIGANDARA and another

APPEALS NOS. 102 AND 103 OF 1966, WITH APPLICATIONS 58 AND 59

S. C. 291/65—M. C. Kalutara, 20085

Charge of abetment of attempted murder—Conviction for using criminal force—Validity.

An accused person cannot be convicted of using criminal force when the only charge framed against him is that of aiding and abetting another in the offence of attempted murder.

APPEALS against two convictions at a trial before the Supreme Court.

G. E. Chitty, Q.C., with *Elmo Vannitamby, Mangala Munasinghe* and *N. Balakrishnan* (assigned), for both Accused-Appellants.

T. A. de S. Wijesundere, Senior Crown Counsel, for the Crown.

September 15, 1966. SANSONI, C.J.—

We see no reason to interfere with the conviction and sentence in the case of the second accused-appellant.

In the case of the first accused-appellant, however, we set aside his conviction and acquit him. The point argued by Mr. Chitty was that the first accused-appellant could not be convicted of using criminal force when the only charge framed against him was that of aiding and abetting the second accused-appellant in the offence of attempted murder. There is a decision of this Court which we think is in point—the case of *Queen v. D. K. Dhanapala*¹, where it was held that on a charge of abetment of attempted murder, a person cannot be convicted of voluntarily causing simple hurt. We would follow that decision.

Appeal of 1st accused allowed.

Appeal of 2nd accused dismissed.

¹ (1964) 67 N. L. R. 450.