

[COURT OF CRIMINAL APPEAL]

1970 *Present*: H. N. G. Fernando, C.J. (President), Samerawickrame, J.,
and Tennekoon, J.

U. WICKRAMANAYAKE, Appellant, *and* THE QUEEN, Respondent

APPEAL No. 105 OF 1969, WITH APPLICATION No. 146

S. C. 270/68—M. C. Chilaw, 16199

Charge of murder—Summing-up—Non-direction.

In the summing-up on a charge of murder, the trial Judge repeatedly expressed his own opinion that the accused had acted with murderous intention. An alternative verdict of culpable homicide not amounting to murder was not even mentioned.

Held, that it is only in a rare case that the omission from a summing-up of a direction as to the alternative verdict of culpable homicide can be justified.

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

Colvin R. de Silva, with Mark Fernando, S. D. P. Valentine and Hannan Ismail (assigned), for the accused-appellant.

Noel Tittawella, Crown Counsel, for the Crown.

February 2, 1970. H. N. G. FERNANDO, C.J.—

In the summing up of the learned Commissioner on the charge of murder he repeatedly expressed his own opinion that if the evidence of the prosecution principal witness was true the accused had acted with the murderous intention. The alternative that they might find him guilty only of culpable homicide not amounting to murder on the ground that he did not act with a murderous intention was not even mentioned. In fact the learned Commissioner at the end of the summing up definitely directed the jury that the only alternative to a verdict of murder was one of acquittal.

It is only in a rare case that the omission from a summing up of a direction as to the alternative verdict of culpable homicide can be justified.

In the instant case, the evidence elicited by the prosecution did not suffice to found the inference that the accused must have continued to stab the deceased again and again until he made sure that the latter was dead. It is thus quite possible that a lesser verdict may have been returned if the directions to the jury had not precluded it.

We set aside the verdict of murder and sentence of death, and substitute a verdict of culpable homicide not amounting to murder and impose for that offence a sentence of ten (10) years' rigorous imprisonment.

Verdict altered.
