

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Wood Renton.

1908.
July 1.

THE KING *v.* DIAS SINNO.

D. C. (Crim.), Kalutara, 1,939.

*District Court—Punitive jurisdiction—Sentence of four years—Robbery—
Previous conviction—Ceylon Penal Code, s. 68, and chapter XII.—
Criminal Procedure Code, ss. 14, 167 (7), and 192.*

Where an accused was convicted of robbery in the District Court, and there being a previous conviction against him, the District Judge sentenced him to four years' rigorous imprisonment—

Held, that the sentence was beyond the punitive jurisdiction of the District Court, and the sentence was accordingly reduced to two years.

THE accused was convicted of robbery in the District Court, and the District Judge in view of a previous conviction sentenced the accused to four years' rigorous imprisonment.

The accused appealed.

A. St. V. Jayewardene, for the accused, appellant.

Walter Pereira, K.C., S.-G., for the Crown.

Cur. adv. vult.

July 1, 1908. HUTCHINSON C.J.—

This is an appeal against a sentence of four years' imprisonment imposed by the District Court. The appellant was convicted of robbery, an offence under chapter XII. of the Penal Code; he had been previously convicted of an offence under the same chapter; and the District Court thereupon imposed this sentence, purporting to act under section 68.

In my opinion, section 68 of the Penal Code must be read subject to the enactment of the later Ordinance, section 14 of the Criminal Procedure Code, which limits the sentence of imprisonment which a District Court can pass to two years; and the sentence imposed by the District Court should be reduced to two years.

WOOD RENTON J.—

The appellant was convicted of robbery under section 380 of the Penal Code, in the District Court of Kalutara. He admitted a previous conviction under the same chapter of the Code (chapter XVII.), and the District Judge, purporting to act under section 68, thereupon sentenced him to four years' rigorous imprisonment. The

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only point argued before us on this appeal, which is a reference by Grenier J. under section 52 of the Courts Ordinance, is whether section 68 of the Penal Code enables a District Judge—to take the concrete case now under consideration—to impose a sentence of imprisonment in excess of the ordinary two years' limit to which his jurisdiction is confined by section 14 of the Criminal Procedure Code. In my opinion, section 68 of the Penal Code enhances the liability of the accused, but it does not enlarge the jurisdiction of the District Court. The Solicitor-General, who practically supported the appeal, pointed out to us that there are sections in the Penal Code (e.g., section 417) in which the District Court, without exceeding its normal jurisdiction, could give effect to section 68 by imposing double the ordinary maximum punishment (viz., one year's imprisonment of either description). I do not think that we ought to give to section 68 any wider application. If we do so, the result will be that the offence of robbery might be punished in the District Court by twenty years' rigorous imprisonment. I would reduce the sentence appealed against in the present case to two years' rigorous imprisonment. The construction of section 68 of the Penal Code which I suggest that we should adopt, is supported by the decision of the Indian Courts under the analogous provisions (section 75) in the Indian Penal Code. See *Reg. v. Vithya*,¹ *Queen Empress v. Khalak*,² and cases noted in Ratanlal and Dhirajlal's *Law of Crimes* (p. 75). I do not agree with Mr. A. Jayewardene, the appellant's counsel, that section 192 of the Criminal Procedure Code, which empowers a Magistrate, if, "after taking the evidence adduced for the prosecution and the defence, he is of opinion that the accused is guilty of an offence which cannot be adequately punished by a Police Court," to take steps with a view to committal before a higher Court, has any application to the present case. On the other hand, I think that we ought not to interpret the incidental language of section 167 (7) of the Criminal Procedure Code, in which reference is made to proof of a previous conviction increasing the punishment "which the Court is competent to award," as extending the jurisdiction of the District Court beyond its ordinary statutory limits. Section 6 of Ordinance No. 7 of 1899 shows that when such an extension was intended, it was effected in express terms.

Sentence reduced.

¹ (1871) *Ratanlal's unreported Cases*, p. 49.

² (1888) *I. L. R. II.*, All. 393.