

[IN THE COURT OF CRIMINAL APPEAL]

1956 *Present* : Basnayake, A.C.J. (President), Pulle, J., and
Weerasooriya, J.

THE QUEEN *v.* H. G. HARAMANIS

APPLICATION 160 OF 1955
APPEAL 113 OF 1935 (WITH LEAVE OBTAINED)

S. C. 35—M. C. Matala, 5,265

Court of Criminal Appeal—Sentence—Application for leave to appeal—Formalities necessary—Enhancement of sentence—Court of Criminal Appeal Rules, 1940, Rule 4.

An application for leave to appeal against the sentence passed on a conviction must be expressly made and must be in conformity with Rule 4 of the Court of Criminal Appeal Rules, 1940. In the absence of such an application the Court of Criminal Appeal has no power to increase the sentence.

APPLICATION for leave to appeal on sentence.

J. C. Thurairatnam, for accused-appellant.

V. T. Thamotheram, Crown Counsel, for Attorney-General.

Cur. adv. vult.

June 5, 1956. BASNAYAKE, C.J.—

This is an application for leave to appeal by the accused who was tried on an indictment containing five charges of attempted murder committed in the course of the same transaction and sentenced to undergo a term of ten years' rigorous imprisonment on each of the first four charges and to a term of six months' rigorous imprisonment on the fifth charge, the sentences to run concurrently.

The grounds urged by the appellant are :—

- (1) that the trial Judge misdirected the Jury in his summing-up ;
- (2) that though there were several houses at the scene of this incident no one came forward with any evidence ;
- (3) that the lawyer who acted in place of the one retained by the appellant failed to cross-examine the complainant.

Learned counsel who appeared in support of the application indicated to us that he sought leave to appeal only on the ground of sentence. Before perusing it we granted leave to appeal on the assumption that the application signed by the applicant contained that ground.

The sentence passed on the appellant is utterly inadequate. He has committed a number of very grave offences. He invaded the house of his victims, four of whom are women, armed with a gun and shot them despite the fact that they made every endeavour to escape from his attack. Earlier he had threatened to shoot the Village Headman who was on his way to investigate a complaint made against the appellant in regard to an offence involving violence committed by him against one of the female inmates of the house whom he shot later. The appellant enacted a "reign of terror" that night for his unfortunate victims. Having fired through gaps in the wooden shutters and having injured them he went on banging at the doors of the house and at the same time he kept on shouting "Are you fellows all dead?" "Why don't you fellows open the door?" "Are you fellows all dead or finished?". When he was arrested by the Police he had sixteen live cartridges in his pocket and the gun was loaded with another cartridge. Another grave circumstance against the appellant is that the cartridges he used in shooting the injured persons were S. G. cartridges.

Leave was granted with a view to enhancing the sentence because of the gravity of the appellant's crime ; but when the appeal was taken up

for hearing learned counsel moved to withdraw it. He relied on Rule 22 of the Court of Criminal Appeal Rules, 1940. That rule reads:—

“ An appellant at any time after he has duly served notice of appeal, or of application for leave to appeal, or of application for extension of time within which under the Ordinance such notices shall be given, may abandon his appeal by giving notice of abandonment there-of in the Form III to the Registrar and upon such notice being given, the appeal shall be deemed to have been dismissed by the Court of Appeal. ”

The form referred to in the rule is as follows:—

Form III

IN THE COURT OF CRIMINAL APPEAL

Criminal Appeal No.— of 19—

Rex v. ———

(Supreme Court, — — Circuit, 19—, Case No. — of 19—)

Notice of abandonment of Appeal

I, ———, having been convicted of ——— at the Assizes at ——— and having been desirous of appealing and having duly sent notice to that effect to the Court of Criminal Appeal against my said conviction (or the sentence of ——— passed upon me on my said conviction) do hereby give you notice that I do not intend further to prosecute my appeal, but that I hereby abandon all further proceedings in regard thereto as from the date hereof.

Sgd. ———

Witness to signature : ———

Dated this ——— day of ———, 19—.

To the Registrar of the Court of Criminal Appeal.

The appellant has in this case not given notice of abandonment in Form III, but counsel relies on a decision in the case of *Joseph Gibbon*¹. It is unnecessary to discuss that case or the question whether an application for leave to appeal once granted can be withdrawn except in the manner provided in Rule 22, as in the instant case there is before us no proper application for leave to appeal on sentence. An application for leave to appeal against the sentence passed on a conviction must be expressly made and must be in conformity with Rule 4 of the Court of Criminal Appeal Rules, 1940. In the absence of such an application we have no power to increase the sentence.

As stated earlier counsel did not urge the other grounds of appeal.

The appeal is therefore dismissed.

Appeal dismissed.

¹ 31 Cr. App. R. 113.