1953 *Present :* **Pulle J.**

D. C. WEERASOORIYA, *et al.*, Appellants, *and* M. SABDEEN (Police Sergeant), Respondent

S. C. 1,034–1,035—M.C., Badulla-Haldumulla, 11'979

Sentence—Previous record of accused—Proof required.

In passing sentence after conviction, a Court should not be influenced by a statement of the Police that the accused has a worse record than that revealed by the previous convictions. It is wrong for the Police to press for deterrent punishment on grounds which they are not prepared to disclose and establish by evidence.

[1] *A. I. R. 1933, Bom. 479 at 481.* [2] *A. I. R. 1940, Madras 196 at 200.*

APPEAL from a judgment of the Magistrate's Court, Badulla-Haldumulla.

J. A. L. Cooray, with *J. R. M. Perera*, for the 1st accused appellant.

2nd accused appellant, in person.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

January 20, 1953. PULLE J.—

The appellants were convicted of the offences of breaking into a garage on the night of the 2nd December, 1951, and stealing a Lucas battery from a car. There was ample evidence to support the convictions. I have re-read the evidence in the light of the criticism that the learned Magistrate should not have acted on the evidence of the witness W. Nandasena and the driver of the motor car in which the stolen battery was transported from Haputale to Bandarawela. In my opinion there is no substance in that criticism and the convictions must be affirmed.

The appellants were sentenced to two years' rigorous imprisonment on each count, the sentences to run concurrently. The second accused appellant was further fined Rs. 100 on each count, in default one year's rigorous imprisonment to run concurrently. In passing sentence the Magistrate stated,

" A deterrent sentence is called for in this case and Police have pressed for such punishment in view of facts within their knowledge apart from their bad records. "

The first accused had one previous conviction in 1941 for housebreaking and theft and the second accused five previous convictions all entered in 1952, four for dishonest retention of stolen articles and one for housebreaking and theft.

In my opinion it was wrong for the Police to have pressed for deterrent punishment on grounds which they were not prepared to disclose and to establish by evidence. The following observations made by the Court of Criminal Appeal in the case *Van Pelz* [1] are in point :

" Police officers are nearly always called, after conviction, to assist the Court when it is considering the sentence to be passed on convicted person. We think that in this case we should enlarge a little on what Lord Alverstone C.J., said in *Campbell* [2] and what Humphreys J. said in *Burton* [3]. When a police officer is called to give evidence about a prisoner who has been convicted, he should in general limit himself to such matters as the previous convictions, if any, and the antecedents of the prisoner, including anything which has been ascertained about his home and upbringing in cases where the age of the prisoner makes this information material. It is the duty of the police officer, we think, to inform the Court also of any matters, whether

[1] *(1943) 29 Cr. A. R. 10.* [2] *(1911) 6 Cr. A. R. 131.*

[3] *(1941) 28 Cr. A. R. 89.*

or not the subject of charges which are to be taken into consideration, which he believes are not disputed by the prisoner and ought to be known by the Court. Police officers should inform the Court of anything in the prisoner's favour which is known to the police, such as periods of employment and good conduct. We have no reason to believe that this is contrary to the present practice of the police who constantly inform the Court of matters which are in the prisoner's favour. We also think that it is the duty of counsel for the prosecution to see that a police witness, when speaking on all these matters, is kept in hand, and is not allowed, much less invited, to make allegations which are incapable of proof and which he has reason to think will be denied by the prisoner. ''

In awarding the maximum sentence of imprisonment on each count the learned Magistrate appears to have been influenced by the statement of the Police that the appellants had a worse record than that revealed by the previous convictions. I would, therefore, vary the sentences as follows : The first accused will undergo eighteen months' rigorous imprisonment on each count, the sentences to run concurrently and the second accused to two years' rigorous on each count without any fine, the sentences to run concurrently. The period during which the appellants have been on remand after conviction reckoned from 22nd August, 1952, will be deemed to be part of the sentence.

Subject to the variation indicated above the appeals are dismissed.

Sentence reduced.