

[COURT OF CRIMINAL APPEAL.]

1946 Present : Keuneman S. P. J. (President), Jayetileke J. and Dias J.

THE KING *v.* PUNCHIRALA.

Appeal No. 44 of 1946.

S. C. 29—M. C. Anuradhapura, 18,933.

Court of Criminal Appeal—Sentence—Reduction of.

A plea was accepted by the trial Judge of culpable homicide not amounting to murder and a sentence of twelve years' rigorous imprisonment was imposed upon the accused. The evidence recorded in the Magistrate's Court against the prisoner disclosed circumstances indicating that the sentence was excessive.

Held, that, in the circumstances, the sentence should be reduced.

A PPEAL, with leave obtained, against a conviction in a trial before the Supreme Court.

H. Wanigatunga, for the accused, appellant.

H. A. Wijemanne, C.C., for the Attorney-General.

October 7, 1946. KEUNEMAN S.P.J.—

The only question that arises for consideration is the sentence imposed upon the accused. A plea was accepted by the learned trial Judge of culpable homicide not amounting to murder and the trial Judge imposed a sentence of 12 years' rigorous imprisonment upon the accused. We have looked into the record and find that the only evidence recorded in the Magistrate's Court against the prisoner is that of his mistress. According to the story of the mistress the accused woke her up and said "Thieves are coming, I am prepared, do not talk. Then the thief opened the shutter and put his head in. Then my husband who was standing by the side of the wall gave two heavy blows with P 2. The thief got behind. Accused also got out and assaulted the thief in the shed. He assaulted this time with P 2. I was in the compound when the accused struck the thief with P 2. The thief tripped on something which I do not know and fell on the plank. Then accused threw P 2 on the compound and cut him with a katty. The thief died." That was her statement in examination-in-chief and this immediately raises for the accused person the defence of the exercise of the right of private defence. If this evidence is to be accepted, the accused acted in defence of himself and his mistress, protecting their persons and their property. Now, it is in evidence that the deceased man had come there carrying a gun. That is a fact that also must be taken into account. No doubt also arises from this statement that the accused exceeded the right of private defence.

That is one aspect of the matter. In her cross-examination the mistress of the accused said "I was on terms of intimacy with deceased. He visits me in the night without the knowledge of accused. My husband did not know this intimacy. Deceased lives in a village 12 miles away.

Whenever deceased came he brought gun P 4." Now, this does raise or suggest another possible defence which may have been developed at the trial, namely, that this accused was taking direct action against the paramour of his mistress who was trying to break into the house.

It is not quite clear on what footing the plea of culpable homicide not amounting to murder was accepted, but whatever view we take it appears to us that the sentence of 12 years' rigorous imprisonment is excessive. In all the circumstances, while affirming the conviction, we set aside the sentence of 12 years' rigorous imprisonment and substitute therefor a sentence of 4 years' rigorous imprisonment.

Sentence reduced.
