

[COURT OF CRIMINAL APPEAL.]

1942 Present : Howard C.J., Moseley S.P.J. and Keuneman J.

THE KING v. PONNASAMY.

18—M. C. Mallakam, 23,014.

*Sentence—Charge of attempted culpable homicide not amounting to murder—
Mitigating circumstance not put to Jury—Reduction of sentence.*

Where the gravity of the offence of which the appellant was found guilty depended upon whether it was attempted culpable homicide not amounting to murder because of mitigating circumstances or because there was no specific intention on the part of the appellant but merely the knowledge that what he was doing was likely to result in death, and where the Jury was not asked under which heading they found the accused guilty.

Held, that the Judge should have given the accused the benefit of the doubt and sentenced him on the assumption that the Jury had found that there was no specific intention to cause death.

¹ 1 C. L. J. 139.

CASE heard before a Judge and Jury of the Northern Circuit.

H. A. Chandrasena, for the appellant.

E. H. T. Gunasekera, C.C., for the Crown.

April 28, 1942. HOWARD C.J.—

As has been pointed out in previous cases, this Court is very reluctant to interfere with the discretion of a Judge in imposing a sentence on a prisoner convicted by the verdict of a jury. This Court will only interfere when it is manifest that that sentence has been imposed on a wrong principle. In this case, the gravity of the offence of which the appellant was found guilty depended on whether it was attempted culpable homicide not amounting to murder because of mitigating circumstances, or whether it was attempted culpable homicide not amounting to murder because there was no specific intention, but the appellant merely had the knowledge that what he was doing was likely to result in death. The Jury was not asked under which heading they found the appellant guilty of attempted culpable homicide not amounting to murder. The learned Judge, however, has sentenced the appellant to the maximum punishment, namely, 7 years' rigorous imprisonment. It is also apparent from his remarks to the appellant that he deems this a case in which the appellant had the intention to cause death. We think that the Judge should have given the appellant the benefit of the doubt and sentenced him on the assumption that the Jury had found that there was no specific intention to cause death. In these circumstances, having regard to the fact that the completed offence would result in a maximum sentence of 10 years' rigorous imprisonment, we think that the sentence of 7 years' rigorous imprisonment is excessive. We, therefore, substitute for the sentence of 7 years' rigorous imprisonment passed in respect of count 1 a sentence of 5 years' rigorous imprisonment.

Sentence reduced.
