

1938

*Present : Abrahams C.J.*DABARE *v.* WIJESOORIYA.467—*P. C. Avissawella, 17,885.**Appeal—Sentence of one month—No right of appeal—Criminal Procedure Code, s. 335.*

Where an accused person is sentenced to one month's imprisonment, section 335 of the Criminal Procedure Code precludes an appeal even on the question of sentence.

**A** PPEAL from a conviction by the Police Magistrate of Avissawella.

*L. A. Rajapakse, for the accused, appellant.*

*J. E. M. Obeyesekere, for the complainant, respondent.*

*Cur. adv. vult.*

October 31, 1938. ABRAHAMS C.J.—

The appellant was convicted of insult and criminal intimidation and was sentenced to two weeks' rigorous imprisonment on each count, the sentences to run concurrently. He finds himself unable to attack the conviction but submits that the sentence is excessive and that as this is a first offence he ought not to be sent to jail. It is argued on his behalf that he is entitled as a matter of right to appeal against the sentence, and that he is not precluded from doing so by section 335 of the Criminal

Procedure Code, which, it is contended, has no application to sentences. I am expected to infer from this submission that no matter how modest or meagre a sentence may be an accused has always a right of appeal in respect of it.

I am of the opinion that section 335 of the Code does apply to sentences. It is one of the most clumsily and intricately worded enactments that I have ever seen, but a patient examination of it shows what it means. At the same time, although I hold against the appellant on this point, if I thought the sentence was patently unjust I should consider myself warranted in interfering in revision, but can I come to that conclusion on the facts ?

It was shown that the complainant, a middle-aged man who was a Head Teacher of a school, refused to lend his car to the accused who rewarded this refusal by filthy abuse and by threatening to stab him with a knife that he had. One witness said that the accused came rushing at the complainant with a knife in his hand, saying that he was going to kill him. There is a certain type of blackguard in this country who, when he cannot get his own way, resorts to abuse and violence or threats of violence. It is the duty of the Courts to protect people against such behaviour. I cannot see, in the circumstances, that the short term of imprisonment is a harsh punishment for such conduct.

The appeal is dismissed.

*Appeal dismissed.*

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