1941

[IN REVISION.]

Present : **Moseley S.P.J.**

SOLICITOR-GENERAL *v.* KRITNASAMY

M. C. Point Pedro, 20,047.

Sentence—First offender—Crimes of violence—Criminal Procedure Code, s. 325.

It is not an inflexible rule that a first offender should not be sent to prison when crimes of violence are concerned.

An accused person who uses a knife should not be treated with leniency unless there are good grounds for so doing.

THIS was an application by the Crown to enhance the sentence pronounced in the case.

E. H. T. Gunasekera, C.C., in support. *Cur. adv. vult.*

N. Nadarajah, for the accused, respondent.

May 30, 1941. MOSELEY S.P.J.—

This is an application to enhance the sentence imposed upon the respondent who was convicted of causing grievous hurt with a knife. The sentence imposed was a fine of Rs. 250 and imprisonment until the rising of the Court. It was further ordered that, if the fine were paid, a sum of Rs. 75 should be paid thereout to the injured man.

Counsel for the respondent has argued that this Court will not interfere in such a matter unless it appears that the discretion which is vested by law in the Magistrate has been improperly exercised. He brought to my notice the case of *Fernando v. Alwis and another*[1] which was a case of cheating in which the accused concerned was a first offender and a young man. The Magistrate dealt with the case under section 325 of the Criminal Procedure Code and bound him over to be of good behaviour for a period of one year and to come up for judgment when called upon. The Supreme Court was moved by the Crown to enhance this sentence which Hearne J. declined to do on the ground that the exercise by the Magistrate of his discretion was not so improper that interference by this Court was desirable. The fact that this Court itself would have passed a heavier sentence would, of course, be no ground for interfering with a Magistrate's discretion.

In the present case circumstances which the learned Magistrate would appear to have taken into consideration in mitigation of sentence were that the respondent was an old man with no previous convictions and that he and his wife were living in separation and that he had a young daughter in the house who would be unprotected if a severe sentence were to be passed. Those facts were admitted and the learned Magistrate in sentencing the respondent to pay what he described as a heavy fine reiterated that a setence of imprisonment would leave the respondent's daughter, a young girl, unprotected without mother or father. Now while the fact that there were no previous convictions against the respondent is a matter which may, in a great many cases, properly be taken into consideration, it does not appear to me that his age, which is stated to be 50 is so great as to render him exempt from the rigours of

[1] *4 C. L. J. 111.*

imprisonment nor, indeed, does the fact that his imprisonment would react harshly upon his daughter seem to be one which should be allowed to weigh in such a case.

In *S. C. No. 688—P. C. Colombo 6,470* (*S. C. Minutes of November 10, 1937*), Abrahams C.J. declined to enhance a sentence for a somewhat similar offence on the ground that he could not say that a miscarriage of justice had been occasioned by excessive leniency. He further contended himself with saying that Courts ought not to regard it as a rule that first offenders are not to be sent to prison when crimes of violence are concerned. Again in *S. C. No. 473—P. C. Chilaw No. 3,190M* (*S. C. Minutes of November 8, 1937*), which was a case of stabbing, Abrahams C.J. thought that the fine which was imposed was of such outstanding leniency that he thought he was justified in enhancing it. In his opinion a man who uses a knife is a man who is not to be treated with leniency unless there are strong grounds for so doing . . . . Whether it will be possible to reduce such crime by " the infliction of severer sentences or not, it is not easy to say, but it is obvious that it would be impossible to reduce this sort of crime if sentences quite out of proportion in leniency to the offence are inflicted ".

In the present case the injured man had two incised injuries, one of which was 6 inches long and 3 inches deep in the neighbourhood of the left shoulder blade, cutting the seventh rib. It would seem that good fortune favoured the respondent in that he did not find himself called upon to answer a much more serious charge. In my view it is eminently a case for imprisonment. I, therefore, set aside the sentence of a fine and substitute therefor a sentence of 6 months rigorous imprisonment. I am not at all sure that I too am not erring on the side of leniency. Any portion of the fine which has been paid must be repaid to the respondent.

Sentence entered.