

1945

Present: **Wijewardene J.**

**KASINATHAR THANGARASA**, Appellant, and **SAMBONATHER THARRONACHARI**, Respondent.

184—*M. C. Kalmunai, 675.*

*Sentence—Previous Conviction—Court should not take into consideration in imposing sentence.*

A Court should not take into consideration a previous conviction in imposing a sentence except where the Court has to consider the applicability of an Ordinance such as the Prevention of Crimes Ordinance.

**A** PPEAL from a conviction by the Magistrate of Kalmunai.

*C. T. Olegasegaram* for the accused, appellant.

No appearance for the complainant, respondent.

*Cur. adv. vult.*

May 29, 1945. **WIJEWARDENE J.**—

The accused was convicted on charges of (a) theft of an ear-stud worth Rs. 9 from one Seenithamby and (b) assaulting Seenithamby. The Magistrate sentenced him to 4 months' rigorous imprisonment on the first count and 2 week's rigorous imprisonment on the second count and directed the sentences to run consecutively.

The evidence shows that the accused had a quarrel with Seenithamby's daughter and was removing a grinding stone when Seenithamby ran to the spot and questioned the accused. There was then a fight between the accused and Seenithamby in the course of which the accused assaulted Seenithamby and took away his ear-stud.

I see no reason to interfere with the conviction. As regards the sentence there is, no doubt, evidence that the accused was previously convicted in 1940 when he was a young man of twenty. A previous conviction is relevant when a Court has to consider the applicability of some

Ordinance as the Prevention of Crimes Ordinance. Otherwise it is not right to take such a conviction into consideration in imposing a sentence. I would in this connection refer to *Betteridge's Case* where Caldecott L. C. J. said:—

“ It is not right to hold over a man's past offences which have been dealt with by appropriate sentences, as we must assume past offences have been dealt with, and add them up and increase accordingly the severity of the sentence for a later offence. That is dangerously like punishing a man twice over for one offence. If a man who has been convicted shows himself unresponsive to leniency and persists in a life of crime, that is a reason for giving him the proper and deserved sentence in the particular case. If, on the other hand, there are some merits, it may be that the Court will treat him more leniently because he has shown himself in some way responsive to the warnings which he has had ”.

In the circumstances of this case, I think a sentence of 2 months' rigorous imprisonment would be an adequate punishment on the first charge. The sentence passed by the Magistrate on the second charge will stand and the sentences will run consecutively.

*Sentence on 1st charge altered.*

