

[COURT OF CRIMINAL APPEAL]

1966 *Present* : H. N. G. Fernando, S.P.J. (President), Abeyesundere, J.,
and Manicavasagar, J.

THE QUEEN *v.* A. ADAMBAWA

APPEAL No. 33 OF 1966, WITH APPLICATION No. 22

S. C. 19/65—M. C. Batticaloa, 16043

Charge of murder—Summing-up—Non-direction.

Where, in a prosecution for murder, the evidence showed that there was only one injury on the deceased and that it had been possibly caused by a club—

Held, that the jury should have been directed that they could convict the accused of culpable homicide not amounting to murder on the basis that he had no intention to kill but only the knowledge of likelihood of death.

APPEAL against a conviction at a trial before the Supreme Court.

K. Sivasubramaniam, with *A. R. Mansoor* and *D. V. A. Joseph* (Assigned), for the Accused-Appellant.

E. R. de Fonseka, Senior Crown Counsel, for the Attorney-General.

April 30, 1966. H. N. G. FERNANDO, S.P.J.—

Having regard to the fact that there was only one injury and the possibility that it had been caused by a club, we think it was the duty of the learned Judge to direct the jury that they could convict the accused of culpable homicide not amounting to murder on the basis that he had no intention to kill but only the knowledge of likelihood of death. As this direction was not given we set aside the conviction and sentence for murder, and substitute a conviction of culpable homicide not amounting to murder and pass a sentence of eight years' rigorous imprisonment.

Conviction altered.

