

[COURT OF CRIMINAL APPEAL]

1967 Present : T. S. Fernando, A.C.J. (President), Abeyesundere, J.,
and Alles, J.

THE QUEEN *v.* B. M. A. S. THELIS

C. C. A. APPLICATION No. 139 OF 1967

S. C. 217 of 1966—M. C. Panadura, 95712

Sentence—Previous conviction—Scope of its relevancy.

In assessing the sentence that should be passed on an accused person when he is convicted, the Court must not take into account a conviction of the accused for an offence committed after the date of the commission of the offence in respect of which he is being sentenced.

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

• *C. Ganesh* (Assigned), for Accused-Appellant.

Ranjith Abeysuriya, Crown Counsel, for the Crown.

November 2, 1967. T. S. FERNANDO, A.C.J.—

The appellant who at the relevant time was 18 years of age, and according to the evidence, a mechanic by occupation, was convicted of an attempt to commit the offence of culpable homicide not amounting to murder by causing an injury on the back of a man named Vincent. We are not disposed to interfere with the conviction but the sentence imposed on the appellant is one of 5 years' rigorous imprisonment. While we must bear in mind that the weapon used is a pointed one, we have to take into account the fact that the appellant on this occasion caused the injury in the course of intervening in a quarrel between two of his friends and Vincent. Having regard to the appellant's youth and the circumstances in which he became involved in the quarrel we consider that the sentence imposed on him is excessive. We also think it reasonable to infer that the learned Judge took into account—in our opinion, contrary to the provisions of the Procedure Code—a conviction of the appellant in respect of an offence committed after the date of the commission of the offence in this case. The learned Judge had some doubt as to whether that conviction could have been taken into account in assessing sentence, but Crown Counsel who appeared at the trial erroneously expressed the view to the Judge that it could be so taken. We have little doubt that had it not been for the circumstance that this previous conviction had been wrongly taken into account, the appellant would not have had imposed on him the fairly heavy sentence of 5 years' rigorous imprisonment. Bearing these considerations in mind, we think a sentence of one year's rigorous imprisonment would serve the ends of justice in this case, and we alter the sentence accordingly.

Sentence reduced.