

[COURT OF CRIMINAL APPEAL]

1949 Present : Jayetileke S.P.J. (President), Canekeratne and
Windham J.

THE KING v. MARTIN APPUHAMY

APPLICATION 73 OF 1949

S. C. 11—M. C. Matara, 8,442

Court of Criminal Appeal—Right of private defence—Failure of Judge to explain—Misdirection.

In a case involving private defence the failure of the judge to explain to the jury in his summing up the law relating to private defence amounts to a misdirection which vitiates the conviction.

APPPLICATION for leave to appeal against a conviction in a trial before a Judge and Jury.

Austin Jayasuriya, for the applicant.

H. A. Wijemanne, Crown Counsel, for the Crown.

Cur. adv. vult.

May 24, 1949. JAYETILEKE S.P.J.—

The main point taken at the argument before us was that the learned Judge had failed to explain to the Jury the law relating to private defence. Counsel for the appellant referred us to the passage in the summing-up which dealt with private defence. It reads—

“If a person acts in self-defence and kills another in the proper exercise of the right of private defence without exceeding the right, then it is no offence at all, it is justifiable homicide; but if he exceeds the right of private defence then the offence is reduced to culpable homicide not amounting to murder.”

It is clear from this passage that the learned Judge had assumed that the Jury understood what is meant by private defence. We are of opinion that it was the duty of the learned Judge to explain to the Jury in his summing-up the law relating to private defence and that his failure to do so is a non-direction which amounts to a misdirection which vitiates the conviction. We would set aside the conviction and sentence and send the case back for a fresh trial.

Retrial ordered.