[COURT OF CRIMINAL APPEAL.]

1945 *Present:* **Howard C.J., Keuneman and Jayetileke JJ.**

THE KING *v.* PIYADASA.

26—M. C. Panadure, 32,480.

Court of Criminal Appeal—Charge of murder—Plea of self-defence—Duty of Judge to direct jury on self-defence—Directions regarding provocation not sufficient.

Where the accused, in an indictment for murder, pleaded self-defence, but the presiding Judge directed the jury solely on the question whether the accused had acted under grave and sudden provocation—

Held, that the plea of self-defence should have been specially put by the Judge to the jury. From the fact that the finding of the jury on the question of provocation was adverse to the accused it could not be inferred that they could not possibly have found that the accused had exercised any right of private defence.

APPEAL against a conviction by a Judge and Jury before the Western Circuit.

H. V. Perera, K.C. (with him *V. Wijetunge* and *K. A. P. Rajakaruna*), for accused, appellant.

D. Jansze, C.C., for the Crown.

May 30, 1945. HOWARD C.J.—

In this appeal Mr. Perera on behalf of the appellant bases his argument on the fact that the learned Judge has not put to the jury the defence of the accused that he was exercising the right of private defence. The accused in his evidence stated as follows:—" The deceasd came out from there towards me pouring forth abuse and saying ' I have come to eat you ' struck at me with a club. He dealt the blow on my head. I said ' Peter Aiya don't strike me '. He paid no heed to what I said and he struck me and I put my hand and received the blow on my arm and the club striking my arm glanced on to my head. He raised his club to strike me again a second blow saying ' I have come to kill and eat you ' when through fear for my life I stabbed him with the knife I had in my waist. When I stabbed him he let off the club and snatched the knife off my hand. Both of us struggled and I fell into the ravine close by. When we were thus struggling I felt the deceased had released his hold on me and I ran away." Now, it is quite obvious from this that the accused was raising a defence based on the fact that

he stabbed the deceased after he had been attacked with a club and feared for his life. The learned Judge left to the jury the question as to whether the accused when he stabbed the deceased had lost his power of self-control by reason of grave and sudden provocation and Mr. Jansze has argued that if the jury rejected that plea, as they obviously have done, they could not possibly have found that the accused was exercising any right of private defence. In other words, they must be taken to have rejected this plea also. We cannot accept this contention because it does not necessarily follow that a person who is not provoked does not fear for his life. In these circumstances we think that the learned Judge should have left the question as to the defence of the accused being based on the exercise of the right of private defence to the jury. We therefore, set aside the conviction of the offence of murder.

Mr. Perera has not argued that the accused, even if his story had been accepted, has established that he was completely justified in killing the deceased man. In fact, such a defence cannot be maintained. We do not consider that a new trial is necessary inasmuch as a verdict of guilty of the lesser offence is in accordance with the facts of this case. We, therefore, hold that the accused has exceeded the right of private defence and we substitute for the conviction of the offence of murder one of culpable homicide not amounting to murder. In respect of this offence we pass a sentence of 10 years' rigorous imprisonment.

Varied.