[COURT OF CRIMINAL APPEAL.]

1940 *Present :* **Howard C.J., Moseley S.P.J., and Wijeyewardene J.**

THE KING *v.* GOVINDA PULLE.

45—M. C. Colombo, 45,900.

Evidence of character of accused after conviction—Right of Court to act upon an unsworn statement of witness—English practice—Desirability of taking evidence on oath.

There is nothing in law which prohibits a Court from receiving, before passing sentence, unsworn evidence regarding the character of an accused who has been convicted, although it is desirable that such evidence should be tendered on oath.

***Nikapota v. Gunasekere* (*14 N. L. R. 213*) referred to.**

APPEAL from a conviction for culpable homicide not amounting to murder before a Judge and Jury in the Western Circuit.

P. S. W. Abeywardene, for accused, appellant.

E. H. T. Gunasekere, C.C., for Crown, respondent.

Cur. adv. vult.

August 28, 1940. HOWARD C.J.—

This is an appeal against a sentence of ten years' rigorous imprisonment passed by Mr. Justice Cannon on the accused for the offence of culpable homicide not amounting to murder.

Counsel for the appellant has argued that this sentence is harsh and excessive and that in passing it the Judge has been influenced by certain evidence with regard to the character of the accused given by Inspector Sheddon. He also objects to that evidence on the ground that it was not given on oath.

The question of whether such evidence should be given and whether it should be given on oath was considered by Middleton J. and Wood-Renton J. in the case of *Nikapota v. Gunasekere.*[1] The Judges in that case held that there was a *casus omissus* in the Evidence Ordinance and that they were entitled to have regard to the law of England with regard to the evidence of character of an accused person tendered after he has been convicted. The law in England on this point was laid down by the Lord Chief Justice of England in *Weaver's case, 1908, 1 Criminal Appeal Reports 13.* The principle was laid down by the Lord Chief Justice as follows :—

> "In considering sentences, the invariable practice is to inquire into the prisoner's history in his own interest and if in the course of that inquiry facts come out which damage him, the Judge ought to take notice of them."

In adopting this practice, Wood-Renton J. said that he need scarcely add that any investigation conducted by a Court of trial, after conviction, into the character and antecedents of an accused should be an investigation according to the rules of evidence. Middleton J. stated that in his opinion no evidence to prove the antecedents and bad character of an accused should be accepted by the Police Court except from persons of undeniable position and respectability and then also only under the sanction of an oath or affirmation.

Our attention has been invited by Mr. Gunasekere to certain English cases which formulate the practice adopted in this connection by English Courts. It would appear from those cases that it is the practice of Judges of the High Court in England after the verdict has been given by the jury to receive unsworn evidence as to the character of the person who has been convicted.

In these circumstances we do not feel that we can go so far as to adopt in whole the dicta of the Judges in the case of *Nikapota v. Gunasekere* (*supra*) with regard to the necessity for the evidence of character of an accused person to be on oath. At the same time we feel that it is very desirable that such evidence should be tendered and tendered only on oath.

Quite apart from the evidence given by the Inspector with regard to the previous character of the accused, we have given consideration to the facts of this case. It has been pointed out by Counsel for the appellant that the jury have not registered their opinion as to whether the offence was committed with intention or merely with knowledge. Having regard to the fact that the accused used a knife which he thrust into a vital part of the body of the deceased, we are of opinion that this question is not of material interest.

Having regard to the facts of this case which was one of extreme gravity, we do not feel disposed to interfere with the sentence which was fully merited. In these circumstances, the appeal against the sentence is dismissed.

Affirmed.

37-

[1] *14 N. L. R. 213.*