

[COURT OF CRIMINAL APPEAL.]

1941 Present : Howard C.J., Soertsz and Wijeyewardene JJ.

THE KING *v.* E. M. T. DE SARAM.

11—M. C. Hambantota, 6,857.

Sentence—Discretion of Judge—Sentence manifestly excessive—Court of Criminal Appeal.

The Court of Criminal Appeal will not interfere with the discretion of the trial Judge with regard to the sentence unless that discretion has been exercised on a wrong principle or unless the sentence is manifestly excessive.

THIS was an appeal from a conviction by a Judge and jury before the Southern Circuit.

J. R. Jayawardene (with him *H. W. Jayawardene*), for the appellant.

E. H. T. Gunasekera, C.C., for the Crown.

July 30, 1941. HOWARD C.J.—

Mr. Jayawardene on this appeal has contended that the learned Judge misdirected the jury in putting to them the possibility that the injuries received by the deceased arose on a sudden fight and that if this defence had not been put to the jury they would have found that the appellant was acting in the exercise of the right of private defence and was therefore entitled to be acquitted. We are unable to accept this contention and consider that the learned Judge was perfectly right in putting the possible defence that the deceased received his injuries in the course of a sudden fight to the jury inasmuch as there was evidence to this effect.

With regard to the sentence, it has been laid down by this Court on several occasions that it is most reluctant to interfere with the discretion of the Judge in this matter. This Court will only interfere when it is obvious that that discretion has been exercised on a wrong principle or if the sentence is manifestly excessive. We think that in this case the sentence is manifestly excessive. It is just possible that in passing sentence the learned Judge lost sight of the fact that the accused was of previous good character and also—the most important point of all—received severe injuries when the deceased met with his death. In these circumstances we reduce the sentence to one of 5 years' rigorous imprisonment. The appeal and the application are otherwise dismissed.

Affirmed.