

[COURT OF CRIMINAL APPEAL.]

1948 Present: Howard C.J., Keuneman and Jayetilleke JJ.

THE KING v. VEDANAYAGAM PULLE.

57—M. C. Colombo, 45,148.

Court of Criminal appeal—Charge of murder against appellant and five others—Death of deceased as result of three blows—Only one blow struck by appellant—Verdict of grievous hurt against appellant alone—Points on which trial Judge should have directed the jury.

The appellant and five other persons were charged, in one of the counts in the indictment, with committing murder.

There was evidence to the effect that the appellant struck one blow with a club on the head of the deceased man. There was, however, no evidence as to where that blow alighted nor the precise injury which that blow caused, having regard to the fact that the deceased was found with two other blows on his head, the cumulative effect of these blows being to cause a fracture of the brain.

The jury found the appellant alone guilty of the offence of causing grievous hurt and acquitted all the other accused.

Held, that the trial Judge should have directed the Jury—(1) as to what in law constituted common intention, (2) as to the position which would arise if the jury found that there was no common intention between the appellant and the other persons mentioned in the charge but possibly a common intention between the appellant and other persons whose names were not mentioned, (3) as to what in law constituted the offence of causing grievous hurt.

¹ (1906) 10 N. L. R. 44.

² (1926) 29 N. L. R. 132.

A PPEAL from a conviction by a Judge and Jury before the Western Circuit.

H. V. Perera, K.C. (with him *G. E. Chitty*), for the first accused, appellants.

M. F. S. Pulle, C.C., for the Crown.

June 27, 1945. HOWARD C.J.—

In this case the appellant was charged with eighteen others on an indictment which contained three counts. The first count related to all the accused and charged them with being members of an unlawful assembly, the common object of which was to cause hurt to one Peter Silva. The second count which also related to all the accused charged them with being members of an unlawful assembly and in prosecution of the said common object committing murder by causing the death of the said Peter Silva. The third count related to the appellant, the first accused, and the second, third, eighth, fourteenth, and fifteenth accused and charged them with committing murder by causing the death of the said Peter Silva. The jury found all the accused not guilty on counts 1 and 2 but found the appellant guilty of the offence of grievous hurt on count 3 whilst acquitting the other accused charged in that count.

The grounds of appeal formulated by the appellant are (1) that the verdict is unreasonable and cannot be supported, having regard to the evidence, (2) that there was non-direction in the charge on the possible alternative verdicts, and (3) the case of the defence was not fairly and adequately put to the jury. Mr. Perera on behalf of the appellant has not argued the third ground of appeal but has concentrated his attention on the first and second grounds.

Now, it is perfectly obvious that in order to succeed on count 3 the prosecution had to prove that a common intention existed between the appellant and one or other of the persons who were jointly charged with him on that count. In this connection it would appear that there was no explanation by the trial Judge as to what in law constituted common intention. Nor was there any explanation as to the position which would arise if the jury found that there was no common intention between the appellant and the other persons mentioned in that charge, but possibly a common intention between the appellant and other persons whose names were not mentioned. If, therefore, the jury did by their verdict intend to find that a common intention existed between the appellant and someone else, we think there was no adequate explanation of what constituted common intention to support such a charge. But we think that the jury by their verdict definitely found that the appellant did not share a common intention with anybody else and by their verdict they came to the conclusion that by his own acts, and those acts alone, the appellant had committed the offence of intentionally causing grievous hurt. The only question that arises, therefore, is whether that verdict can be supported on the evidence. In this connection there was no direction on the question of what in law constituted the offence of grievous hurt. Moreover, there was no evidence on which the appellant by his own acts could be found guilty of this offence. There was evidence

to the effect that he struck one blow with a club on the head of the deceased man, Peter Silva. There was, however, no evidence as to where that blow alighted nor the precise injury which that blow caused, having regard to the fact that Peter Silva was found with two other blows on his head, the cumulative effect of these blows being to cause a fracture of the brain. In these circumstances we think that there was no evidence before the jury on which the appellant could have been convicted of intentionally causing grievous hurt. There was, however, sufficient evidence to convict him of causing simple hurt under section 314 of the Penal Code. We, therefore, find him guilty of causing simple hurt under section 314 of the Penal Code and impose a sentence of one year's rigorous imprisonment.

Varied.
