

[COURT OF CRIMINAL APPEAL.]

1940 Present : **Howard C.J. and Hearne and Keuneman JJ.**

THE KING v. RANHAMY.

59—*M. C. Anuradhapura, 2,708.*

Charge of murder—Weak case for the Crown—Evidence led in appeal—Effect of such evidence is to create doubt as to the guilt of accused—Verdict set aside.

Where in a charge of murder the evidence for the prosecution is of a contradictory character and fresh evidence is led in appeal, the Court of Criminal Appeal would have to consider whether the jury would have believed the fresh evidence or there was a strong probability that they would have believed it and further whether the evidence would have raised such a doubt in the minds of the jury as to have acquitted the accused.

A PPEAL from a conviction before a Judge and jury in the First Midland Circuit.

V. T. Panditha Gunawardene, for appellant.

Nihal Gunasekera, C.C., for the Crown.

September 23, 1940. HOWARD C.J.—

In this case we are confronted with a somewhat difficult task. In effect we are called upon to constitute ourselves the jury, and to give a decision on facts which are deposed to partly by witnesses who gave their evidence before the Judge and Jury and partly by witnesses who gave their evidence in this Court. Thus we have not had the advantage, so far as the first class of witnesses are concerned, of seeing them in the witness box and judging from their demeanour as to whether they are speaking the truth.

In this task imposed upon us we have first of all given careful consideration to the case put forward by the prosecution. This case depends, first of all, on the evidence of the injured man, and secondly on that of his brother, the witness Sohendirala. So far as the evidence of the injured man is concerned we have to bear in mind that he was very severely injured on the head as a result of the assault. In fact, his injuries were of so grave a character that nineteen days after the assault he was adjudged a lunatic.

When we come to the consideration of his evidence we find that there are several discrepancies which are unexplained. To the Judge and jury he says that his wife got out of the house and that he heard her speaking to the accused for some time. Then the accused is stated to have suddenly attacked him with an axe on the head, and there is no mention in this evidence of the accused's brother, Kalu Banda.

On the other hand his brother Sohendirala in giving evidence says that when the injured man called out he heard the cry, "Ranhamy (the accused) and Kalu Banda are cutting me". It is true that when the question was put to him again he said, he heard the cry that Ranhamy was cutting. Then Sohendirala says that when he went to see the injured man, Kalu Banda and Bendi Etani, that is the woman Menikhamy, were with him. To the Vel-Vidane when he arrived at the house the injured man said that the accused and Bendi Etani had cut him—that is to say, that the accused and his mistress had cut him. To the Arachchi when he arrived, he said that the accused and Kalu Banda had entered the house and the accused cut him with an axe. In his dying deposition he said, "Ranhamy cut me on my head with an axe. Kalu Banda also came with Ranhamy. Kalu Banda abused me and came to strike me with a club and I was cut about three or four times on my head. Kalu Banda struck me with a club towards my legs".

It would thus be seen that there are a number of discrepancies and inconsistencies in the evidence of the chief witness, the injured man, which may possibly be explained by the fact that he had received severe injuries on the head and was not really in a fit state to remember what exactly did take place. The evidence therefore, which is put forward by the Crown cannot be described as being of the strongest character.

That being the character of the evidence we have to consider what is the effect created by the fresh evidence which was produced before this Court to-day. It would not be right or proper that we should quash the verdict of the jury merely because we took a different view of the evidence and would have come to a different conclusion ourselves on that evidence. What we have to consider is whether, first of all, the jury would have believed the fresh evidence or there was strong probability that they would have believed it, and further whether it would have raised such a doubt in the minds of the jury that they must have acquitted the accused.

Without saying that the evidence produced before this Court to-day was untainted and was so steeped with the impression of truth that it must be believed, we think that having regard to the rather weak case put forward by the prosecution, it would have tipped the balance in favour of the accused at the trial and created such a doubt in the minds of the jury that if they did their duty properly they would have acquitted the accused.

In these circumstances the appeal must be allowed and the accused discharged.

Appeal allowed.

