

[COURT OF CRIMINAL APPEAL.]

1943 Present : Howard C.J., Wijeyewardene and Jayetileke JJ.

THE KING *v.* ALDON.1—*M. C. Kalutara, 19,380.*

*Murder—Doubt in minds of jury as to whether accused had murderous intent—
Accused is entitled to benefit of doubt—Sentence—Penal Code s. 297.*

Where, in a charge of murder, the Court of Criminal Appeal is satisfied that there was some doubt as to whether the jury were of opinion that the accused had a murderous intention or merely the knowledge that what he did was likely to cause death,—

Held, that the accused should be given the benefit of the doubt and sentenced under the latter part of section 297 of the Penal Code.

The King v. Ponnasamy (43 N.L.R. 359) followed.

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

Appellant in person.

Douglas Janszè C.C., for the Crown.

October 4, 1943. HOWARD C.J.—

In this case, the appellant was charged with murder. In his charge to the Jury, the learned Judge stated that there were no circumstances of a mitigating character. We agree with that aspect of the learned Judge's charge.

The Jury found the accused not guilty of murder but guilty of culpable homicide not amounting to murder. It would, therefore, appear, at first glance, that, as there were no mitigating circumstances, the Jury were not satisfied that the appellant had a murderous intention and, therefore, his case comes within the second part of section 297 of the Penal Code which prescribed a maximum sentence of ten years' rigorous imprisonment. After the verdict had been given the learned Judge put this question to the Jury: "I take it that you are under the impression that there might have been some kind of fight"? The answer to that question was "Yes, my Lord". That answer seems to imply that the Jury did consider that there were circumstances of a mitigating character. We are of opinion that there is some doubt as to whether the Jury were of opinion that the accused had a murderous intention or merely the knowledge that what he did was likely to cause death. In these circumstances, we think, following the decision of this Court in *The King v. Ponnasamy*¹, that the accused should have been given the benefit of such doubt and sentenced under the second part of the section.

We, therefore, substitute for the 15 years' rigorous imprisonment a sentence of 10 years' rigorous imprisonment.

Sentence varied.

¹ 43 N. L. R. 359.