[COURT OF CRIMINAL APPEAL.]

1947 *Present:* **Soertsz A.C.J. (President), Jayetileke and Canekeratne JJ.**

THE KING *v.* WIJERATNE.

Appeal No. 64 of 1946.

S. C. 15—M. C. Kalutara, 37,375.

Jury—Puzzling verdict—Validity of such verdict.

Where the verdict returned by the jury was extremely puzzling—*Held*, that the verdict ought not to be allowed to stand.

APPEAL, with leave obtained, against a conviction in a trial before the Supreme Court.

M. M. Kumarakulasingham, for the appellant.

T. S. Fernando, C.C., for the Attorney-General.

Cur. adv. vult.

February 3, 1947. SOERTSZ A.C.J.—

In this case the appellant was charged with attempt to murder a man called Seemon Appuhamy. The appellant's defence was that he inflicted the injuries found on the injured man in the course of defending himself against an attack on him by the injured man which gave rise to a reasonable apprehension in his mind that if he did not defend himself in the way he did he would be killed or, at least grievously injured. Upon that plea the questions that arose for consideration were whether an occasion arose for the appellant to exercise the right of self-defence, whether he exercised it reasonably without inflicting more harm than was necessary for the purpose of defence, or whether he exceeded the right given to him by law.

The learned trial Judge directed the Jury on this part of the case as follows:—

"If you find that as the accused says he went there on a very peaceful mission to buy some nails, that he was taken unawares and the complainant attacked him with a knife on his head, that he rushed and picked up a manna knife or any other knife that was lying somewhere there and used that knife on the complainant, well then the question is—two questions arise: firstly, as to whether he was justified in inflicting those wounds and secondly, whether he had exceeded his right of private defence. Well, in view of the nature of the injuries on the accused himself it would be a correct proposition of law to say that where he apprehended or reasonably apprehended that his life was in danger or that he would sustain grievous injury at the hand of his assailant he was entitled, in order to defend himself against that attack, to use the knife or any other weapon and use it in such a way as to cause the death of the assailant. If you accept those facts the accused will be entitled to ask for a verdict of acquittal at your hands, because the law does not say that a man whose life is being threatened must sit with his arms

folded and suffer death. It gives the right of self help to every individual. In this case, although the complainant denies it, yet in view of the nature of the injuries on the accused, if you think the complainant was armed, and if you accept the accused's evidence that he was unarmed, that this man attacked him, that in order to protect himself he picked up the knife that was lying nearest to him and started slashing at the other man in order to save himself, it would be very difficult to say in those circumstances that the man had exceeded the right of private defence, and in that case you will bring in a verdict of not guilty."

The learned Judge also invited the Jury to consider another defence which the appellant might have advanced, namely, that these injuries were inflicted in a sudden fight upon a sudden quarrel and without premeditation and that, therefore, they might find the appellant guilty of attempt to commit culpable homicide not amounting to murder. Thirdly, he asked them to consider the question whether the appellant had a murderous intention or only the knowledge that death was likely to result from his act and he directed them that in the latter case the offence would be again attempt to commit culpable homicide not amounting to murder.

The Jury retired to consider their verdict and when they returned to Court, they said to the Clerk of Assize that they were divided by 5 to 2 in regard to the verdict. Thereupon, the Clerk of Assize said to them "Do you find the prisoner guilty or not guilty of attempted *culpable homicide not amounting to murder?*" (sic). The Foreman answered "No". The next question the Clerk of Assize put to them was "Do you find him guilty of a lesser offence?" The answer was "He has exceeded the right of private defence." The Court then said "Then do you find him guilty?" and the Foreman replied "Definitely not". Thereupon, the Court said "It is difficult to understand your verdict. If he exercised the right of private defence and did not exceed the right then he is not guilty. But if he exceeded the right of private defence then he is guilty of attempted culpable homicide not amounting to murder. Will you go and reconsider your vedict?" They then retired again, and when they came back the Clerk of Assize said to the Foreman "Mr. Foreman, are you unanimously agreed upon your verdict?" Foreman: "Yes". Clerk of Assize: "Do you find the prisoner guilty or not guilty of attempted culpable homicide not amounting to murder?" Foreman: "Guilty." Court: "On what grounds?" Foreman: "Exceeding the right of private defence to a certain extent". Court: "I am bound to accept this verdict. I sentence you to a term of two years' rigorous imprisonment."

To say the least, this is extremely puzzling. Firstly, the Jury by a majority of 5 to 2 declared that the prisoner was not guilty of attempting to commit culpable homicide not amounting to murder, on the footing it must be supposed that he had not exceeded the right of private defence. If the appellant had not acted in excess of that right, he was entitled to be acquitted and yet, in the next breath, the Jury say that "He has exceeded the right of private defence" and again definitely that he was not guilty.

On reconsidering their verdict, they found unanimously that the prisoner was guilty of attempt to commit culpable homicide not amounting to murder because he had exceeded the right of self-defence to some extent. This is extremely unsatisfactory and we are of the opinion that their verdict ought not to be allowed to stand. We have examined the evidence in the case and we are of the opinion, which appears to have been the opinion of the trial Judge too, that once the Jury found as they did that occasion for self-defence arose, it cannot be said, having regard to the injuries the appellant inflicted, that he did more harm than was necessary for his defence.

Appeal allowed.