[COURT OF CRIMINAL APPEAL]

1953 *Present:* **Rose C.J. (President), H. A. de Silva J. and K. D. de Silva J.**

PEERIS SINGHO *et al.*, Appellants, *and* THE QUEEN, Respondent

APPEALS 62-64, WITH APPLICATIONS 100-102

S. C. 32—M. C. Kanadulla, 1,708

Court of Criminal Appeal—Unreasonable verdict—Certificate of trial Judge—Weight which should be attached to it—Court of Criminal Appeal Ordinance, No. 23 of 1938, ss. 4 (b), 5 (1).

Although the certificate of the trial Judge that a case is fit for appeal is no ground in itself for setting aside a verdict, it is, however, an element which the Court of Criminal Appeal will take into consideration together with other elements in deciding whether or not a particular verdict should stand.

The Court of Criminal Appeal may, though rarely, decide that a verdict is unreasonable if upon a consideration of the case as a whole it is felt that the verdict is not satisfactory. It is not necessary for the Court to single out any particular item upon which it bases its view.

APPEALS, with applications for leave to appeal, against three convictions in a trial before the Supreme Court.

C. E. Mackenzie Pereira, for the accused appellants.

G. P. A. Silva, Crown Counsel, with *N. T. D. Kanekeratne*, Crown Counsel, for the Crown.

Cur. adv. vult.

November 3, 1953. ROSE C.J.—

In this case the three appellants were convicted of the murder of a man called Babasingho. It is one of those somewhat difficult cases in which we are invited to say that the verdict of the jury was unreasonable. There is no doubt from a perusal of the learned trial Judge's charge that he himself had formed a view upon the evidence that was favourable to the appellants. Moreover, he has himself certified that this is a fit case for appeal. As, of course, has been said in very many cases, the fact that a learned trial Judge himself might have come to a different conclusion from that of the jury is no ground in itself for setting aside a verdict. It is, however, an element which this Court will take into consideration together with other elements in deciding whether or not a particular verdict should stand.

Now, on the facts of this case, the case for the prosecution depends in substance upon the evidence of a single witness, an alleged eye-witness, a woman called Leelawathie, who was the daughter of the deceased man.

She states that upon the evening of the 2nd of March, 1953, the three appellants who are related to each other, the 1st appellant being the father of the 2nd and the 3rd being a son-in-law of the 1st, accosted her and her father on the road in the vicinity of their house, made a joint attack upon her father and removed him into the compound of their house where he was subsequently done to death with a katty. She says that she saw these events by means of an electric torch she had in her hand and that she then returned to her house and in the course of the night she says that she informed her husband and the Village Headman of the complicity of these appellants in these events.

Now, in considering this matter, very strong criticisms have been directed against the witness Leelawathie and as to why we should say that her evidence should not have been accepted by the jury. First it is said that her evidence is belated. The episode in question took place at 8 or 8.30 p.m. on the evening of the 2nd of March and according to the evidence which it is suggested we must accept apart from that of Leelawathie herself, the first statement that she made to anyone in authority was at 9.45 a.m. on the following morning, the 3rd of March, when the Police came to her house. The Village Headman denies that she made a statement to him that night and he was called as a witness for the prosecution. The question of course whether a statement of a witness is belated and whether therefore it should be rejected upon that ground is eminently one for the consideration of a jury. We do not suggest that in this case or in any case a matter like that should be decisive in coming to a conclusion on the question of whether a jury's verdict is unreasonable, but it is of course an element which may be taken into consideration with other elements in the case.

The second point why it is suggested that this woman's evidence is unlikely to be true is that she puts the beginning of the contest in the road. It appears that the spot on the road which she indicated to the Police as being where these events began is some 88 feet from the spot where the unfortunate deceased man was subsequently found fallen, that is according to the evidence of the Police which has not been challenged in this case. The defence case is that the episode began in their (the appellants') house and the distance from where the episode began in their house to where they say the struggle concluded is only a matter of some 30 feet. Now, Counsel for the appellant points out that one would have expected, if there had been anything in the nature of a scuffle or a struggle between these men from the road to this point in the compound 88 feet away, that there would have been some evidence of marks on the ground or something of that sort which might tend to corroborate the fact that the struggle or episode had taken place over such a considerable area. The Police Sergeant who made investigations into this matter stated, and apparently that was not challenged, that the only blood marks that he found were at the point in the compound where the deceased man was found fallen and that he found no other marks either in the house or in the compound or in the road, which led him to conclude that anything untoward had occurred there. We then have the further relatively minor criticism which relates to the medical evidence. The medical evidence is that the only injuries found upon the deceased man were

three injuries, two on the head and one on the shoulder, the two on the head being necessarily fatal, and that they were all caused with a cutting instrument such as a katty. There is no evidence of any contusions or marks such as might have been expected to be caused by a club or any weapon of that kind. Now, Leelawathie's evidence is that upon the road this episode began with a series of club blows and that it was only at a later stage that the 3rd appellant handed the katty to the 1st appellant who then inflicted the fatal injuries.

We have then, before coming to the evidence on the appellants' side, two further matters which might have a slight bearing on this matter. We have first the fact that the deceased man had, according to the medical evidence, been taking alcoholic drink shortly before this incident, that is to say, the stomach contents still contained traces of alcohol. We have next the fact that, according to the Village Headman, the deceased man was known to be a man of violent character in the village. He was also a reconvicted criminal and was apparently a powerfully built man. Evidence of good character was led on behalf of the three appellants which was not in any way challenged by the prosecution. We have also the fact that there was a motive, although as learned Crown Counsel correctly points out, that motive was a double edged motive, annoyance over a land dispute, which might of course have operated as a motive for an attack by the deceased man upon the appellants or an attack by the appellants upon the deceased man.

Now, the story of the appellants as told by the 2nd appellant, the son of the 1st appellant, who was the only one of the three to give evidence, was that at 8 or 8.30 p.m. that evening Babasingho accompanied by another man, Punchi Banda, who as soon as the fight began ran away and took no further part in the proceedings, came in an aggressive mood to their house and made an attack upon the 1st appellant, the 2nd appellant's father. He says that the attack was made with a club, that the father who was lying down at the time got up and struggled for the club, that the two men grappled with each other, that he and the 3rd appellant, the son-in-law, went to the assistance of the father and that being unable to separate them a blow was struck, or more than one blow with a katty as a result of which this man Babasingho met with his death.

Learned Crown Counsel says to us, and there is reason in his observations, that all these are eminently matters for a jury and that this is not a class of case in which we should interfere. We have given the matter very anxious consideration and we are fully alive to the evils that may flow from this Court too freely intervening in matters which have been decided by a jury and in which there was, technically at any rate, material upon which they could properly have come to their conclusion. We feel, however, that in all the circumstances of the case and paying regard to the learned trial Judge's own view of the matter, that this is one of those rare cases in which we should interfere. I may perhaps repeat what was said by Mr. Justice Humphreys, in the case of *Rex v. Frederick Barnes*[1], "Those cases tend to show that it is often, as we think it is in

[1] *28 Criminal Appeal Reports 144.*

this case, difficult to place upon a single legal ground the reason why we have come to the conclusion at which we have in fact arrived, that the verdict of the jury in this case was not satisfactory ". We prefer in this case not to single out any particular item upon which we base our view. We say that upon a consideration of the case as a whole and of the matters which have been put before us by learned Counsel we feel that the verdict of the jury is not satisfactory and that upon the evidence at their disposal it must be held to be unreasonable within the meaning of the appropriate section of the Court of Criminal Appeal Ordinance. That being so, we think that the convictions cannot stand and the appeals must be allowed and the appellants acquitted.

Appeals allowed.