

[IN REVISION.]

1908.  
October 23.

Present: Mr. Justice Wendt.

COREA v. GRIGORIS APPU.

P. C., Negombo, 10,203.

Revision — Inadequacy of sentence — Enhancement — Appeal — Criminal Procedure Code, ss. 347, 356, and 357.

The Supreme Court has power, in the exercise of its revisionary jurisdiction, to enhance the sentence passed on an accused by a Police Court, even if an appeal lies from such sentence.

THIS was an application by the Attorney-General to revise the sentence passed on the accused with a view to its being enhanced. The facts sufficiently appear in the judgment.

*Walter Pereira, K.C., S.-G.*, for the Attorney-General.

*H. Jayewardene* (with him *A. Driberg*), for the accused, respondent.

*Cur. adv. vult.*

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The Solicitor-General in this case invokes the revisionary powers of this Court with the view of having the sentence passed upon the accused enhanced. Mr. Jayewardene, for the accused, has raised the question of the jurisdiction of this Court to interfere in the manner suggested, and I will deal with that point first. I think there can be no doubt about the jurisdiction. Section 356 of the Criminal Procedure Code empowers this Court to call for and examine the record of any case for the purpose of satisfying itself as to the legality or propriety of any sentence passed therein, and section 357 authorizes the Court in its discretion to exercise any of the powers conferred by section 347, and thereby expressly invests it with the power of increasing the amount of the sentence or the nature thereof. But, perhaps, Mr. Jayewardene intended to put his objection rather on the footing of a rule of practice in this Court, for he cited the case of *Bogaars v. Karunaratne*.<sup>1</sup> There the Magistrate had acquitted the accused, and Clarence J., in refusing to accede to the Attorney-General's application for revision, said he did not, in general, consider it proper to interfere by way of revision in cases where an appeal might have been taken. There is, perhaps, no objection to be taken to that as a general rule, but each case must

<sup>1</sup> (1891) 1 C. L. R. 80.

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depend on its own circumstances, and I think a distinction should be drawn between the case of an acquittal and that of a conviction with an inadequate sentence, and also between the sentence of a District Court, in which the Attorney-General directly prosecutes by one of his officers, and that of a Police Court, of which the Attorney-General has not, as a rule, any direct cognizance. Respondent's counsel himself, however, cited the case of *The Queen v. Domiel*,<sup>1</sup> which, if it can be considered good law at the present day, establishes that the Attorney-General cannot appeal in order to obtain enhancement of the sentence. The case of *Saxton v. Andi*<sup>2</sup> was also an appeal (apparently by the Attorney-General) against an inadequate sentence upon conviction, and it was dismissed on the express ground that the Court of Appeal has no power to enhance the punishment—a ground which, in view of the provisions of section 347 already referred to, is no longer maintainable.

The jurisdiction of the Court being clear, I hold this is a proper case for its exercise. The accused pleaded guilty to the charge of having possessed half a pound of extract of opium without having obtained a licence, in breach of section 16 of Ordinance No. 5 of 1899, as amended by section 3 of Ordinance No. 9 of 1905, which imposes the penalty of a fine not exceeding Rs. 50, or imprisonment of either description not exceeding three months, or a combination of both punishments for every unlawful possession, transfer, gift, or sale of opium. The quantity found in the respondent's possession was large; it was entirely unaccounted for, and the articles found with it and produced in Court pointed to the probability that the opium was kept for illicit sale. The offence being a first offence, I do not think imprisonment was called for; but, in view of the profits derivable from the illicit traffic in opium, the amount of the fine ought to have been such as to ensure a deterrent effect. Rs. 10 was an inadequate amount. In revision I enhance it to Rs. 30, with one month's rigorous imprisonment in default of payment.

*Sentence enhanced.*

<sup>1</sup> (1895) 1 N. L. R. 87.

<sup>2</sup> (1895) 1 N. L. R. 341.