

GLI-G2

1, 1961

IN THE PRIVY COUNCIL

No. 12 of 1960

ON APPEAL  
FROM THE COURT OF CRIMINAL APPEAL OF CEYLON

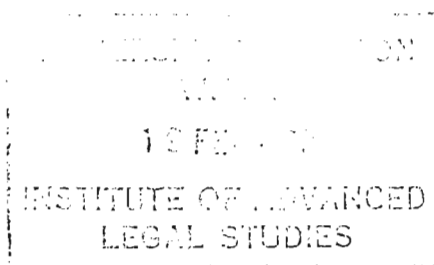
B E T W E E N :

THE QUEEN .. .. . Appellant

- and -

PANIKKAPODY EDIRIMANASINGHAM Respondent

RECORD OF PROCEEDINGS



63699

T. L. WILSON & CO.,  
6 Westminster Palace Gardens,  
London, S.W.1.

Solicitors for the Appellant.

IN THE PRIVY COUNCILNo. 12 of 1960ON APPEALFROM THE COURT OF CRIMINAL APPEAL OF CEYLONB E T W E E N :THE QUEEN .. .. . Appellant

- and -

PANIKKAPODY EDIRIMANASINGHAM RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE MAGISTRATE'S COURT,</u> <u>BATTICALOA</u>		
1	Indictment	8th April 1958	1
2	Plea of the Accused	8th September 1958	2
3	Verdict and Sentence	12th September 1958	3
4	Proceedings after the Summing-up	12th September 1958	3
	<u>IN THE COURT OF CRIMINAL APPEAL</u>		
5	Judgment	26th January 1959	5
	<u>IN THE PRIVY COUNCIL</u>		
6	Order granting Special Leave to Appeal	12th August 1959	10

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document
<u>IN THE MAGISTRATE'S COURT, BATTICALOA</u>
List of Productions
List of Witnesses

IN THE PRIVY COUNCIL

No. 12 of 1960

ON APPEAL  
FROM THE COURT OF CRIMINAL APPEAL OF CEYLON

B E T W E E N :

THE QUEEN .. .. . Appellant  
- and -  
PANIKKAPODY EDIRIMANASINGHAM Respondent

RECORD OF PROCEEDINGS

No. 1

In the  
Magistrate's  
Court, Batticaloa

10

INDICTMENT

S.C.4/2nd Eastern 1958  
Magistrate's Court of Batticaloa.  
Case No.1925

No.1  
Indictment,  
8th April 1958.

I N D I C T M E N T

In the Supreme Court of  
the Island of Ceylon (Criminal Jurisdiction)

Eastern Circuit. (At a Session of the said  
District of Batticaloa {Supreme Court in its Crimi-  
20 Session, 1958 {nal Jurisdiction for the  
{Eastern Circuit, to be hol-  
{den at Batticaloa in the  
{year One thousand Nine  
{hundred and Fifty Eight

THE QUEEN

Versus

- 1. P.Edirimanasingham
- 2. E.Gopalapillai

30 You are indicted at the instance of The Honourable  
Douglas St. Clive Budd Jansze, Q.C.  
Her Majesty's Attorney-General, and the charges  
against you are:

In the  
Magistrate's  
Court, Batticaloa

No.1

Indictment,  
8th April 1958

- continued.

1. That on or about the 27th day of July, 1957, at Kothiyapulai, in the division of Batticaloa, within the jurisdiction of this Court, you did commit murder, by causing the death of one Sem-bakutti Kandapodi, and that you have thereby committed an offence punishable under Section 296 of the Penal Code.

2. That at the time and place aforesaid and in the course of the same transaction, you did shoot one Palipody Nagamany with a gun, with such intention or knowledge, and under such circumstances, that had you by such act caused the death of the said Palipody Nagamany, you would have been guilty of murder, and that you by such act caused hurt to the said Palipody Nagamany, and that you have thereby committed an offence punishable under Section 300 of the Penal Code.

10

3. That at the time and place aforesaid, and in the course of the same transaction, you did shoot at one Eliyathamby Palipody with a gun, with such intention or knowledge and under such circumstances, that had you by such act caused the death of the said Eliyathamby Palipody, you would have been guilty of murder, and that you have thereby committed an offence punishable under Section 300 of the Penal Code.

20

This 8th day of April, 1958.

Sgd. H.B. White

CROWN COUNSEL.

No.2

Plea of the  
Accused,  
8th September  
1958.

No. 2

PLEA OF THE ACCUSED

Batticaloa, Monday 8th September 1958.

To this Indictment the prisoners (1) P. Edirimanasingham and (2) E. Gopalapillai severally plead not guilty.

Sgd. O.W. Wanniachy

Clerk of Assize, S.C.  
Batticaloa.

30

3.

No. 3

VERDICT AND SENTENCE

In the  
Magistrate's  
Court, Batticaloa

No.3

Friday the Twelfth day of September One thousand  
Nine hundred and Fifty Eight.

Verdict and  
Sentence,  
12th September  
1958.

The unanimous Verdict of the Jurors sworn to  
try the matter of accusation in this case is that  
the prisoners (1) P. Edirimanasingham and (2) E.  
Gopalapillai are guilty of the offences as set out  
in Counts (1), (2) and (3).

10

Sgd.

Foreman.

Sgd. O.W. Wanniachy  
Clerk of Assize, S.C.  
Batticaloa.

On this Indictment the sentence of the Court,  
pronounced and published this day, is that the  
prisoners (1) P. Edirimanasingham and (2) E. Gopal-  
apillai be kept in rigorous imprisonment for Life.

20

Sgd. O.W. Wanniachy  
Clerk of Assize, S.C.  
Batticaloa.

No. 4

No.4

PROCEEDINGS AFTER THE SUMMING-UP

Proceedings after  
the Summing-up,  
12th September  
1958.

S.C.4 12.9.58 - 9.15 a.m.

Accused present.  
Same counsel as before.  
Court continues the summing-up.

Jury retire at 10.22 a.m. and return at 10.30 a.m.

30

Clerk of Assize: Q.Foreman, you are unanimously  
agreed upon your verdict in re-  
gard to the first accused P.  
Edirimanasingham on count No.1  
of the indictment?

Foreman: A.Yes.

In the  
Magistrate's  
Court, Batticaloa

No.4

Proceedings after  
the Summing-up,  
12th September  
1958 -

continued.

Clerk of Assize: Q.Do you find the first accused  
guilty on count 1?

Foreman: A.Yes.

Clerk of Assize: Q.Are you unanimously agreed upon  
your verdict in regard to the  
second accused E.Gopalapillai  
on count 1 of the indictment?

Foreman: A.Yes.

Clerk of Assize: Q.Do you find the second accused  
guilty on count 1 of the indict- 10  
ment?

Foreman: A.Yes.

Clerk of Assize: Q.Are you unanimously agreed upon  
your verdict in regard to the  
first accused on count 2 of the  
indictment?

Foreman: A.Yes.

Clerk of Assize: Q.Do you find the first accused  
guilty on count 2 of the indict- 20  
ment?

Foreman: A.Yes.

Clerk of Assize: Q.Are you unanimously agreed upon  
your verdict in regard to the  
second accused on count 2 of  
the indictment?

Foreman: A.Yes.

Clerk of Assize: Q.Do you find the second accused  
guilty on count 2 of the indict-  
ment?

Foreman: A.Yes. 30

Clerk of Assize: Q.Are you unanimously agreed upon  
your verdict in regard to the  
first accused on count 3 of the  
indictment?

Foreman: A.Yes.

Clerk of Assize: Q.Do you find the first accused  
guilty on count 3 of the indict-  
ment?

Foreman: A.Yes.

Clerk of Assize: Q.Are you unanimously agreed upon 40  
your verdict in regard to the  
second accused on count 3?

Foreman: A.Yes.

Clerk of Assize: Q.Do you find the second accused guilty on count 3 of the indictment?

Foreman: A.Yes.

Court: Inform the verdict to the accused. Tell the first accused that I sentence him to rigorous imprisonment for life. I sentence the second accused for rigorous imprisonment for life.

In the  
Magistrate's  
Court, Batticaloa

No.4

Proceedings after  
the Summing-up,  
12th September  
1958 -  
continued.

10

No. 5

J U D G M E N T

In the Court  
of Criminal  
Appeal, Ceylon

No.5

IN THE COURT OF CRIMINAL APPEAL

Appeals Nos.106 & 107 of 1958 with S.C.No.4  
Applications Nos.142 & 143 of 1958 M.C.Batticaloa,  
No.1925.

Judgment,  
26th January  
1959.

The Queen

vs.

20

- (1) E. Gopalapillai (2nd accused)  
(2) P. Edirimanasingham (1st accused)

Present: Basnayake, C.J.(President), Pulle, J.,  
and H.N.G. Fernando, J.

Counsel: Colvin R. de Silva with J.A.P. Cherubim,  
S.Saravanamuttu, A.C.N.Amit, M.L. de  
Silva, and A.C.M.Uvais (assigned), for  
Accused-Appellants

30

A.C.Alles, deputy Solicitor-General with  
R.A. de Silva, Crown Counsel, for the  
Attorney-General

Argued on: November 17 and 18, 1958 and January  
13, 1959.

Decided on: January 26th, 1959.

Basnayake, C.J.

The appellants who are father and son were  
convicted on the following charges:-



In the Court  
of Criminal  
Appeal, Ceylon

No.5

Judgment,  
26th January  
1959 -

continued.

"1. That on or about the 27th day of July 1957, at Kothiyapulai in the division of Batticaloa, within the jurisdiction of this Court, you did commit murder, by causing the death of one Sembakutti Kandapodi, and that you have thereby committed an offence punishable under section 296 of the Penal Code.

"2. That at the time and place aforesaid and in the course of the same transaction, you did shoot one Palipody Nagamany with a gun, with such intention or knowledge, and under such circumstances, that had you by such act caused the death of the said Palipody Nagamany, you would have been guilty of murder, and that you by such act caused hurt to the said Palipody Nagamany, and that you have thereby committed an offence punishable under section 300 of the Penal Code.

10

"3. That at the time and place aforesaid, and in the course of the same transaction, you did shoot at one Eliyathamby Palipody with a gun, with such intention or knowledge and under such circumstances, that had you by such act caused the death of the said Eliyathamby Palipody, you would have been guilty of murder, and that you have thereby committed an offence punishable under section 300 of the Penal Code."

20

Learned counsel for the appellants did not challenge the verdict against the 2nd accused, nor did he challenge the verdict on the 2nd and 3rd charges against the 1st accused. He maintained that the verdict against the 1st accused on the 1st charge was not supported by the evidence. We shall therefore confine our attention to the matters urged on behalf of the 1st accused in respect of the verdict of murder against him.

30

The charge is that both the accused-appellants committed murder by causing the death of Sembakutti Kandapodi. Shortly the prosecution case is

40

as follows:- The 1st accused with a bag in his hand and his son the 2nd accused carrying a gun approached the western boundary of the deceased's garden. The 1st accused took out a cartridge and handing it over to the 2nd accused said, "There goes Palau's son Nagamany, shoot him." The 2nd accused loaded his gun and shot him. Next the 1st

In the Court  
of Criminal  
Appeal, Ceylon

          
No.5

Judgment,  
26th January  
1959 -

continued.

10 accused handed over to the 2nd accused another cartridge and he loaded his gun and attempted to shoot Palipody. Then the deceased who was near by went towards the accused and asked them "Why are you shooting?" Then the 2nd accused who was aiming his gun at Eliyathamby Palipody aimed it at the deceased. He turned to run but was injured by the shot fired by the 2nd accused and he fell. The 1st accused took yet another cartridge from his bag and handed it over to the 2nd accused, who loaded his gun and fired it at Eliyathamby Palipody, whom he missed.

20 On this evidence it is clear that it was not the 1st accused who shot the deceased. It is also clear that when he handed the cartridge which was fired at the deceased he did not intend that the 2nd accused should shoot the deceased. The question that arises for decision then is whether by the operation of section 32 of the Penal Code he is liable for the act of the 2nd accused in the same manner as if it were done by him alone. In our opinion the evidence does not bring section 32 into operation. The conviction of the 1st accused on the 1st charge of the indictment should therefore be quashed and we direct that a judgment of acquittal be entered in respect of that charge.

30 The learned trial Judge has not imposed a sentence on the 1st accused in respect of the 2nd and 3rd charges of which he has been found guilty. As we were not agreed that we have power under the Court of Criminal Appeal Ordinance to impose a sentence in respect of a charge on which the learned trial Judge omitted to impose a sentence we directed that this appeal be listed for further argument on that point. Learned Counsel for the appellant contended that section 6 of the Court of Criminal Appeal Ordinance did not empower this Court to impose a sentence in a case such as this. Sub-section (1) of that section reads -

40 "If it appears to the Court of Criminal Appeal that an appellant, though not properly convicted on some charge or part of the indictment, has been properly convicted on some other charge or part of the indictment, the court may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as they think proper and as may be warranted in law

In the Court  
of Criminal  
Appeal, Ceylon

No.5

Judgment,  
26th January  
1959 -  
continued.

by the verdict on the charge or part of the indictment on which the court consider that the appellant has been properly convicted."

Learned counsel stressed the fact that the section empowered the Court to pass a sentence in substitution of the sentence passed by the trial Judge and that where the trial Judge had passed no sentence at all the question of substitution does not arise.

Learned counsel for the Crown relied on the cases of Dorothy Pamela O'Grady, 28 Cr. App. R.33; Thomas Henry James Lovelock, 40 Cr. App. R.137, (1956) 1 W.L.R. 1217; and Victor Frank Cochrane Hervy & William Goodwin, 27 Cr. App. R.146. After we had reserved judgment he also brought to our notice the decision of this Court in S.C. No.13 - M.C. Gampaha 26876 decided on 5th March 1956. In O'Grady's case the appellant (a woman) was tried on an indictment containing nine counts. She was acquitted on counts 1 and 4 and convicted on the other seven counts. She was sentenced to death on the two charges under the Treachery Act, 1940, but no sentence was passed in respect of the other charges. In appeal the convictions of the charges under the Treachery Act were quashed and the sentence of death was set aside. The Court proceeded to impose a sentence of fourteen years' penal servitude on the remaining convictions. It does not appear from the report that the scope of the power conferred by section 5(1) of the Criminal Appeal Act, 1907, which is the same as our section 6(1), was considered when the sentence was imposed on the remaining convictions. Lovelock's and Goodwin's cases are different and in those cases the sentences that were imposed were in substitution of those passed at the trial. In the former case the appellant was convicted of attempted rape. He was sentenced to six years' imprisonment in respect of it. He had pleaded guilty to an alternative count of indecent assault arising out of the same incident for which he received a concurrent sentence of two years' imprisonment. The conviction for attempted rape was quashed. Acting under section 5(1) of the Criminal Appeal Act, 1907, the Court substituted for the sentence of two years' imprisonment a sentence of six years' preventive detention. In the latter case the appellants Hervy and Goodwin were convicted on four out of five charges. Hervy was sentenced to three years' penal servitude and Goodwin

10

20

30

40

to two years' imprisonment. Goodwin appealed against his conviction. The Court of Criminal Appeal held that Goodwin's conviction on charges 4 and 5 could not be supported and ought to be quashed, while his conviction on charges 1 and 2 was affirmed (he had been acquitted on charge 3 at the trial). The Court reduced Goodwin's sentence to eighteen months' imprisonment.

In the Court  
of Criminal  
Appeal, Ceylon

No.5

Judgment,  
26th January  
1959 -

continued.

10 We are unable to accept O'Grady's case as having any persuasive force as no reasons have been given for what seems to us a disregard of the words of the section. In the previous decision of this Court to which learned counsel for the Crown had drawn our attention the question does not appear to have been argued as fully as it has been on this occasion. The fact that sub-section (1) of section 6 empowered this Court to pass a sentence in substitution for the sentence passed on the appellant at the trial seems to have passed unnoticed.

20 In the instant case as the learned Judge has not passed any sentence at all on the 2nd and 3rd charges we are unable to pass a sentence in substitution of that passed at the trial. The Ordinance does not empower this Court to supply the omission of the trial Judge. The legislature has assumed that an offender who is found guilty would in the ordinary course be sentenced to the punishment the Judge of trial thinks he deserves and has not contemplated a case in which the Judge refrains deliberately or otherwise from performing the duty of imposing a sentence on the charges on which a prisoner has been properly convicted. It has been stated over and over again that the Court of Criminal Appeal can only exercise such powers as are expressly entrusted to it by the statute and no other.

30

The 1st accused is accordingly entitled to be discharged from prison. The appeal of the 2nd accused is dismissed.

40

Sgd. Hema H. Basnayake  
President  
Court of Criminal Appeal.

---

In the Privy  
Council.

No. 6

No. 6

ORDER OF HER MAJESTY'S PRIVY COUNCIL  
GRANTING SPECIAL LEAVE TO APPEAL

Order granting  
Special Leave  
to Appeal,  
12th August 1959.

AT THE COURT AT BALMORAL  
The 12th day of August, 1959

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT                      SIR MICHAEL ADEANE  
LORD CHAMBERLAIN                    DOCTOR NKRUMAH  
MR. SECRETARY MACLAY

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 27th day of July 1959 in the words following, viz:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a Petition of Your Majesty in the matter of an Appeal from the Court of Criminal Appeal of Ceylon between the Petitioner and Panikkapody Edirimanasingham Respondent setting forth (amongst other matters) that the Petitioner desires special leave to appeal from a Judgment of the Court of Criminal Appeal of Ceylon dated 26th January 1959 allowing the Respondent's Appeal from a Judgment of a Criminal Sessions of the Supreme Court of Ceylon for the Eastern Circuit held at Batticaloa dated 11th August 1958: that the Respondent (thereinafter called the first accused) was indicted with his son E.G. Pillai (thereinafter called the second accused) on the following charges: (1) that on or about the 27th day of July 1957 at Kothiyapulai in the division of Batticaloa they did commit murder by causing the death of one Sembakutti Kandapodi and that they thereby committed an offence punishable under Section 296 of the Penal Code (2) that at the time and place aforesaid and in the course of the same transaction they did shoot one Palipody Nagamany with a gun with such intention or knowledge and under such circumstances that had they by such act caused the death of the said Palipody Nagamany they would have been guilty of murder and that they by such act caused hurt to the said Palipody Nagamany and that they thereby committed an offence

20

30

40

punishable under Section 300 of the Penal Code and (3) that at the time and place aforesaid and in the course of the same transaction they did shoot at one Eliyathamby Palipody with a gun with such intention or knowledge and under such circumstances that had they by such act caused the death of the said Eliyathamby Palipody they would have been guilty of murder and that they thereby committed an offence punishable under Section 300 of the Penal Code: that at the conclusion of the trial the Jury by their unanimous Verdict found both the accused guilty of all the charges preferred against them: that the two accused appealed to the Court of Criminal Appeal and that Court having heard argument indicated that the conviction of the first accused in respect of the charge of murder should be quashed as the evidence adduced at the trial was not sufficient in law to render him liable under the provision of Section 32 of the Penal Code and that a Judgment of acquittal should be entered in his favour and the Court dismissed the Appeal of the second accused: that since the Court were of the opinion that the learned Trial Judge had not passed a sentence on the first accused in respect of the 2nd and 3rd counts of the Indictment viz. the charges of attempted murder of which he had been unanimously found guilty by the Jury the Court requested further argument on the question as to whether the Court of Criminal Appeal had the power to impose sentence in respect of these charges: that after hearing further argument the Court of Criminal Appeal held that they lacked power to pass such sentence and ordered that the first accused be discharged from prison: And praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Court of Criminal Appeal of Ceylon dated the 26th January 1959 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble petition into consideration and having heard Counsel in support thereof no one appearing at the Bar in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute her Appeal against the Judgment of the Court of Criminal Appeal of Ceylon dated the 26th day of January 1959:

"And Their Lordships do further report to

In the Privy  
Council

No. 6

Order granting  
Special Leave  
to Appeal,

12th August  
1959 -

continued.

In the Privy  
Council

No. 6

Order granting  
Special Leave  
to Appeal,

12th August  
1959 -

continued.

Your Majesty that the proper officer of the said Court of Criminal Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

10

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW.