

A **FRANCIS PREM CHAND alias PREMU**

v.

REGINAM

[SUPREME COURT, 1965 (Mills-Owens C.J.), 12th, 26th, February]

B Appellate Jurisdiction

Criminal law—sentence—unnatural offence in private—young persons—modern approach—Penal Code (Cap. 8) s.165(a).

C The appellant, aged nineteen years, pleaded guilty to and was convicted of an unnatural offence upon a consenting youth of between sixteen and seventeen years of age. The offence took place in circumstances of absolute privacy and there was reason to believe that this was a first attempt. The appellant was sentenced in the Magistrate's Court to imprisonment for 18 months. On appeal against sentence —

D *Held* : Having regard to the change in outlook both of courts and public with respect to such offences in recent years there was little advantage in the imposition of a severe sentence in the present circumstances: sentence of three months imprisonment substituted.

Cases referred to: *R. v. Richardson* (1963) 9 F.L.R. 129: *R. v. Humphreys* (Criminal Appeal No. 3 of 1963 — unreported).

E Appeal against sentence.

D. R. Sharma for the appellant.

K. C. Gajadhar for the Crown.

MILLS-OWENS C.J. : [26th February, 1965]—

F This is an appeal against sentence in respect of an unnatural offence contrary to section 165 (a) of the Penal Code. The appellant pleaded guilty, having elected for summary trial, and was sentenced to imprisonment for 18 months, in addition being ordered to suffer corporal punishment to the extent of six strokes. The sentence of corporal punishment was not confirmed. He now appeals against the sentence of imprisonment. The appellant is aged 19 years, the other party being a youth of between 16 and 17 years of age. The latter was obviously a consenting party and the offence took place in circumstances of privacy. It has been urged on the appellant's behalf that in a number of cases in 1963 sentences of considerably less severity were imposed. Thus in the case of *Richardson* (Criminal Appeal No. 2 of 1963) a sentence of 15 months was reduced to 6 months; that was on a number of counts concurrently. In the case of *Humphreys* (No. 3 of 1963) the sentence was reduced to 3 months concurrently, and in the case of *Cloke*, there was a reduction from 12

months to 6 months concurrently on a number of charges. It has been pointed out that the 1963 cases involved mature adults who were obviously practising homosexuality, whereas to all appearances the present case is an isolated instance; indeed there is reason on the facts as alleged and admitted to think that this was probably a first attempt.

Clearly there has been a change in outlook, both of the Courts and public, with respect to such offences in recent years. Whilst formerly severe sentences were often imposed, today it is not uncommon for such an offender to be bound over on condition of taking medical treatment. Cases where young boys are the victims may, of course, require a certain severity.

In cases such as the present the offence is one which to a very considerable degree carries its own punishment of ignominy and disgrace. I see little advantage in the imposition of a severe sentence in circumstances such as these. Consistently with the pattern laid down in the 1963 cases an appropriate sentence in the present case would be one of three months' imprisonment. Accordingly the appeal is allowed by substituting a sentence of that amount.

Appeal allowed.