A

ATTORNEY-GENERAL

v.

SANT PRAKASH

B

[SUPREME COURT, 1969 (Thompson Ag. P.J.), 19th September]

Appellate Jurisdiction

Criminal law—sentence—act intended to do grievous harm—binding over—in circumstances calling for deterrent sentence wrong in principle—order for payment of compensation ultra vires where no fine imposed—Penal Code (Cap. 11) s.36—Criminal Procedure Code (Cap. 14) s.159.

C

The respondent was convicted on his plea of guilty, of doing an act intended to cause grievous harm; the act in question was a blow with a cane knife causing a deep wound to the leg of the complainant (who was unarmed) and necessitating his remaining in hospital for a month. The magistrate, without recording his reasons, made an order under section 36 of the Penal Code that the respondent should come up for sentence if called upon within twelve months and bound him over to keep the peace and be of good behaviour during that time; he also ordered the respondent to pay $20 compensation to the complainant.

D

Held: 1. Under the Criminal Procedure Code* compensation may only be ordered to be paid out of any fine imposed; the order for compensation was therefore *ultra vires* the jurisdiction of the court.

E

2. Cane knives being lethal weapons commonly carried in the community, everything possible must be done to discourage their use in arguments and quarrels. Normally, in circumstances such as the present, a deterrent sentence is imposed, and there being nothing to justify a departure from that rule, the order binding over the respondent was wrong in principle and manifestly too lenient.

F

3. A sentence of twelve months' imprisonment would be substituted.

Appeal by the Attorney-General against order made by way of sentence in the Magistrate's Court.

J. R. Reddy for the appellant.

G

K. Govind for the respondent.

The facts sufficiently appear from the judgment.

THOMPSON J.: [19th September 1969]—

This is an appeal by the Attorney-General against orders made in the Magistrate's Court of the First Class at Ba upon the respondent's conviction on his plea of guilty to doing an act intended to cause grievous harm.

H

* See Criminal Procedure Code (Cap. 14) s.159. — Ed.

The facts admitted by the respondent were that at about 7 p.m. on 7th March, 1969, he met the complainant in a shop, that, as their houses were in the same direction, they began to walk home together; that on way they started to argue over land matters; and that in the course of the argument the respondent, who was carrying a cane-knife, struck the complainant with it causing a deep wound on the right leg which necessitated the complainant remaining in hospital for a month. The complainant apparently was unarmed and there was no suggestion that he did more than engage in a verbal argument with the respondent. In mitigation the respondent's counsel urged that he had a sense of grievance against the complainant who had ousted him from certain land. It would appear that the offence was not premeditated.

The learned trial magistrate made an order, under the provisions of section 36 of the Penal Code, that the respondent should come up for sentence if called upon within twelve months and bound him over in his own recognisance in the sum of $200 to keep the peace and be of good behaviour during that time. He also ordered the respondent to pay $20 compensation to the complainant or to serve 14 days' imprisonment in default.

It is against these orders that the Attorney-General is appealing, on the ground that they are manifestly lenient and wrong in principle having regard to the nature and circumstances of the offence.

Both learned counsel agree that the order for payment of compensation is *ultra vires* the jurisdiction of the court. Compensation may be ordered only as provided for in the Criminal Procedure Code. Compensation to a person who has suffered loss or injury can be ordered only out of any fine imposed. A bare order for compensation cannot be made. In this case the learned trial magistrate could have fined the respondent $20 and ordered that it all be paid over to the complainant as compensation; but in that event he could not properly have made at the same time an order under section 36. The order for compensation must be set aside.

With regard to the order binding the Accused over for 12 months to come up for judgment, learned Crown Counsel has drawn attention to the fact that it is out of line with sentences imposed in other cases relating to offences of the same nature. He has urged upon this court the need to consider the prevalence of assaults with cane-knives in the Western Division, a matter to which apparently the learned trial magistrate's attention was not drawn. He has also submitted that the offence is one of such seriousness that, except where there are special mitigating circumstances a sentence of imprisonment should be imposed.

Mr. Govind has submitted that too great weight should not be given to the inherent nature of the offence and that the learned trial magistrate's order was proper in view of the mitigating circumstances, most notably the lack of premeditation. I must, at this stage, point out that the learned trial magistrate has given no reasons for deciding upon the orders he made. Except where a court is dealing with a petty offence, e.g. a minor motoring offence, the reasons for choosing a particular way of dealing with the offender should normally be given. In the present case this court can only surmise what the learned trial magistrate's reasons were.

Appellate courts will not interfere with sentences and orders of lower courts unless they are manifestly too harsh or too lenient or are wrong in principle. The respondent used a lethal weapon against an unarmed man. He caused a wound which kept the complainant in hospital for a month. In a community where cane-knives have to be carried a good deal for purposes of work, the risk of their being brought into use in the course of arguments and quarrels is great. As they are lethal weapons, clearly everything possible must be done to discourage their use in this manner. When an offence of the nature of that in this present case is committed, there can be no doubt that normally a deterrent sentence must be imposed. There are no exceptional circumstances in this case justifying a departure from that. The order binding the respondent over to come up for sentence is, therefore, wrong in principle and manifestly too lenient.

Accordingly I set aside both the orders made by the learned trial magistrate and substitute therefor a sentence of 12 months' imprisonment.

Appeal allowed.