CHANDRASENA AND OTHERS
v.
MUNAWEERA

COURT OF APPEAL
JAYASURIYA J.,
C.A. NO. 30-32/83
M.C. TISSAMAHARAMA 10844
DECEMBER 18, 1997.

Code of Criminal Procedure Act – S.165, 203, 306(1) – Reasons belatedly pronounced – Failure to analyse and evaluate the evidence – Burden of proving an ingredient of the charge.

Held:

1. The learned Magistrate has found the accused guilty on 27.10.82, the reasons were delivered belatedly on 6.12.82.

Per Jayasuriya J.,

"In the circumstances the reasons belatedly pronounced and signed by the learned Magistrate long after the imposition of the sentence are illegal and vitiated in law. They are pronounced in contravention of the law as they have not been pronounced within a resonable time or forthwith".

2. The mere outline of the prosecution and defence without reasons being given for the decision is an insufficient discharge of duty cast upon a judge by the provisions of S.306(1).

   The weight of authority is to the effect that the failure to observe the imperative provisions of S.306 is a fatal irregularity.

3. The onus was on the prosecution to discharge its burden to estabilsh that the accused unlawfully and without right entered upon the land in occupation of the complainant.

Cases referred to:

1. *Ibrahim v. Inspector of Police*, 59 NLR 235.
2. *Thusaiya v. Pathihamy* – 15 CLW 119.
3. *Verupadian v. Sollamuttu* – 1901 1 Brown's Repost 384.
4. *Amsa v. Weerawagu* – 1933 Vol. 1 Times Law Reports 50.
5. *Wellakan Kani v. Amadoris* – 1915 3 Balasingham Reports 64.

6. *Henricus v. Wijesooriya.*
7. *Thiagarajah v. Annaikoddai Police*, 50 NLR 109.
8. *Muttusamy v. David* (S.I. Police) 50 NLR 432.
9. *Tissera v. Daniels* – 49 NLR 162.
10. *Rex v. Davoodulebbe* – 50 NLR 274 (D-B Contra).
11. *K v. Deonis* – 52 NLR 547.
12. *Rex v. Marshall* – 51 NLR 157.
13. *Damayanu v. Regina* – 73 NLR 61.
14. *Yohanis v. State* – 67 NLR 8.
15. *Gunasiri v. State* – 1990 2 SLR 265.
16. *Muthukuttige Siriwardane v. A.G* – CA 70/91.
17. *Rex v. H.S.R. Fernando* – 48 NLR 257.

APPEAL from the Judgment of the Magistrates Court of Tissamaharama.

D. S. Wijesinghe PC., with *Ms. Dhammika Dharmadasa* for Accused Appellants.

Ranjith Abeysuriya, PC., with *Ms. Priyadharshani Dias* for Complainant Respondent.

Cur. adv. sult.

December 19, 1997.

JAYASURIYA, J.

I have heard both learned President's counsel appearing for the accused-appellants and learned President's counsel appearing for the complainant-respondent.

The learned Magistrate in a very sparse and scanty judgment has failed to analyse and evaluate the evidence that was led before him, particularly in regard to the evidence given by the complainant and the first accused in relation to the issues that arose in the case whether the accused had entered and cut trees on the land belonging exclusively to Atenekkege Hamine or exclusively to U.A.W. Munaweera, the complainant. It is in evidence that the fence between these two lands was not interfered with at all. In those attendant circumstances it was the paramount duty of the learned Judge to have analysed the evidence and closely evalauated the evidence on these points. There is a manifest failure to indulge in such a process or to give reasons having upheld one of the competing versions and in regard to his finding as to the identity of the land in question.

A perusal of the contents of the Journal entries disclosed that on 27.10.82, the learned Magistrate of Tissamaharama had arrived at a finding that the charges preferred against the accused had been proved and he proceeded to convict the three accused in respect of counts 1, 2, and 3 of the charge sheet and he had postponed the pronouncement of the reasons and sentence for 15.11.82. On 15.11.82, he had further postponed the pronouncement of sentence and reasons for 29.11.82. On 29.11.82, he had proceeded to impose sentences on the three accused and he had ordered the first accused to pay a sum of Rs. 500 as state costs and imposed a fine of Rs. 250 payable by the second as well as the third accused. He has given them time to pay the state costs and fines till 6.12.82. The reasons for the conviction appear at page 67 of the type written brief and reasons have been belatedly delivered and signed by the learned Magistrate on 6.12.82. Since the conviction took place on 27.10.82 the reasons have been delivered belatedly at a point of time in contravention of the law. Vide provisions of section 165 of the Code of Criminal Procedure Act. In the circumstances the reasons belatedly pronounced and signed by the learned magistrate long after the imposition of the sentences are illegal and are vitiated in law. They are pronounced in contravention of the law as they have not been pronounced within a reasonable time or "forthwith". Vide section 165 in regard to the Magistrate's Court Pocedure and section 203 of the said Criminal Procedure Act in regard to the High Court Procedure.

In *Ibrahim v. Inspector of Police*[1] the Supreme Court emphasised that the mere outline of the prosecution and defence without reasons being given for the decision but embellished by such phrases as "I accept the evidence of the prosecution and I disbelieve the defence" is by itself an insufficient discharge of duty cast upon the Judge by the provisions of section 306(1) of the Criminal Procedure Code. Vide also the decision in *Thusaiya v. Pathaimany*[2] by Nihill J - According to the presently applicable section 283(1) of the Code of Criminal Procedure Act No. 15 of 1979, the Judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision. In *Verupadian v. Sollamuttu*[3] the Supreme Court stressed that the object of the statutory provision is to enable the Supreme Court to have before it the specific opinion of the Judge in the lower Court on the question of fact, so that it may enable the Court to ascertain whether the finding is correct or not. The weight of authority is to the effect that the failure to observe the imperative provisions

of this section (see 306) is a fatal irregularity and that *even in a simple case* that the provisions of this statute must be *complied* with. *Vide Amsa* v. Weeravagu[4] *Wellekankani v. Amadoris*[5] *Henricus v. Wijesooriya*[6] *Thiagarajah v. Annaikoddai Police*[7] per Nagalingam J; and *Muthusamy v. David (S.I. Police)*[8] at 432 per Basnayaka, J; *Tissera v. Daniels*[9] *Rex v. Davoodulebbe*[10] (D.B-contra).

Further, the accused have alleged and asserted that the consent and permission of the complainant was obtained for the entry upon the land. It is open to an accused person to make any assertion or allegation in Court with a view to throw doubt on any of the ingredients of the offence which the prosecution is under a duty to prove beyond reasonable doubt. In such a situation the accused does not in law incur a burden or a onus of proof. *Vide King v. Deonis*[11] per Justice E. H. T. Gunasekara. *Rex v. Marshall*[12] *Damayanu v. Regina*[13] *Yahonis v. State*[14] *Gunasiri v. State*[15] - *Muttukutige Siriwardena v. AG*[16] *Rex v. H. S. R. Fernando*[17]. The onus was on the prosecution to discharge its burden to establish that the accused unlawfully and without right entered upon the land in occupation of the complainant. In these circumstances it was a misdirection on the part of the learned Judge to have held that the burden of proving an ingredient of the charge is on the accused and that burden is required by law to be discharged beyond reasonable doubt. He has clearly misdirected himself both in regard to the burden of proof and in regard to the requisite standard of proof in stating thus: එවැනි සමිති රැස්වීමකට සහභාගී වී තමාගේ ඉඩම උඩින් පාරක් කැපීමට පැමිණිලිකරු එකඟ වූ බව විත්තිය විසින් සැකෙන් තොරව ඔප්පු කර නොමැත.

For the aforesaid reasons, I proceed to set aside the proceedings, findings, convictions and sentences imposed by the learned Magistrate and in the interests of justice I direct that a – de novo – fresh trial be held before the present Magistrate of Tissamaharama. The appeals are allowed but a retrial is ordered.

Appeal allowed.

Retrial ordered.