Sirisena and another
v.
Republic of Sri Lanka

COURT OF APPEAL.
RATWATTE, J. AND ABDUL CADER, J.
(C. A.) S.C. 4—5/78—D.C. (CRIMINAL) BALAPITIYA 494
JULY 23, 1979

Administration of Justice Law, sections 184 (4), 186 (2), 213 (4)—Verdict returned more than 24 hours after evidence was concluded—Definition of 'evidence'—Evidence Ordinance, sections 3 and 57—Does 'evidence' include addresses by counsel—Criminal Procedure Code, sections 190 and 214 (1).

Held

(1) The Administration of Justice Law makes a distinction between evidence and addresses as two distinct parts of the procedure in a criminal trial. The taking of evidence would mean the recording of the evidence of witnesses and not the addresses and accordingly the 24 hour limit imposed by section 186(2) runs from the conclusion of the evidence.

(2) It is absolutely fundamental that a Judge should record a verdict when the demeanour of the witnesses and the evidence itself is fresh in his mind.

Cases referred to

(1) *Dias & Another v. Suwaris & Another, (1978) 79 (2) N.L.R. 258.*

No appearances for the accused-appellants.
N. M. Zuhair, State Counsel, for the Attorney-General.

APPEAL from the District Court, Balapitiya.

Cur. adv. vult

August 10, 1979.
ABDUL CADER, J.

The 3 accused were charged on 3 counts under sections 447, 317 and 315. The learned District Judge found the 1st and 2nd accused guilty on counts 1, 2 and 3. The accused were absent and unrepresented at the hearing before us, but we found clear non-compliance with section 186(2), the evidence having been concluded on 6.8.76 and the verdict having been returned on 20.8.76, well beyond the 24-hour limit set down by this section, the delay being due to a postponement for addresses on the application of Counsel for the accused.

Counsel for the State contended that addresses would constitute a part of the evidence and since the verdict was returned on the very same day the addresses were concluded, there has been no violation of the section. In support of his contention, he referred us to the definition of " Evidence " in section 3 and also to 57 of the Evidence Ordinance. He submitted that all documents produced for the inspection of Court is evidence in terms of this definition and when a Counsel submits an N. L. R. or a Gazette for the consideration of Court, that would fall within the word " Law " in section 57(1), and since N.L.Rs were produced in the course of the addresses, they would constitute documents within the meaning of the definition of " evidence." He, therefore, urged that the words " conclusion of the taking of evidence " would include addresses by Counsel, too.

The short answer to this question is that the Administration of Justice Law itself makes a distinction between evidence and addresses as two distinct parts of the procedure in a criminal trial. Section 184(4) reads as follows:—

> " The accused may enter upon his defence and may examine his witnesses, if any, and then sum up his case. "

Thus, a distinction is made between evidence called by the accused and the summing up by the accused. A similar provision is found in section 213(4) under " Trial before the High Court. " The very words in section 186(2) " The taking of evidence " would mean the recording of the evidence of witnesses and not the addresses.

In considering the submissions made by State Counsel with reference to the Evidence Ordinance, it appears to me that he has confused procedure with substantive law. Section 3 gives the law as regards what constitutes evidence. Section 57 deals with proof of evidence. Section 57 occurs in chapter 3 which has been heading: " Facts which need not be proved. " In any event, the mere fact that an N.L.R. is submitted in the course of addresses

as happened in this case would not make it a document in the case so as to fall within the definition of evidence. It is not marked and filed as would be a document tendered in evidence.

This matter has received attention in a well considered judgment by Wijesundera, J., Vythialingam, J. and Walpita, J. in S.C. 894/77—D.C. Panadura No. 519, (1). In that case all the earlier decisions were reviewed. The former states :—

> "Sec. 186(2) requires the Judge to record the verdict not later than twenty-four hours after "the conclusion of the *taking of evidence.*" Sub sec. (1) speaks of "after *taking the evidence* of the prosecution....." This means obviously after the evidence given by the witnesses has been concluded and recorded. The meaning of this phrase in sub sec. (2) must be the same as in sub sec. (1). It may appear that in view of sec. 184(4) this interpretation cannot be given to sec. 186(2). Sec. 184(4) gives the right to the accused to sum up the evidence. This right can be exercised only after the evidence called by him is over. Therefore, the question arises whether the 24 hours run from the time the addresses are over. This may be desirable. But the language of sub sec. (2) is very clear that the period runs from the conclusion of the evidence. In the ordinary case this time may be sufficient. There may be a case where the evidence is long and an accused needs more than a day to conclude his summing up. The answer to this may be that the Administration of Justice Law contemplated the Judge setting a time limit to the summing up to enable him to deliver the verdict in 24 hours. The Administration of Justice Law, it must not be forgotten provided, till recently, a time limit of half an hour which can be extended by another hour for appeals.
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> "In a trial by a Judge and a Jury, the addresses begin soon after the evidence. Then there is the Judge's summing up followed by the verdict. In the average case the verdict is returned within twenty-four hours of the conclusion of the evidence. Therefore, it is not unreasonable to assume that the legislature intended a similar procedure in trials before District Judge with the difference that the verdict has to be returned within a fixed time. This contemplates addresses being delivered soon after the evidence followed by the verdict. Such a procedure avoids the ordeal an accused has to undergo in waiting for a verdict, caused by the postponement of the addresses. This is a paramount

consideration. In the present case, although the evidence is direct, the verdict was returned 10 weeks after the conclusion of the evidence.

"Section 186 may be compared with the corresponding section in the old Criminal Procedure Code. It is sec. 214 (1):—

'When the cases for the prosecution and defence are concluded and the assessors' opinion, if the trial has been with the aid of assessors, has been recorded the District Judge shall forthwith or within not more than twenty-four hours record a verdict of acquittal or conviction.'

The words used in the section are "cases for the prosecution and defence." The twenty-four hours is to start from the time "the cases for prosecution and defence are concluded" which, undoubtedly means from the conclusion of the addresses. No time limit was fixed for addresses. What has really happened is that the old practice is being followed even after 1.1.1974 by some Judges. There is no reason for me to conclude that in all trials the old practice is being followed. That was not the position of the State.

"The State referred the court to the case of *Banda v. David,* 50 N.L.R. 375. That was a decision on the interpretation of sec. 190 of the old Code and cannot be relied upon at all as authority for the proposition that the course adopted by the trial Judge is lawful. The Code did not provide for addresses after the evidence in the Magistrate's Court. Sec. 190 of the Code relates to procedure in those courts and the only difference between sec. 190 of the Code and sec. 186(1) of the law is the omission of the word "forthwith" from the law. In sec. 190 of the Code a Magistrate was required to record the verdict forthwith after he finds tn accused guilty. Sec. 186(2) of the law required the verdict to be recorded within 24 hours of the taking of the evidence. The two are different. The question referred in that case was whether the recording of the verdict by the Magistrate on the following day when he had "concluded *the taking of evidence* on both sides" the previous day was lawful. It is interesting to note that the court in that judgment appears to have regarded the words "concluded the taking of evidence" to mean when the

physical recording of evidence was over. The State submitted that the law contemplated witnesses being called even during the addresses and therefore the twenty-four hours must start from the termination of the addresses. If evidence be called during the addresses I would think twenty-four hours will run from the time that evidence is over. There was no other submission made on behalf of the State.

"In the Sinhala version of the Administration of Justice Law sec. 186(2) reads:—

(2) සාක්ෂි ගැනීම අවසන් කිරීමෙන් පසු පැය විසිහතරක් ඉකුත් වීමට පෙර තීන්දුව වාර්තාගත කරනු ලැබිය යුතු අතර, තීන්දුව වාර්තා ගත කිරීමෙන් පසුව දින දහහතරක් ඉකුත් වීමට පෙර තීන්දුව සඳහා වූ හේතු වාර්තාගත කළ යුතුය.

The words used are "සාක්ෂි ගැනීම අවසන් කිරීමෙන් පසු". These words used cannot include the addresses as I understand the language. The meaning of the words in both languages is clear.

Where the meaning of the words of a statute is plain, nothing can be done but to obey it. Therefore sec. 186(2) provides that the verdict should be recorded within 24 hours of the conclusion of the evidence. To give any other meaning is to ignore the words and legislate, the office of the Judge is "Jus dicere" and not "Jus dare." It is indeed a matter for the legislature whether this section should be amended and in what manner."

In addition to the reason given by Wijesundera, J. viz:— the ordeal an accused has to undergo in waiting for a verdict, I would like to add the further reason that it is absolutely fundamental that a Judge should record a verdict when the demeanour of the witnesses and the evidence itself is fresh in his mind.

In the result, we hold that there has been clear non-compliance with section 186(2). Therefore, we set aside the conviction and sentence and direct that a fresh trial be had before a different Judge.

RATWATTE, J.—I agree.

Re-trial ordered.

G G. Ponnambalam (Jnr.),
Attorney-at-Law.