1948 *Present :* **Nagalingam J.**

THIAGARAJAH, Appellant, *and* ANNAIKODDAI POLICE, Respondent

S. C. 1,354—M. C. Jaffna, 7,537

Criminal Procedure Code—Conviction by Magistrate—Failure to pronounce judgment in open Court—Irregularity—Not cured by section 425—Sections 304 and 306.

A Magistrate, after he has written out his judgment, must pronounce it in open Court in the presence of the accused in terms of section 304 of the Criminal Procedure Code. Failure to do this is not such an irregularity as is covered by section 425 of that Code.

APPEAL from a judgment of the Magistrate, Jaffna.

C. Renganathan, with *V. K. Kandasamy*, for the accused, appellant.

R. A. Kannangara, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

[1] *(1915) 18 N. L. R. 376.*

[2] *(1922) 24 N. L. R. 17.*

September 23, 1948. NAGALINGAM J.—

The appellant in this case was convicted under section 272 of the Penal Code with having driven car No. X 5050 in a rash and negligent manner so as to endanger human life, and has been sentenced to undergo a term of six weeks' rigorous imprisonment.

The case for the prosecution was dependent upon the evidence of two Police officers, while the defence of the accused, which was that he had not driven the vehicle in question on the date of the alleged offence, was supported by his employer.

In view of the order I propose to make in this case I do not think it necessary to express an opinion on the merits.

The main point argued in appeal was that the learned Magistrate had not delivered his judgment in open Court and that therefore the conviction was bad. In support of the averment that the judgment was not delivered in open Court an affidavit was filed by the appellant. In view of the state of the record the affidavit was forwarded to the Magistrate for his observations. The Magistrate has informed this Court that his usual practice when he convicts a person is to tell him in short the reasons for the conviction and " not read out word to word the reasons " that he has written out ; but in regard to *this case* he states that it may be that he did adjourn after the conclusion of the trial and that the reasons were written out in chambers. He, however, adds that even in this instance he would not have departed from his usual practice of telling the accused shortly his reasons for convicting him, though the reasons may not have been reduced to writing at that stage. The Magistrate does not, however, state that after he had written out his reasons for the conviction in chambers he pronounced those reasons at any time in open Court or in the presence of the accused.

The question for consideration, therefore, on appeal is whether the failure on the part of the Magistrate to read out or, to use the language of the Code, pronounce the reasons for the conviction, is fatal to the conviction.

Section 190 of the Criminal Procedure Code prescribes that where the Magistrate finds the accused guilty he should forthwith record a verdict of guilty and pass sentence upon him according to law and shall record such sentence. The learned Magistrate in this case complied with those provisions by recording the verdict and sentencing the accused immediately at the conclusion of the trial. The verdict is, however, treated as something apart from the judgment. The necessity for a judgment is to be inferred from the provisions of section 304 of the Code. I say " to be inferred ", because there is no express provision which requires that the Magistrate—I shall confine my remarks to summary trials before a Magistrate—should write out a judgment or the stage at which he is required so to do. Section 304 of the Code assumes that a judgment would be written out by a Magistrate and proceeds to set out the stage at which it should be pronounced. That the judgment is required to be pronounced after the verdict is clear from the section—either immediately after the verdict was recorded or at some subsequent time.

Section 304, however, does not make it equally clear whether the judgment is to precede the sentence or follow it. De Silva J. in *Henricus v. Wijesuriya*[1] took the view that "the judgment must be contemporaneous with the sentence and that the sentence forms in fact a part of the judgment". For the purpose of this case it is unnecessary to go into this question.

The two points that have been pressed on this appeal are, firstly, that the judgment should have been pronounced in open Court and, secondly, that the accused person should have been required to attend Court to hear judgment delivered. The term "judgment" is not formally defined in the Code but its essential characteristics or qualities are set out in section 306. Confining the requirements of a judgment to a case of conviction, it would appear that (1) it should specify the offence, if any, of which, and the section under which, the accused is convicted, (2) (*a*) the point or points for determination, (*b*) the decision thereon, (*c*) the reasons for the decision, and (3) the punishment to which the accused is sentenced. Section 306 also requires that the judgment should be dated and signed by the Magistrate in open Court at the time it is pronounced.

The learned Magistrate after he had written out the judgment neither pronounced it nor signed and dated it in open Court, nor was the accused person present to hear judgment delivered—this is not a case where the presence of the accused could have been dispensed with. Learned Crown Counsel sought to have the conviction affirmed by invoking to his aid section 425 of the Criminal Procedure Code which provides, *inter alia*, that a judgment should not be reversed or altered on appeal on account of any error, omission or irregularity in the judgment unless such error, omission or irregularity or want has occasioned a failure of justice. His contention was that, at best, the failure to pronounce the judgment after it had been written out and to sign and date it in open Court in the presence of the accused amounted to an irregularity in the judgment which would be cured by the provisions of the section and would therefore not furnish an adequate ground to the appellant to have the conviction set aside.

In support of his contention the case of *Tissera v. Daniels*[2] was quoted by him, and he particularly relied upon the quotation therein made of a judgment of Soertsz J. in S. C. No. 646—M. C., Trincomalee, No. 11,304, where that learned Judge held that the total absence of a judgment amounted to an irregularity of procedure which did not vitiate the conviction. But Dias J., to whom the earlier case of *Henricus v. Wijesekera* (*supra*) had not been cited, came independently to the conclusion that the facts of the case he was dealing with were far removed from those which were before Soertsz J. and quashed the conviction. De Silva J., however, held in the case of *Henricus v. Wijesekera* (*supra*) that the non-compliance with the provisions of section 304 by a Magistrate was sufficient ground to set aside the conviction. It seems to me that the question whether in any particular case non-compliance with the provisions of sections 304 and 306 amounts to an irregularity or to something more in the nature of an illegality which must be held to vitiate the conviction must depend on the facts of each case. Had the learned

[1] (*1946*) *47 N. L. R. 378.* [2] (*1948*) *49 N. L. R. 162.*

Magistrate written out his judgment and then in pronouncing the judgment referred to the main points of his findings, such a case, I do not doubt, would only amount to an irregularity and an appellate Court would not interfere in those circumstances. But where a Magistrate without writing his judgment indicates orally to the accused the gist of what he proposes to embody in his judgment, there is no guarantee that the language employed by him in his judgment would not have suffered some modification compared with that employed in orally indicating to the accused his reasons.

The essence of a judgment, to my mind, consists in the reasons which a Magistrate is called upon to give for taking the view he takes either for convicting or acquitting an accused person. That being an integral part of the judgment, I do not think a failure to give reasons in writing before pronouncing it can be said in all cases to amount to an irregularity only which could be covered by section 425 of the Code. In this case there were two versions placed before the Magistrate, the defence of the accused being in the nature of an *alibi*. I would, concurring in the view expressed by my brother Dias J. in the case of *Tissera v. Daniel* (*supra*), hold that the failure passed beyond the bounds of what may be described as an irregularity within the meaning of section 425 of the Criminal Procedure Code.

In this view of the matter, the conviction cannot be allowed to stand. I quash the conviction and send the case back for a new trial before another Magistrate.

Re-trial ordered.