1933 *Present :* **Akbar J.**

VANROOYEN *v.* PERERA.

369—P. C. Colombo, 2,443.

Bias—Case depending on evidence of headman—Witness known to Magistrate as satisfactory officer—Personal knowledge.

Where the proof of a material fact, upon which the case for the prosecution rested, depended upon the evidence of a Police Vidane, which the Magistrate accepted on account of his personal knowledge that the witness was a satisfactory officer,—

Held, that the conviction was bad.

A witness should not be debarred from giving evidence in a Police Court because he was present in Court during the hearing.

APPEAL from a conviction of the Police Magistrate of Colombo.

B. P. Peries, for appellant.

May 22, 1933. AKBAR J.—

Mr. Peries who appeared for the accused has taken objection to the conviction on two or three grounds—two of them on the law and one on the facts. I need only mention the objection taken by Mr. Peries on the law in view of what I propose to do with this case. The accused was convicted of having been in possession of three bottles of fermented toddy containing 30 drams without a permit. The whole case depended on whether the three bottles were possessed exclusively by the accused or whether he only had two bottles and the third bottle was in the possession of a man called Reuban. This question of fact depended, so far as the prosecution was concerned, on the evidence of the Police Vidane that a crowd afterwards interfered and one of the bottles was taken away.

The Magistrate says in his judgment: "I entirely believe the prosecution story which has been put forward clearly and precisely. The accused has endeavoured to show that the Police Vidane is angry with him for some paltry gambling affair, and has endeavoured to throw 'mud' on the Headman, who to my knowledge is quite a satisfactory officer. I despise such habits. This is a bad case." So that it is quite clear that the Magistrate has imported into the case his own knowledge of the character and the degree of credibility which should be attached in the case of the principal witness for the prosecution, viz., the Police Headman. Mr. Peries has pointed out to me the report of a case, which unfortunately is not obtainable here, referred to in *The Law Journal, Vol. LXXV. of April 22, 1913, at p. 268.* The question was decided in *Curch v. Church*[1]. The facts as stated in the *Law Journal* are interesting. In this case a wife took out a summons against her husband owing to his alleged failure to maintain her. The wife was represented professionally, but the husband conducted his case in person. On the husband's cross-examination of his wife, the Chairman of the Bench stated that he knew all about the husband, and did not believe a word of what he said. The Chairman in granting the maximum order of £2 per week, again made comments in regard to the husband admittedly based not on the evidence, but on personal information. Upon an appeal being preferred Lord Merrivale and Langton J. delivered judgment quashing the conviction on the ground, *inter alia,* that there had not been a fair hearing.

The Magistrate's knowledge of the Police Headman has created "a real likelihood of bias" as stated in the case of *Regina v. Rand*[2].

It is obvious therefore that the conviction must be set aside.

A further point was mentioned by Mr. Peries that when the accused wished to call a witness the Magistrate did not allow him to give evidence because he was close to the Court during the hearing of the evidence. As to this, so far as I can find, there is nothing in the Code which prevents a person giving evidence by reason of the fact that he was close to the Court during the bearing of the evidence. This would no doubt go against the weight of the evidence of the person concerned, but the Magistrate was I think not right in excluding this evidence.

The only difficulty I have in this case is whether I should order a re-trial or wheher I should acquit the accused. He was sentenced to pay a fine of Rs. 150 or in default to undergo six weeks' rigorous imprisonment. Pending appeal bail was fixed at Rs. 600. Apparently there was a failure to furnish this bail and he was committed to jail because the petition of appeal was signed by him in prison in the presence of the Welikada prison authorities and it is dated April 27, 1933. So that he has already undergone a part of the sentence.

I think the justice of the case requires that there should be no further trial.

I would acquit the accused and quash the conviction.

Conviction quashed.

[1] *(1933) 49 T. L. R. 206.*

[2] *(1866) 35 L. J. M. C. at 158.*