

1946

Present : Howard C.J.

RODRIGO, Appellant, and BASTIANZ (INSPECTOR OF POLICE),
Respondent.

1,337—*M.M.C. Colombo, 58,110.*

Evidence—Cross-examination of accused as to bad character—Effect of Magistrate's omission to reject it when convicting the accused.

Where the accused was cross-examined to show that he was of bad character and it was not possible to say that the Magistrate, when he convicted the accused, was not influenced by this evidence—

Held, that the evidence of the bad character of the accused vitiated his conviction.

A PPEAL against a conviction from the Municipal Magistrate's Court, Colombo.

N. Nadarajah, K.C. (with him *E. B. Sathurukulasinghe*), for the accused, appellant.

R. A. Kannangara, C.C., for the Attorney-General.

February 7, 1946. HOWARD C.J.—

In this case the appellant was charged with and convicted of keeping a brothel and sentenced to six months' rigorous imprisonment. He appeals against this conviction on the ground that he was cross-examined to show that he was of bad character. It appears from his cross-examination that he was asked whether Mr. Stork had charged him once for running a brothel. In answer to that question he said that the case failed. He was also asked if Mr. Stork had charged him for retaining stolen property. His answer to that was that he was not convicted for theft. He was also asked if he had been sentenced to jail. His answer to that question was "Eight years ago". So it is obvious that there was a considerable volume of evidence before the Magistrate that the appellant was of bad character. It is perfectly true that the Court takes a different view of

evidence of bad character which has been introduced into a case when the accused is charged before a Judge and Jury and the same evidence when it is produced before a District Judge or Magistrate. Crown Counsel has referred me to the case of *The King v. Perera*¹ where in spite of the fact that evidence of bad character was improperly produced before the District Judge the conviction was upheld. But in that case it would appear that the District Judge convicted on ample evidence and it had not been suggested nor was it possible that in convicting the appellant he was in any way influenced by the fact that the latter had been previously in jail. I do not think the same thing could be said in this case. I do not think it can be said that it is not possible that the Magistrate was influenced by the fact that the appellant had been previously in jail. The reasons given by the Magistrate make no reference at all to this evidence of bad character which was produced before him and therefore it is not possible to say that he was uninfluenced by this evidence. In these circumstances the conviction is set aside and the appellant will be tried again by another Magistrate.

Conviction quashed.
