

1964

*Present : Sirimane, J.*

D. R. PERERA and another, Appellants, and SUB-INSPECTOR OF POLICE, MOUNT LAVINIA, Respondent

*S. C. 186-187/1964—M. C. Colombo South, 14465/A*

*Evidence—Criminal case—Proctor's statements from the Bar—Inadmissibility.*

A Magistrate must not consider as evidence statements made from the Bar by a Proctor regarding instructions received by him from the accused.

**A**PPEAL from a judgment of the Magistrate's Court, Colombo South.

*M. M. Kumarakulasingham*, for the Accused-Appellants.

*K. Abeynayake*, Crown Counsel, for the Attorney-General.

May 27, 1964. SIRIMANE, J.—

The two accused were charged with insulting and intimidating one Carolis Perera on 18.6.61. They denied the charge and the 1st accused stated in evidence that there was merely an exchange of words over a previous incident. At this point in the proceedings the learned Magistrate had taken what Counsel for the appellants described as an extraordinary step. He asked Counsel for the defence what his instructions were in regard to the incident referred to, whether it was before or after the incident which is the subject-matter of this charge. The Proctor appearing for the accused stated to Court that according to his instructions the incident had taken place after June, 1961. The learned Magistrate has used this information in disbelieving the 1st accused-appellant, for he states in his judgment, "Only the 1st accused has given evidence in this case and in cross-examination he said that the 2nd accused's brother had assaulted a brother of the complainant before June, 1961. This obviously is false. Mr. Quentin Perera says that his instructions were that that incident took place after this incident."

The learned Magistrate had allowed his mind to be influenced by matters which were inadmissible in evidence.

I set aside the conviction of the appellants and acquit them.

*Appeal allowed.*