

1949 Present : Wijeyewardene C.J. and Windham J.

THE KING *v.* DAVOODULEBBE *et al.*

*S. C. 224-229—D. C. (Criminal) Batticaloa 59*

*Criminal Procedure Code—Conviction of accused—Reasons not pronounced in open Court—Irregularity—Curable—Sections 304 and 425.*

The failure to comply with the requirements of section 304 of the Criminal Procedure Code is an irregularity which is curable under section 425.

**A**PPEAL from a judgment of the District Judge, Batticaloa.

*G. E. Chitty*, with *Vernon Wijetunge*, for 1st, 7th and 21st accused appellants.

*S. Nadesan*, for 2nd, 8th and 25th accused appellants.

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

*Cur. adv. vult.*

March 16, 1949. WIJEYWARDENE C.J.—

The accused are Muslim worshippers at the Periapallai Mosque and are said to have been opposed to some other Muslim worshippers who had formed themselves into an association called the Baransanje Association. The accused entered the Mosque on January 2, 1948, when the members of the Baransanje Association were at their prayers and created a disturbance. They were charged in this case with having committed various offences punishable under sections 140, 144, 291, 316/146 and 314/146. The case came up for trial before Mr. F. E. Alles, District Judge of Badulla, who was specially gazetted as Additional District Judge of Batticaloa, for August 23 to 26, 1948, and September 1 to 3, 1948, to try the case. The case proceeded to trial against all the accused except the 24th, who was too ill to attend court. At the conclusion of the hearing on September 2, 1948, Mr. Alles acquitted the 20th accused and convicted all the other accused tried by him on all the counts in the indictment. On the same day he sentenced the 1st, 2nd and 7th accused to six months' rigorous imprisonment, the 8th, 21st and 25th to 3 months' rigorous imprisonment each and ordered each of the remaining accused whom he had convicted to enter into a bond under section 325 (a) of the Criminal Procedure Code for a period of two years, and to pay Rs. 50 as Crown costs. Mr. Alles gave his "reasons" in a writing dated September 12, 1948. Those "reasons" were not pronounced in open court as required by section 304 of the Criminal Procedure Code. The present appeals are preferred by 1st, 2nd, 7th, 8th, 21st and 25th accused, who filed their petitions of appeal on September 2, 1948, immediately after the sentences were passed.

So far as I have been able to gather from the proceedings the only reasons for sentencing the 8th, 21st and 25th accused to terms of imprisonment appear to be that each of them "admitted" a previous conviction. The District Judge has not specified the particular offences admitted by them. The Crown Counsel was unable to state definitely which conviction sheet applied to each of these accused. The trial Judge should have taken care to see that there was definite evidence as to the particular offence committed by each of the accused previously so as to enable this Court to decide the question as to the appropriateness of the sentences passed on them. As regards the 21st accused the Crown Counsel stated that the previous conviction of the 21st accused appeared to be for retaining a stolen head of cattle in 1946. I am unable in these circumstances to see any good reason for passing a sentence of imprisonment on the 8th, 21st and 25th accused, when the accused who have not appealed have been dealt with under section 325 (2) of the Criminal Procedure Code.

As regards the other appellants it was urged that

- (a) the failure of the Judge to observe the provisions of section 304 of the Criminal Procedure Code amounted to an irregularity which could not be cured by section 425 of the Criminal Procedure Code.
- (b) that the "reasons" dated September 12, 1948, could not be regarded as of any legal validity as Mr. Alles was not the District Judge of Badulla on that day.

The cases of *Henricus v. Wijesooriya*<sup>1</sup>, *Queen Empress v. Hargobind Singh*<sup>2</sup>, and *Bandama Atchaya v. Emperor*<sup>3</sup> were cited in support of argument (a). Our attention was also invited to *Tissera v. Daniels*<sup>4</sup>, *S. C. 646-637—M. C. Trincomalee 11,304 (S. C. Minutes of October 23, 1948)*, *Tiagarajah v. Annaikoddai Police*<sup>5</sup>, and some Indian decisions. I am of opinion that the failure to comply with section 304 is an irregularity curable under section 425 of the Criminal Procedure Code and that we need not acquit the accused or send the case for a re-trial if we are satisfied that the convictions are supported by the evidence.

As regards the argument (b) the position is that we have to ignore the reasons dated September 12, 1948, and deal with the case as we have merely the conviction and sentence of September 2, 1948.

On a careful perusal of the evidence, I find no reason whatever to set aside the conviction of the appellants. On the other hand we have some conflicting evidence as to the 1st, 2nd and 7th accused, carrying some weapons. As there is no finding by Mr. Alles of which we could take judicial notice to show us whether he accepted the evidence that the 1st, 2nd and 7th accused carried weapons I am unable to see any reason why they should be dealt with differently from those who were asked to enter into a bond.

<sup>1</sup> (1946) 47 N. L. R. 378.

<sup>3</sup> (1903) I. L. R. 27 Madras 237.

<sup>2</sup> (1892) I. L. R. 14 Allahabad 392.

<sup>4</sup> (1948) 49 N. L. R. 162.

<sup>5</sup> (1948) 50 N. L. R. 109.

For the reasons given by me I uphold the convictions of the appellants but set aside the sentences passed by the District Judge. I order each of the appellants to enter into a bond in a sum of Rs. 200/200 with one surety for a period of 2 years under section 325 of the Criminal Procedure Code and pay a fine of Rs. 50 as Crown costs.

I direct that the attention of the District Judges and Magistrates should be drawn to the important provisions of sections 304 and 306 of the Criminal Procedure Code and that an explanation should be called for from Mr. F. E. Alles as to his failure to see that he was gazetted as a District Judge of Batticaloa on the relevant days.

WINDHAM J.—I agree.

*Appeals dismissed.*

*Sentences varied.*

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