1964 *Present :* **H. N. G. Fernando, J.**

D. S. SATHARASINGHE, Appellant, *and* C. E. JURIANSZ (Excise Inspector), Respondent

S. C. 728/63—M. C. Colombo South, 14,106/N

Criminal procedure—Mode of delivering judgment—Signing and dating of judgment prior to date of pronouncement—Illegality—Right of defence Counsel to address Court—Criminal Procedure Code, ss. 304, 306.

Where a judgment which was intended by a Magistrate to be delivered at the earliest on 11th October was written and signed by him on 25th September—

Held, that there was a violation of the requirement in section 306 of the Criminal Procedure Code that a judgment shall be signed and dated by a Magistrate in open Court at the time of pronouncing it.

Held further, that it is quite improper for a Magistrate to fix a date for addresses of Counsel and then to complete and sign the judgment before hearing the address of the defence Counsel.

APPEAL from a judgment of the Magistrate's Court, Colombo South.

H. E. P. Cooray, for the Accused-Appellant.

A. A. de Silva, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

January 21, 1964. H. N. G. FERNANDO, J.—

In this trial for an offence under the Excise Ordinance, the evidence for the prosecution was led on 14th September 1962, and the evidence for the defence on 24th September 1962. On the latter date the Magistrate made the following minute :—" Defence closed leading in

evidence D1. Addresses on 11.10.62." The case was called for addresses on 11th October 1962, but the journal entry for that date reads :—" Mr. Crossette Thambiah is ill and Mr. L. Jayatilleke on his behalf moves for a postponement on personal grounds. Allowed. Addresses on 18.10.62."

For the date 18.10.62 to which the case had been thus postponed there is the following journal entry :—

> " Accused D. S. Satharasinghe (present). Case called for addresses. I find the accused guilty and I convict him. He admits one previous conviction for similar offence. I sentence him to a term of four months R. I.
>
> (Initialled) N. W. Dissanayake."

The journal does not state that addresses were in fact heard on 18th October, but a note in the record at page 47 indicates that certain authorities were cited to the Magistrate by Defence Counsel. It seems perfectly clear from the journal that, after the address of Defence Counsel on 18th October 1962 :—

(i) The Magistrate recorded his verdict of guilty ; and

(ii) The accused admitted one previous conviction.

In point of fact, however, the judgment, the original of which is handwritten by the Magistrate, is dated 25th September 1962, and not 18th October 1962. Learned Crown Counsel could not contend that the date 25th September 1962 had been stated in the judgment through some error, for there is nothing in the record to support such a possibility. On the other hand the commendable industry of Counsel appearing before me for the appellant has brought to light a circumstance which confirms the prima facie opinion that the judgment was in fact (as it indeed purports to have been) written and signed on 25th September 1962.

The Magistrate states in the concluding paragraph of the judgment that the accused admits one previous conviction for a similar offence. Now this statement is supported in the journal *only* by the entry of 18th October 1962, and one might accordingly have supposed that the paragraph was written on or after 18th October, and therefore not on 25th September. But Counsel has referred me to the record of another prosecution and conviction against the same accused for a different Excise offence, which is M. C. Colombo South Case No. 13,354/N heard by the same Magistrate whose reasons were delivered on 4th September 1962. The appeal from the conviction in that case (S.C. No. 792/63) was listed before me on the same date as the present appeal. It seems clear enough, at least for present purposes, that because of the earlier conviction on 4th September by the same Magistrate, he had on 25th September knowledge of the former conviction, and utilized that knowledge to refer in his present judgment to an admission of that conviction by

the accused, although no admission had been made at the stage when he wrote the judgment. If that knowledge was so utilized, one cannot exclude the possibility that the Magistrate utilized that same knowledge in reaching his verdict against the accused on the facts.

According to the journal entry of 18th October 1962, the verdict in this case was recorded on that date, and section 304 of the Criminal Procedure Code required the judgment to be pronounced thereafter. There is no ground for doubt that this requirement, namely verdict first and pronouncement of judgment thereafter, was observed by the Magistrate on 18th October 1962. But section 306 of the Code requires that *the judgment shall be signed and dated by the Magistrate in open Court at the time of pronouncing it.* The signature and dating, on the 25th September 1962, of a judgment which (having regard to the journal entry of 24th September 1962) was intended to be delivered at the earliest on 11th October, was in violation of this requirement. I can see no excuse for this violation of a requirement which falls to be observed, and I trust is observed, every day by every District Judge and every Magistrate.

There is authority in my own judgment in *Sumanasekera v. Inspector of Police, Ella* [1] and that of my brother Tambiah in *Murugiah v. Outschoorn* [2], for the proposition that the right of defence counsel to address a Magistrate before verdict arises from a practice which has hardened into a rule. But even if it be that counsel has no absolute right to address at that stage, counsel was in fact accorded that right in this case, and it was a mere sham, unworthy of being practised by a Court, to fix a date for addresses and then to complete and sign a judgment before hearing the address of counsel. It was in addition gravely discourteous to the counsel, who it would seem, was a senior Queen's Counsel.

The peculiar manner in which the Magistrate has acted and the appearance of prejudice against the accused's counsel, satisfy me that the case is one in which at the least *justice does not appear to have been done.* If there are explanations not apparent on the record for the serious flaws which *are* apparent, the Magistrate will no doubt have an opportunity to furnish them when my observations come to the notice of the proper authority. I direct the Registrar to transmit copies of this judgment to the Secretary, Judicial Service Commission, for the information of the members of the Commission.

I quash the conviction and sentence. Considering all the circumstances, I think some amends are owed to the accused. I therefore acquit him of the offence charged.

Conviction quashed.

[1] *(1957) 61 N. L. R. 424.* [2] *(1963) 65 N. L. R. 372.*