

1927.

Present: Dalton J.

SAMSUDEEN v. SUTHORIS

169—P. C. Colombo, 27,546.

Verdict—Meaning of the phrase "forthwith record"—Criminal Procedure Code, s. 190.

Section 190 of the Criminal Procedure Code does not enact that the verdict shall be recorded forthwith after taking the evidence.

A PPEAL from a conviction by the Police Magistrate of Colombo.

L. A. Rajapakse, for accused, appellant.

N. E. Weerasooria, for complainant, respondent.

April 14, 1927. DALTON J.—

The appellant has been convicted on a charge of breach of trust and sentenced to four months' rigorous imprisonment. The appeal is from that conviction and from that sentence.

The evidence in the case was led on February 11, 1927, and at the conclusion of the defence on that day the learned Magistrate recorded that he would give judgment on the 12th. On the 12th he wanted further time for consideration and recorded that he would give judgment on the 14th. On February 14 he found the accused guilty and sentenced him to imprisonment as I have stated.

It is urged in appeal that inasmuch as he did not find the accused guilty or not guilty immediately after taking the evidence that the proceedings are bad in view of the provisions of section 190 of the Criminal Procedure Code. That section enacts that—

“ If the Magistrate after taking the evidence for the prosecution and defence finds the accused not guilty he shall forthwith record a verdict of acquittal. If he finds the accused guilty he shall forthwith record a verdict of guilty and pass sentence according to law.”

It is argued for the appellant that the word “ forthwith ” in that section has reference to the taking of evidence for the prosecution and defence; in other words, that what the section says is that after taking the evidence for the prosecution and defence the Magistrate shall forthwith record his verdict. There is authority to support this contention in *Rodrigo v. Fernando*.¹ Withers J. states that “ this section enacts that the Magistrate shall record his verdict of acquittal or guilty forthwith after hearing the evidence for the prosecution and defence.” If one reads the judgment and if one has reference to the inverted commas in the first part of the judgment it is apparent that the section has been misquoted, for the learned Judge says “ that section 190 enacts that a Magistrate shall after taking the evidence for the prosecution and defence forthwith record a verdict of acquittal or guilty as he may find ” There is therefore that authority which supports the contention of counsel for the appellant.

Another case is *P. C. Panadure*, 9,292.² There the headnote does not accurately set out the decision of Lawrie A.C.J., but in the words used by the learned Judge he does hold that “ verdict must not be given a month after trial, it must be given forthwith.” The reporter in his headnote has taken that to mean “ forthwith after evidence taken ”. It is possible the learned Judge meant that, but it is not stated, nor is the earlier case of *Rodrigo v. Fernando* (*supra*) referred to. It is clear, however, that for other reasons the appeal was allowed and the conviction there was quashed. In *Peiris v. Silva*³ Wendt J. appears to have interpreted section 190 in the same way as Withers J. in the earlier case. He, however, came to the conclusion that failure to carry out this requirement does not necessarily make the proceedings invalid. He was of opinion that it was at most an irregular procedure, and in the case before him occasioned no failure of justice.

For myself, reading section 190 I have the greatest difficulty in following those decisions as regards what that section enacts. It seems to me that the condition precedent to the recording of

¹ 4 N. L. R. 176.

³ 3 Bal. Reports 165.

² 5 N. L. R. 140.

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the verdict is the finding of the verdict and not the taking of evidence. The taking of the evidence may be well said to be a condition precedent to finding the verdict in a case in which evidence is led. I am, however, unable to agree that this section enacts that the verdict shall be recorded forthwith after taking the evidence. Section 214 plainly provides in the case of District Courts that the District Judge shall forthwith, or not more than 24 hours after the case for the prosecution and defence are concluded, record a verdict of acquittal or conviction. It is argued from that, that what the Legislature provides in section 190 is that in the case of a Magistrate his verdict should be recorded immediately after taking the evidence for the prosecution and defence. The language of section 190 seems to me to be so plain that it does not require any reference to section 214 to assist one to interpret it. On that interpretation of section 190, as there has been in the case now before me, a recording of the verdict forthwith after the finding of the verdict, and without any time elapsing between the two, a point of law must fail. In any case, I would also point out that no failure of justice has been occasioned.

The appeal was also based upon the severity of the sentence. It is true that in this case the sum of money misappropriated was small. The accused, however, was in a position of trust; his offence was deliberate, and, as the learned Magistrate states, "methodical". Nothing has been placed before me which would in my opinion justify me in interfering with the sentence passed by the learned Magistrate.

Appeal dismissed.

