

Nikulas and others v. Linus

COURT OF APPEAL.
ABDUL CADER, J. AND ATUKORALE, J.
CA (S.C.) 475-479/76—M.C. WATTALA 850.
OCTOBER 19, 1978.

Criminal Procedure Code, section 186 (2)—Requirement that verdict should be recorded within 24 hours of conclusion of evidence—Whether mandatory.

Held

That the requirement in section 186(2) of the Criminal Procedure Code that a verdict must be recorded by the Magistrate not later than 24 hours after the conclusion of the taking of evidence is mandatory. There is nothing inconsistent between the right of defence Counsel to address at the conclusion of the evidence and this 24 hour limit enforced by the law.

APPEAL from the Magistrate's Court, Wattala.

A. Ratnayake, with P. Samararatne, for the appellants.

D. W. Abeykoon, with Miss G. Rajapakse, for the respondent.

Cur. adv. vult.

November 10, 1978.

ABDUL CADER, J.

According to the proceedings of 7.8.75, evidence for the defence was closed. The next minute made is 'addresses on 12.9.75.' (According to the journal, an opportunity for addresses was granted because there was an application by defence Counsel. But since there was no time, it was postponed for 12.9.75.) On 12.9.75, Counsel for the accused addressed quite at length and it being 3.45 p.m. a further date was given for addresses on 30.9.75. Counsel for the accused continued to address on that date again at length. Counsel for the complainant had addressed thereafter and the Magistrate had delivered his verdict on the same day.

Counsel for the accused-appellants has now drawn our attention to section 186 (2) which runs as follows:—

“The verdict shall be recorded not later than twenty-four hours after the conclusion of the taking of evidence, and the reasons for the verdict shall be recorded not later than fourteen days after recording the verdict.”

He contends that in this case, although evidence was concluded on 7.8.75 the verdict was given only on 30.9.75 and, therefore, the verdict is illegal. Several decisions of this Court have been cited to us and with respect we are in agreement with those judgments to the effect that the 24-hour limit is mandatory.

Counsel for the complainant urged that since it is a fundamental right of the accused to be heard after evidence is concluded before a verdict is returned, the 24-hour rule should be modified especially when it is the defence Counsel who has taken all the time between the conclusion of the evidence and the return of the verdict. I do not think there is anything inconsistent between the right of defence Counsel to address and the 24-hour limit enforced by the law. All that the Magistrate under the circumstances should have done was to limit the address of the Counsel to a specific period of time so as to give himself an opportunity to return his verdict within 24 hours. This verdict and sentence have to be set aside as illegal.

The only other matter for consideration is whether this case should be sent back for retrial. This was a private plaint filed on 22nd March, 1974, in respect of several offences alleged to have been committed on 6th February, 1974, over 4 years ago. All the accused have been acquitted in respect of the more serious charge of theft of a wristlet and the penalty imposed on the other counts were fines of Rs. 20, Rs. 10, Rs. 10 and warned and discharged. Counsel for the appellants also pointed to the fact that the Magistrate had rejected the evidence of the complainant that he did not use a bottle in the course of the fight and to that extent the evidence of the complainant was discredited. The proceedings took over 1½ years.

Taking into consideration all these circumstances, we do not think this is a case in which we should order a retrial. We, therefore, acquit the accused on all counts.

ATUKORALE, J.—I agree.

Accused acquitted.