

1951

Present : Gratiaen J.

KRISHNAPILLAI, Appellant, and KONCHIPPALI (Village Headman),
Respondent.

— S. C. 1314—M. C. Batticaloa, 10,619

Criminal procedure—Inspection of scene of offence—Statements of witnesses—Requirements of oath and cross-examination.

Where there is an inspection by Court of the *locus in quo*, statements made at the spot by witnesses should be made on oath or affirmation and an opportunity should be given to the parties to cross-examine the witnesses

APPPEAL from a judgment of the Magistrate's Court, Batticaloa.
H. Wanigatunga, with *M. D. H. Jayawardene* and *D. R. P. Goonetilleke*,
 for the accused appellant.

L. B. T. Premaratne, *Crown Counsel*, for the Attorney-General.

Cur. adv. vult.

March 13, 1951. GRATIAEN J.—

In my opinion the conviction in this case cannot stand. A vital question which arose for the learned Magistrate's decision was whether the accused could have been identified by the witnesses for the prosecution on the night when the offence is alleged to have been committed. In these circumstances, at the close of the case for the defence, the learned Magistrate made the following record:—

“As there seems to be some disagreement with regard to the question of whether two lights alleged to have been placed in the front compounds of the accused's house and his mother-in-law's house could have shed their light at the spot where the stabbing is alleged to have taken place it is the wish of parties that I should inspect this spot and test the light for myself before I give judgment. I am therefore, fixing an inspection at 6 p.m. at the spot tomorrow. Thereafter, I shall give my judgment on Friday morning.”

The inspection of the scene took place as arranged, and it seems clear from the learned Magistrate's judgment that on this occasion certain witnesses were invited, admittedly in the presence of the parties and without objection, to reconstruct the scene of the alleged offence and to point out various relevant positions to the Magistrate. The statements made at the spot by these witnesses were not made on oath or affirmation and no opportunity of cross-examining them was offered to the defence. In the result, the decision of the learned Magistrate was to some extent influenced by the unsworn statements of the witnesses concerned. This is yet another illustration of a well-intentioned Magisterial inspection of the *locus in quo* which was unfortunately attended by substantial irregularities. (*Barnes v. Pinto*¹ and *Aron Singho v. Buultjens*².) In the circumstances I quash the conviction and order that the case be retried before another Magistrate.

Sent back for re-trial.

¹ (1938) 40 N. L. R. 125.

² (1947) 43 N. L. R. 285.