1941 *Present* : **Moseley S.P.J.**

SABARATNAM *v.* SANTHIA.

522—M. C. Mannar, 1,885.

Verdict of guilt—Failure to record—Curable irregularity—Criminal Procedure Code, s. 188 (1).

Where, upon an accused offering a plea of guilt, the Magistrate without recording a verdict of guilty as provided by section 188 (1) of the Criminal Procedure Code made the following entry :—" Sentence on——— ".

***Held*, that the omission formally to record the verdict was an irregularity curable under section 425 of the Criminal Procedure Code.**

APPEAL from a conviction by the Magistrate of Mannar.

J. A. P. Cherubin, for the accused, appellant.

E. H. T. Gunasekera, C.C., for the complainant, respondent.

September 16, 1941. MOSELEY S.P.J.—

The appellant was charged with the retention of stolen property knowing or having reason to believe that the same had been stolen. Evidence was led as to the finding of certain property on the appellant, which was identified by the complainant as his. The appellant upon being charged said : " I am guilty ". The learned Magistrate did not proceed, in so many words, to record a verdict of guilty, as provided by section 188 (1) of the Criminal Procedure Code, but made the following entry :—" Sentence on 4.7.41 ". On the latter date the appellant appeared before another Magistrate when his Counsel stated that the appellant had pleaded guilty under threat. The appellant alleged that he had been threatened with assault by two headmen and that through fear he had pleaded guilty. The Magistrate ordered him to be produced before Mr. Hingley who had recorded his plea of guilty. Mr. Hingley, to whom the representations alleging threat were repeated, held that the plea of guilty was unqualified and refused to accept a plea of not guilty.

Counsel for the appellant brought to my notice the case of *Siriwardene v. James et al.*[1], in which the trial Magistrate had expressed his doubts as to whether he had the right to set aside a verdict of guilty which he had recorded. In that case the accused had filed an affidavit stating that they were under a misapprehension as to the facts when they tendered their plea of guilty. On appeal it was held that the Magistrate was mistaken in the view that he had no power to set aside his finding of guilty.

In the present case the Magistrate had apparently no inclination to allow the plea of guilty to be withdrawn. He regarded that plea as unqualified, as indeed it would seem to be. In my view he was right in refusing to allow the plea to be withdrawn at that stage.

[1] *41 N. L. R. 560.*

The point was also taken that the failure of the Magistrate formally to record a conviction in so many words invalidates the conviction and sentence. In *The King v. Babappu and another* [1], it was held that where an accused had pleaded guilty although it eventually turned out that he had not committed the offences charged, there should legally be a formal conviction. At the same time Shaw A.C.J., commended the trial Judge for, while being technically wrong, exercising his good sense in hearing evidence before he finally dealt with the case. In *Akbar v. James Appu* [2] there was an appeal against an order discharging the accused after he had pleaded guilty. He was thereupon warned and discharged which in effect, amounted to an acquittal. In appeal, the case was, if I may say so with respect, properly sent back that a conviction might be recorded in accordance with and not contrary to, the plea. Neither of these cases seem to me to be in point.

It seems to me however that in the present case, the words " Sentence on 4.7.41 " at least imply that the appellant in this case was convicted.

The omission to record the fact does not seem to me to amount to anymore than an irregularity curable under section 425.

I would therefore dismiss the appeal.

Affirmed.