1978 *Present :* **Wijesundera, J., Vythialingam, J. and Walpita. J.**

HAKMANA KODITUWAKKUGE DIAS and ANOTHER, Petitioners

and

J. B. C. SUWARIS and ANOTHER, Respondents

S. C. Application 894/77—D. C. Panadura 519

Administration of Justice Law, No. 44 of 1973, section 186—Requirement that verdict be given within 24 hours of evidence being concluded.

When section 186(2) of the Administration of Justice Law provides that "the verdict shall be recorded not later than 24 hours after the conclusion of the taking of evidence" in a trial in the District Court, it cannot be construed to mean that the 24 hours run from the time the addresses are over. The meaning of the words of the Statute are plain and no other construction is possible.

Cases referred to :

Banda v. David, 50 N.L.R. 375.
S.C. 374/75—M.C. Horana 9712 S.C. Minutes of 23.7.77.
S.C. 445/76—M.C. Kilinochchi 14386, S.C. Minutes of 19.8.77.

APPLICATION in revision or for Writs of Certiorari and Prohibition.

Dr. Colvin R. de Silva, with *P. K. Liyanage, Manouri Muthettuwegama, B. Weerakoon* and *W. B. Jayasekera*, for the petitioners.

Upananda Yapa, Senior State Counsel, for the respondents.

Cur. adv. vult.

June 23, 1978. WIJESUNDERA, J.

This is an application by two of the three accused who were convicted in the District Court of Panadura of various charges on the 20th October, 1977, to have their convictions set aside in

the exercise of the power vested in this court under sections 11 and 13 of the Administration of Justice Law or for the grant and issue of a writ of certiorari on the 1st respondent, quashing the verdict of guilty recorded on that date and for the issue of a writ of prohibition, prohibiting him from proceeding further with the case in passing sentence and in recording his reasons. The 3rd accused was convicted in his absence and is not a party to these proceedings. He is said to be in India.

The two petitioners along with seven others were indicted in the District Court of Panadura on 11 charges under the Penal Code of being members of an unlawful assembly, of causing hurt under section 314 of the Penal Code to a number of persons on the basis of section 146 of the Penal Code, of committing robbery under section 380 read with section 146 of the Penal Code and of committing the offences of hurt under section 314 of the Penal Code and robbery under section 380 read with section 32 of the Penal Code. The trial commenced on the 31st day of December 1976. A State Attorney prosecuted. The evidence of the prosecution was concluded on the 15th June, 1977, and the learned District Judge called upon the accused for their defence. The Attorney for the accused moved for a date which was granted. The learned Attorney on the adjourned date called the petitioners and, concluded the evidence on the 9th August, 1977. On the application of the learned Attorneys the addresses were postponed for various reasons and ultimately fixed for the 12th and 13th October. On these two dates the State Attorney, and the Attorney for the accused addressed and on the 13th October, 1977, there were submissions in particular on the meaning of section 186 of the Administration of Justice Law. According to the record, Dr. Colvin R. de Silva conceded, this case had been postponed on the 13th October for further addresses for the 20th October.

On the 20th October, before coming on the bench learned District Judge inquired whether the State Attorney had arrived and in fact delayed to come on the bench in doing so. When the learned Judge found that the State Attorney had not come he came on the bench, acquitted 4th, 5th, 7th 8th and 9th accused, the 6th accused having being acquitted earlier, and proceeded to convict the 2 petitioners and the 3rd accused who was tried in his absence. As the learned Attorney challenged the powers of the court to proceed to convict as the addresses were concluded according to him on the 13th October, there was an ugly incident and the learned District Judge at the end of it " proceeded to give the rest of the verdict ". The two petitioners and the third accused were convicted of the charges based on unlawful assembly and common intention, and the reasons postponed for 28th October. On the 25th October, 1977, this court issued notice

on the present application and directed the learned District Judge to stop further proceedings and to forward the record. The record was sent to this court on the 27th October. It contains no reasons for the conviction or verdict which in terms of the Administration of Justice Law in section 186 (2) have to be given within 14 days of the date of verdict, viz. 20th October. This time limit has long passed and the reasons cannot now be given as contemplated and provided for in the Administration of Justice Law, even if this application is dsmissed. There is now left only the affidavit filed by the learned District Judge on the 24th November and what is recorded in the journal entry and what is stated in the "Order" made by the District Judge on the 20th October for this Court to find out the reasons for the convictions.

Whether relief should be granted to the petitioners can be examined in two ways:— *Firstly* from the contents of the affidavit of the learned trial Judge and the entries in the record and the contents of an "Order" made by the trial Judge. *Secondly* by construing the meaning of section 186(2) of the Administration of Justice Law.

To consider the first aspect; the learned District Judge's affidavit states: "On the 13th October..... it was agreed by all parties including Mr. Karalasingham that time was necessary to study the evidence ..... and to consider the number of reported cases submitted in view of the legal arguments on sections 140. 146 and 32 of the Penal Code ..... I told counsel that I might need further elucidation on the law ....." From this it is quite plain that the learned District Judge had not made up his mind on the charges regarding any of the accused. On the 13th October he thought that he will need further assistance. He was doubtful and hesitating. By the 20th October this state of mind had not changed because he further states that on the morning of the 20th October he sent for the State Attorney to tell him that he "needed further addresses on the law." But the State Attorney had not arrived. So his state of mind could not have changed. He still needed assistance on his own admission. His state of mind was that he was prevented from concluding that the accused were guilty. A reasonable doubt is nothing more nor less than that degree of doubt or state of mind which prevents a reasonable person from coming to the conclusion sought, which in this case is the guilt of the accused. When he came on the bench Mr. Gunaratne, Attorney-at-Law appeared for the State in the absence of the State Attorney. In his affidavit he states that there were no further addresses and the learned Judge said that "if State Attorney were present he would have asked for further elucidation on the counts of the Indictment". This only confirms the doubts of the learned trial Judge. But the learned

trial Judge proceeded to convict three of the accused. He does not state how his doubts were resolved. In another paragraph he states that " the verdict was based on proof and the prosecution had proved its case beyond reasonable doubt and after the evidence was studied." This, with great respect, is inconsistent with what he had said and had in fact happened as pointed out earlier. Therefore he was in error in convicting without resolving his doubts or difficulties on the law. If he was doubtful the correct course for him to have taken, if he was recording a verdict, was to have recorded a verdict of acquittal in respect of all the accused. Consequently the verdict of guilty must be set aside.

The journal entry of 20th October and the affidavit of the learned trial Judge state that when he was about to convict the three accused there was a scene in Court, as the learned Attorney maintained that the Court had no jurisdiction to convict the addresses being over on the 13th. It is unnecessary to go into the details of the incident. The learned trial Judge accepted the apology tendered to him by the Junior Attorney at the end of it. But heated exchanges between the bench and the bar culminating in the march of a policeman cannot do credit to those concerned. It matters not who is right or who is wrong or who is the winner or who is the loser. The task of every Attorney in a case, as Dr. Colvin R. de Silva submitted, must be to assist the trial Judge in the difficult task of returning a correct and a just verdict and a Judge should be appreciative of the assistance when given. Incidents of this type must not occur because when they were caused in the process Justice may well be the loser.

The second aspect is the correct meaning of section 186(2). It was submitted by Dr. Colvin R. de Silva that as the evidence was concluded on the 9th of August, 1977, the verdict should have been returned within twenty-four hours of that conclusion and not from the conclusion of the addresses, as contemplated in section 186 of the Administration of Justice Law. Section 186 of the Law reads :

186 (1) If the Judge after taking the evidence of the prosecution and defence and such further evidence (if any) as he may of his own motion cause to be produced, finds the accused not guilty he shall record a verdict of acquittal. If he finds the accused guilty he shall record a verdict of guilty and shall pass sentence upon the accused according to law and record such sentence.

(2) 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.

(3) The sentence, if any, shall, subject to the other provisions of this Law, be recorded at the time of the recording of the verdict.

This provision is identically the same as section 169 relating to verdicts by a Magistrate. Section 186(2) requires the Judge to record the verdict not later than twenty-four hours after "the conclusion of the *taking of evidence*". Sub-section (1) speaks of "after *taking the evidence* of the prosecution....." This means obviously after the evidence given by the witnesses has been included and recorded. The meaning of this phrase in subsection (2) must be the same as in sub-section (1). It may appear that in view of section 184 (4) this interpretation cannot be given to section 186(2). Section 184(4) gives the rights to the accused to sum up the evidence. This right can be exercised only after the evidence called by him is over. Therefore the question arises whether the 24 hours run from the time the addresses are over. This may be desirable. But the language of sub-section (2) is very clear that the period runs from the conclusion of the evidence. In the ordinary case this time may be sufficient. There may be a case where the evidence is long and an accused needs more than a day to conclude his summing up. The answer to this may be that the Administration of Justice Law contemplated the Judge setting a time limit to the summing up to enable him to deliver the verdict in 24 hours. The Administration of Justice Law, it must not be forgotten provided till recently a time limit of half-an-hour which can be extended by another hour for appeals.

In a trial by a Judge and a Jury, the addresses begin soon after the evidence. Then there is the Judge's summing up followed by the verdict. In the average case the verdict is returned within twenty-four hours of the conclusion of the evidence. Therefore it is not unreasonable to assume that the legislature intended a similar procedure in trials before a District Judge with the difference that the verdict has to be returned within a fixed time. This contemplates addresses being delivered soon after the evidence followed by the verdict. Such a procedure avoids the ordeal an accused has to undergo in waiting for verdict, caused by the postponement of the addresses. This is a paramount consideration. In the present case, although the evidence is direct, the verdict was returned 10 weeks after the conclusion of the evidence.

Section 186 may be compared with the corresponding section in the Old Criminal Procedure Code. It is section 214(1) :

> When the cases for the prosecution and defence are concluded and the assessors' opinion, if the trial has been with the aid of assessors has been recorded the District Judge

shall forthwith or within not more than twenty-four hours record a verdict of acquittal or conviction.

The words used in the section are "cases for the prosecution and defence". The twenty-four hours is to start from the time "the cases for prosecution and defence are concluded" which undoubtedly means from the conclusion of the addresses. No time limit was fixed for addresses. What has really happened is that the old practice is being followed even after 1.1.1974 by some Judges. There is no reason for me to conclude that in all trials the old practice is being followed. That was not the position of the State.

The State referred the court to the case of *Banda v. David*, 50 N.L.R. 375. That was a decision on the interpretation of section 190 of the Old Code and cannot be relied upon at all as authority for the proposition that the course adopted by the trial Judge is lawful. The Code did not provide for addresses after the evidence in the Magistrate's Court. Section 190 of the Code relates to procedure in those courts and the only difference between section 190 of the Code and section 186 (1) of the Law is the omission of the word "forthwith" from the law. In section 190 of the Code a Magistrate was required to record the verdict forthwith after he finds an accused guilty. Section 186(1) of the Law required the verdict to be recorded within 24 hours of the taking of the evidence. The two are different. The question referred in that case was whether the recording of the verdict by the Magistrate on the following day when he had "concluded *the taking of evidence* on both sides" the previous day was lawful. It is interesting to note that the court in that judgment appears to have regarded the words "concluded the taking of evidence" to mean when the physical recording of evidence was over. The State submitted that the law contemplated witnesses being called even during the address and therefore the twenty-four hours must start from the termination of the addresses. If evidence be called during the addresses I would think twenty-four hours will run from the time that evidence is over. There was no other submission made on behalf of the State.

In the Sinhala version of the Administration of Justice Law section 186(2) reads :

(2) සාක්ෂි ගැනීම අවසන් කිරීමෙන් පසු පැය විසිහතරක් ඉකුත් වීමට පෙර තීන්දුව කියා ගත කරනු ලැබිය යුතු අතර තීන්දුව කියා ගත කිරීමෙන් පසු දින දහතරක් ඉකුත් වීමට පෙර තීන්දුව සඳහා වූ හේතු කියා ගත කළ යුතුය.

The words used are "සාක්ෂි ගැනීම අවසන් කිරීමෙන් පසු". These words cannot include the addresses as I understand the language. .....The meaning of the words in both languages is clear.

Where the meaning of the words of a statute is plain nothing can be done but to obey it. Therefore section 186(2) provides that the verdict should be recorded within 24 hours of the conclusion of the evidence. To give any other meaning is to ignore the words and legislate, the office of the Judge is "Jus dicere" and not "Jus dare." It is indeed a matter for the legislature whether this section should be amended and in what manner.

Two other decisions were referred to in the course of the submissions. Both relate to trials in the Magistrate's Court, where the provisions relating to addresses are slightly different from those relating to trials in the District Court. In S.C. 374/75 M.C., Horana 9712 S.C.M. 25.7.77, a Magistrate reserved the verdict on 17.12.74 but did not record it till 18.2.75 and two Judges were of the view that there was a violation of section 169(2) of the law. The Judgment does not state when the evidence was concluded as in view of the delay of the verdict it did not matter when it was over. In the S.C. 445/76 M.C. Kilinochchi 14386 S.C.M. of 19.8.77, two Judges of this Court held that the proviso was inapplicable. In the instant case the two Attorneys moved for dates at various stages for addresses. A hand-written copy of the evidence in Sinhala was forwarded to the Attorney for the accused on his application for a copy of the proceedings. This took time. However the application of the proviso does not arise in this case.

The question left is what is the remedy to be granted. In view of the first reason given for setting aside this verdict there cannot be a retrial of these accused. In any event there can be no retrial of those acquitted. The 3rd accused is said to be in India and he has not moved this Court. I do not see how he can be retried. The name of the 2nd accused who is the 2nd petitioner, it has been submitted and not contested by the State and which I find is correct from the record, has not been mentioned to the Police though he is known by name to the witness who implicated him for the first time in Court. There is then no purpose in ordering him to be retried. The only order which can be made in this case is the acquittal of the two petitioners and the 3rd accused. In the exercise of the powers of revision given to this Court under sections 11 and 13 of the Administration of Justice Law, at the conclusion of the arguments the convictions of the two petitioners and the 3rd accused were quashed and they were acquitted.

VYTHIALINGAM, J.—I agree.

WALPITA, J.—I agree.

Convictions quashed.