1933 *Present:* Koch A.J.

SENEVIRATNE *v.* BODIA.

650—P. C. Teldeniya, 19,232.

Verdict—Trial before Police Court—Interval between taking of evidence and recording of verdict—Likelihood of failure of justice—Irregularity—Criminal Procedure Code, ss. 190 and 425.

An interval of four months between the taking of evidence and the recording of a verdict, which is likely to lead to a failure of justice, is not such an irregularity as can be cured by the saving provisions of section 425 of the Criminal Procedure Code.

APPEAL from a conviction by the Police Magistrate of Teldeniya.

Ponnambalam, for accused, appellant.

October 19, 1933. KOCH A.P.J.—

The appellant was charged under section 315 of the Ceylon Penal Code with committing simple hurt to one Seneviratne by shooting at him with a gun. He was convicted and sentenced to undergo three months' rigorous imprisonment.

The proceedings commenced with a report from the Police being presented to Court on March 13, 1933. The complainant Seneviratne gave evidence on March 23. Thereafter the charge was framed and read to the accused, and on the latter pleading not guilty the trial was fixed for April 27. On April 27 the complainant was recalled and cross-examined and the evidence of four other witnesses led for the prosecution. The prosecution was then closed and the trial adjourned for May 25 for the defence. On May 25 the trial was postponed for June 22, when the accused gave evidence on his behalf and called seven witnesses to support him. After the evidence of the last witness was recorded, the learned Magistrate made the following note on the record:—" Judgment for July 12. Next day criminal sessions at Teldeniya". All the evidence was recorded at Teldeniya, and as nearly two months had expired between the case for the prosecution and the defence being presented to him, the

learned Magistrate presumably wanted time to consider what his finding should be. No doubt this would not ordinarily necessitate more than a day or two, but as the Court is an itinerating one, the Magistrate fixed July 12, the first day of the next sessions at Teldeniya, for delivering his judgment. On that day the Magistrate recorded his verdict, "Guilty under section 315 of the Ceylon Penal Code", and sentenced the appellant to three months' rigorous imprisonment.

Mr. Ponnambalam, the learned counsel for the appellant, has on the appeal argued that under section 190 of the Criminal Procedure Code it was obligatory on the Magistrate to have recorded the verdict immediately on the termination of the trial, and that as three weeks had elapsed between the completion of the trial and the recording of the verdict and the passing of sentence, the conviction was irregular and amounted to a nullity.

The point is of some interest and not free from difficulty owing to later decisions on the matter being in apparent conflict with earlier ones. The section, viz., 190, runs as follows:—

> "if the Magistrate after taking evidence . . . . 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 upon him according to law".

The earliest case on the point is *Venasy v. Velan.*[1] The trial in this case took place on May 4, and the Magistrate did not convict until May 11. His Lordship Bonser C.J. expressed himself thus:—

> "I have already stated in another case that I think it most desirable that Magistrates and District Judges should state their finding as to the guilt or the innocence of the accused immediately at the conclusion of the trial, and if the impression left upon their minds by the prosecution after hearing all the evidence is so weak and unsatisfactory that they are unable to say whether they consider the accused to be guilty or not, they should give the accused the benefit of the doubt and acquit".

The next case is *Rodrigo v. Fernando*[2]. The point was not pressed and the appeal was argued on other matters. The learned Judge, however, Withers J. was of opinion that inasmuch as the Magistrate had not given judgment "forthwith", his judgment was of no force or effect. He proceeded to state that had the point been pressed, he would have had to send the case back for a re-trial.

The case that followed was P. C. Kalutara, No. 7,270 (July, 1899, *Koch's Reports 33*). Withers J. on appeal said that the Magistrate's judgment was of no effect because it had not been forthwith recorded as required by section 190 of the Criminal Procedure Code. This is a very important provision in the new Code and Magistrates must be very careful to act up to it, for non-compliance with its provisions renders their judgments nugatory and necessitates a new trial.

[1] *(1895) 1 N. L. R. 124.* [2] *(1899) 4 N. L. R. 176.*

This was succeeded by the judgment in P. C. Panadure, No. 9,292 (1901). Here the complainant and accused agreed that the Magistrate should defer his judgment for one month pending a settlement. This was allowed. The settlement fell through and at the end of the month the accused was sentenced to three months' rigorous imprisonment. His Lordship Acting Chief Justice Lawrie held that it was *ultra vires* to give a verdict a month after the trial. The conviction was accordingly quashed. Thus it will be seen that so far, the opinion of this Court was that the irregularity that proceeded from a non-compliance with the provisions of section 190 was incurable.

In 1905, however Wendt J. in the case of *Peris v. Silva*[1] rather thought that a failure to conform with the requirements of this section at most amounted to an irregularity in the procedure, and although it would be a ground for altering and reversing a judgment of a competent Court if a failure of justice was occasioned, nevertheless held that the irregularity was not necessarily fatal. The delay here was only two days, and the Court of Appeal did not feel that this was sufficiently long to occasion a failure of justice.

In *Assistant Government Agent, Kegalla v. Podi Sinno*[2] Pereira J. held that a delay of six months in recording a verdict and delivering judgment could not be cured, by the application of the saving provisions in section 425 of the Criminal Procedure Code to so great an irregularity. He exprsssed no opinion as to whether he agreed with the earlier judgments or the dictum of Wendt J.

Maartensz A.J. in *Sahul Hamid v. Bansadu*[3] agreed with Wendt J.'s opinion in holding that non-compliance with the provisions of section 190 was not necessarily fatal, and that as there was only a delay of three days in the recording of the verdict and the delivering of the judgment, the conviction should stand, as in his opinion no failure of justice was occasioned thereby.

His Lordship the present Acting Chief Justice struck a new note in the most recent case on the point (*Samsudeen v. Suthoris*[4]). He was of opinion that the language employed in section 190 was so clear that it did not require any reference to section 214 which dealt with the judgments of District Courts, and that the interpretation of the provisions of section 190 did not require that the verdict should be recorded " forthwith " after the evidence was taken. In any case as the delay only amounted to four days, he felt that no failure of justice was occasioned. In connection with this view I wish to point out that Garvin J. in the case of *Joseph v. Punchirala*[5] thought that section 190 clearly contemplated the passing of a sentence immediately upon an entry of a verdict of guilty.

In this state of the law I feel that delay in recording a verdict, even if it did amount to an irregularity, was not necessarily fatal to a conviction and the conviction would stand unless a failure of justice has been occasioned. In the most recent cases I have quoted the delay was a matter of a few days and this was not considered sufficiently long to occasion a failure of justice, but in the present appeal I find that no

[1] *3 Bal. Reps. 165.*
[2] *15 N. L. R. 28.*
[3] *4 Times Law Reps. Ceylon 145.*
[4] *29 N. L. R. 10.*
[5] *4 Ceylon Law Recorder 39.*

pronouncement of the acceptance or rejection of the evidence of the prosecution was made till nearly three months after that evidence was completely recorded and four months after the examination-in-chief of the complainant. This is very unsatisfactory, and I am not satisfied that it has not occasioned a failure of justice.

I therefore quash the proceedings and conviction and order a new trial before a different Magistrate.

Conviction quashed.