1948 *Present :* **Dias J.**

TISSERA, Appellant, *and* DANIELS (S. I. Police), Respondent.

S. C. 1,434—M. C. Gampaha, 39,642.

Criminal Procedure Code—Judgment—No reasons for decision—Does it vitiate conviction ?—Sections 306, 425.

Failure to comply with the provisions of section 306 of the Criminal Procedure Code does not necessarily vitiate a conviction.

APPEAL from a judgment of the Magistrate, Gampaha.

S. C. E. Rodrigo, for first accused, appellant.

A. C. Alles, Crown Counsel, for the Attorney-General.

January 28, 1948. DIAS J.—

The first accused-appellant and another man were jointly charged with having caused hurt with a knife (section 315) to one Nimanis. The evidence for the prosecution consisted of the testimony of the injured man and another, and the headman who produced his diary in which was recorded that a prompt complaint against the appellant was made to him.

The defence foreshadowed, having regard to the Doctor's evidence, was that the injury sustained by the complainant was trivial and might have been self-inflicted, that the complainant was a man of bad character and that there was a motive why the complainant should falsely implicate the appellant, who also pleaded an alibi.

The Magistrate without making any attempt whatever to weigh the evidence on both sides delivered a Lord Chancellor's opinion in the following terms : " I find both accused guilty. In the case of the second accused, I consider it advisable to bind him over . . . . Remand first accused ". Then some days later, the appellant having been brought before him, he proceeded to apportion sentence to the appellant and sentenced him to three months' regorous imprisonment and to enter into a bond to keep the peace for six months, in default to undergo a further term of imprisonment for one month.

Mr. Rodrigo, I think rightly, complains that the Magistrate not having complied with the imperative provisions of section 306 of the Criminal Procedure Code, this Court in appeal is not able to deal with the defence of the accused adequately. It has been pointed out times without number that the object of section 306 is to enable the Supreme Court to have before it the specific opinion of the judge of the lower court on questions of fact, that it may judge whether the finding is correct or not—See *Verupadian v. Sollamuttu* [1]. It has also been held that the failure to observe the imperative provisions of section 306 is a fatal irregularity—See *Amsa v. Weerawagu* [2]. The authorities have even gone to the extent of holding that even in a simple case the provisions of section 306 ought to be complied with—*Welle Kangany v. Amadoris* [3].

[1] *(1901) 1 Browne 384.* [2] *(1933) 11 Times Law Reports 50.*
[3] *(1915) 3 Bal. N. C. 64.*

Mr. Alles has brought to my notice the judgment of Mr. Justice Soertsz in S. C. No. 646—47 M.C. Tricomalee, 11,304[1] where my brother said : " There undoubtedly is an irregularity of procedure in this case in that the Magistrate has not given any reason for convicting the appellant. But in all the circumstances I think this is an instance in which the provisions of section 425 of the Criminal Procedure Code may be applied ". He, therefore, dismissed the appeal holding that the conviction was amply supported by the evidence. I entirely agree with my brother that there may be cases in which the failure to observe the provisions of section 306 may be cured by the application of the provisions of section 425, and that it is not an inflexible rule that a conviction must always be set aside whenever there is an irregularity in regard to the provisions of section 306. But it seems to me that the present case falls far short of the facts which Mr. Justice Soertsz was dealing with. Here there is the defence of an alibi. It is the law that if the plea raised a reasonable doubt in the mind of the Magistrate, the accused is entitled to be acquitted. There is a total failure on the part of the Magistrate to grapple with these considerations and I do not think it just or fair, the point having been taken, that the conviction should be allowed to stand, but whether counsel for the appellant has acted wisely in taking this point is a matter of which he is the best judge ; it may perhaps be to the disadvantage of the appellant.

I quash the conviction and send the case back for a new trial before another Magistrate.

Sent back for re-trial.