

Present: Pereira J.

1915.

THE KING v. PETTA *et al.*

1—6—D.C. (Crim.) Anuradhapura, 611.

Appeal—Right of appellant to reply—Criminal Procedure Code, s. 384 (1).

Under section 384 (1) of the Criminal Procedure Code the appellant in a criminal case has no right, in the course of the argument of the appeal, to address the Court in reply to the respondent.

IN this case, after counsel for the appellant had argued the appeal on the facts, counsel for the Crown (respondent) was called upon. The counsel for the appellant then claimed a right to be heard in reply to the respondent.

E. W. Jayewardene, for the first, second, third, fifth, and sixth appellants.—Counsel for the appellant has a right to be heard in reply. Under the old Criminal Procedure Code of 1883 it was specially enacted that the appellant has no right of reply. But the new Code omitted the words. Clearly the intention was to remove the disability. It is but right that appellant should have the right to meet any new point which counsel for the respondent may raise. In India it has been held that counsel for appellant has a right to be heard in reply. Counsel referred to 38 Cal. 307.

Grenier, Acting C.C., for the Crown.

Cur. adv. vult.

February 11, 1915. PEREIRA J.—

I have read the evidence in this case carefully, and I think that it well supports the verdict of the District Judge. The fact that the complainant did not promptly mention to the headman the names of the accused when he made his complaint to him is, I think, sufficiently accounted for by him.

A question of procedure arose in the course of the argument, namely, whether the appellant in a criminal appeal was entitled to address the Court in reply to the respondent. Although I should have heard Mr. Jayewardene if I thought that a new point had been pressed by the respondent's counsel, Mr. Jayewardene himself, as I felt, was not so anxious to be heard in reply in this particular case as to obtain a ruling on the question of procedure involved. I have no hesitation in saying that under section 344 (1) of the Criminal Procedure Code the appellant is not entitled to the privilege claimed, and I think that the section has been so understood since the passing

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of the Code. The section enacts that the appellant shall be " first heard in support of the appeal," and that " then the respondent, if present, shall be heard against it. " The use of the words " first " and " then " are significant, implying that it is when the Court has done with the hearing of the appellant that it should hear the other side. In the old Criminal Procedure Code it was expressly provided as follows: " but the appellant shall have no right of reply "; but apparently these words were found to be superfluous in view of the plain meaning conveyed by the words already used in the section, and were omitted in the new Code. When the Legislature has intended that an appellant should have a right of reply, it has expressly given him that right. See, for example, section 769 of the Civil Procedure Code. I have been referred to certain decisions of the Indian Courts, which I have not had the opportunity of examining, to the effect that in a criminal case the appellant has a right of reply. I shall assume that the effect of the decisions referred to above is as contended for by the appellant's counsel, but they are based on a section of the Indian Code of Criminal Procedure the terms of which are quite different from those cited above.

I dismiss the appeal.

Appeal dismissed.

