

1937

*Present : Maartensz J.*

MOLAGODA v. GUNARATNA.

399—P. C. Dandagamuwa, 145.

*Charge—Rules under the Forest Ordinance—Failure to specify number of rule—Mistake regarding date of Gazette—Irregularity—Criminal Procedure Code, s. 425.*

The accused was charged on two counts with the breach of rules made by the Governor under the Forest Ordinance of 1907.

In the charge on the first count the number and the date of the *Gazette* in which the rule was published were wrongly stated.

In the charge on the second count the number of the rule and the number and date of *Gazette* were not mentioned.

*Held*, that the conviction on the first count was good as the irregularity had not occasioned a failure of justice and was cured by the provisions of section 425 of the Criminal Procedure Code.

*Held also*, that the conviction on the second count was bad.

**A** PPEAL from a conviction by the Police Magistrate of Dandagamuwa.

J. R. Jayawardene, for accused, appellant.

T. S. Fernando, C.C., for respondent.

*Cur. adv. vult.*

September 23, 1937. MAARTENSZ J.—

The accused-appellant in this case was charged with and convicted of committing a breach of certain rules made by the Governor under the provisions of the Forest Ordinance, No. 16 of 1907.

It was contended in appeal that the conviction was bad both on the facts and in law.

I am not prepared to interfere with the learned Police Magistrate's finding of fact that the accused committed the acts complained of.

The legal objection to the conviction is that the charge framed against the accused is defective.

The charge is as follows :—“ You, Don William Gunaratna, are hereby charged as follows, that you did, within the jurisdiction of this Court, at Galagedara Mukalan, about September, 1936, fell or cause to be felled and remove or cause to be removed timber valued at Rs. 46.50 from Galagedara Mukalana, proposed Forest Reserve, without a permit from a duly authorized person in breach of rule 6 (1) dated June 2, 1934, made by the Governor under section 21 of Ordinance No. 16 of 1907, and published in *Government Gazette* No. 8,059 of June 15, 1934, and also in breach of rule made by the Governor under section 24 of Ordinance No. 16 of 1907, and thereby committed an offence punishable under sections 22 and 25 of Ordinance No. 16 of 1907 ”.

The number of the rule referred to in the second count of the charge and the number and the date of the *Gazette* in which it was published are not specified in the charge, and the conviction of the accused for a breach of this rule cannot be sustained.

The rule referred to in the first count was not published in the *Gazette* No. 8,059 of June 15, 1934.

It is a well known rule, and the trial proceeded to the conviction of the accused on the assumption that it was published in that *Gazette*.

At the argument in appeal Crown Counsel brought to my notice that the rule in question was published in *Gazette* No. 8,057 of June 8, 1934.

The question I have to decide is whether the conviction of the accused is bad because the correct number and date of the *Gazette* in which the rule was published was not specified in the charge.

Mr. Jayawardene, for the appellant, argued that the error was not one which could be cured by the provisions of section 425 of the Criminal Procedure Code. He contended that the quotation of the wrong *Gazette* in the charge was as fatal as the omission to frame a charge at all, or to frame a charge in accordance with the provisions of the Criminal Procedure Code.

I am unable to agree with him. The omission to frame a charge at all is bound to prejudice an accused as he would not know what he had to meet.

The omission to frame a charge in accordance with the provision of the Criminal Procedure Code is a breach of a specific rule of law, as was the case in *Ebert v. Perera*<sup>1</sup>.

<sup>1</sup> (1922) 23 N. L. R. 362.

In that case proceedings were instituted against the accused on a written report under section 148 (b) of the Criminal Procedure Code. The offence which the accused was alleged to have committed was punishable with more than three months' imprisonment.

The Magistrate endorsed on the report "charge read from the report". Section 187 of the Criminal Procedure Code provides that "it shall be lawful for the Magistrate to read such report, amended if necessary, as a charge", where the report discloses an offence punishable with not more than three months' imprisonment. As the report disclosed an offence punishable with more than three months' imprisonment, it was held there was an omission to frame a charge and that the irregularity was not covered by section 425.

In this case a charge has been framed as required by section 187 of the Criminal Procedure Code, and except for the mistake as to the number and date of the *Gazette*, the charge as regards the first count complies with every requisite of a charge prescribed by section 167 of the Criminal Procedure Code, 1898.

The acts which constitute the breach of the rule are set out in the charge, and the accused knew what offence he was charged with. The mistake has therefore not occasioned a failure of justice.

I accordingly hold that the error is one to which section 425 of the Criminal Procedure Code applies.

I set aside the conviction under section 25 of the Forest Ordinance of 1907, and affirm the conviction under section 22.

The sentence passed on the accused, based on the value of the timber, is well within the limits of the fine prescribed by section 22 of the Ordinance, and I see no reason to interfere with it.

*Varied.*

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