1939

Present : **Soertsz A.C.J.**

JONES *v.* AMARAWEERA.

274—M. C., Tangalla, 7,486.

Petition of appeal—Manual act of lodging necessary—Transmission by post irregular—Computation of time—Criminal Procedure Code, s. 338 (Cap. 16).

In accordance with the terms of section 338 of the Criminal Procedure Code a petition of appeal must be lodged in Court by the appellant or some person authorized by him.

The requirements of the section are not satisfied by the transmission of the petition by post.

***Queen v. Herat* (2 C. L. R. 118) followed.**

The computation of time within which an appeal should be preferred must be made from the date on which the conviction and sentence were recorded and not from the date on which the reasons for the decision were given.

***The King v. de Silva* (3 C. W. R. 235) followed.**

APPEAL from a conviction by the Magistrate of Tangalla.

L. A. Rajapakse, for accused, appellant.

D. Jansze, C.C., for complainant, respondent.

Cur. adv. vult.

July 21, 1939. SOERTSZ A.C.J.—

Crown Counsel invites my attention to a note made by the Magistrate that the petition of appeal was not "correctly tendered under section 338. It has been sent to the Chief Clerk of this Court by registered post . . . . ". Crown Counsel also submits that the appeal is out of time.

In regard to the first question, there is the case of *The Queen v. Herat*[1] in which Burnside C.J. held a petition of appeal is not "lodged" unless there is "a manual act of lodging" and that forwarding a petition of appeal by post to the Judge of the Court although it might be "a convenient practice", "does not satisfy the strict requirements of the Code". The Code referred to in Burnside C.J.'s judgment is Ordinance No. 3 of 1883. But that does not affect the question because in our Code too the word used is "lodged". It says "a party may prefer an appeal . . . . by lodging within ten days . . . . with such Magistrate's Court . . . . a petition of appeal addressed to the Supreme Court. . . . . ".

I can see no good reason for departing from this interpretation which, I understand, has been followed by the Attorney-General in appeals taken by him since the date of that judgment. In my view although it is possible to give the word "lodge" a meaning which will include a deposit made through the post, in the context of section 338, I feel inclined to agree that "a manual act of lodging" appears to have been in contemplation. I would, therefore, follow the ruling I have referred to and hold

[1] *(1892) 2 C. L. R. 118.*

that the petition of appeal was not properly lodged. There should, I think, be some personal contact between an officer of the Court and the party lodging the petition, that is to say, the appellant himself or a party who is his lawfully authorized agent, to vouch for the fact that the petition is the petition of the appellant. It is true that in this case the petition of appeal purports to be signed by the appellant's proctor, but it cannot be assumed that in every case, the officer of the Court will know that the signature on the petition is the signature of the party whose signature it purports to be.

In my opinion, the second point too is entitled to succeed. Admittedly, verdict was entered and sentence passed on March 10, 1939. The petition of appeal although dated March 21, was not received in the Magistrate's Court till March 22, so that it is two days late, and not one day late as Crown Counsel submitted. Mr. Rajapakse however contends that the statement of reasons which, he submits, constitute the "judgment" was not given till March 13. This point too is covered by authority. In *The King v. de Silva* [1] Ennis J. held that the computation of time within which an appeal should be preferred must be made from the date on which the conviction and sentence were recorded and not from the date on which the reasons for the decision were given. Ennis J. in so holding followed an earlier decision of his to which I might refer (*Kershaw v. Rodrigo and others* [2]). I would follow these rulings and I hold that the appeal is out of time even if, as stated, reasons for the decision were given on March 13. But the record shows that these reasons were given on March 10, and I can entertain no affidavit to contradict that fact.

Finally, Mr. Rajapakse asked me to deal with this case in revision. I have examined the evidence and have come to the conclusion that a clear case was established and that the accused has been treated with great leniency.

I reject the appeal and refuse the application for revision.

Appeal rejected.

[1] *(1916) 3 C. W. R. 235.*

[2] *(1916) 3 C. W. R. 44.*