

1958

*Present : Weerasooriya, J.*

N. A. JAYASENA, Appellant, and S. I., POLICE, AKMEEMENA,  
Respondent

*S. C. 291—M. C. Galle, 3,751*

*Criminal Procedure Code—Section 296 (1)—Accused undefended—Duty of Court to explain points against him.*

Where an accused is undefended, the failure of the Magistrate to draw his attention, in compliance with section 296 (1) of the Criminal Procedure Code, to the principal points in the evidence for the prosecution which tell against him vitiates the trial.

**A**PPPEAL from a judgment of the Magistrate's Court, Galle.

*M. S. A. Hassan*, for the accused-appellant.

*R. Abeysuriya*, Crown Counsel, for the Attorney-General.

July 4, 1958. WEERASOORIYA, J.—

The accused in this case was convicted of offences punishable under Sections 287 and 486 of the Penal Code and sentenced to three months rigorous imprisonment for each offence, the sentences to run concurrently.

He was undefended at the trial and at the close of the case for the prosecution the Magistrate made the following note in the record: "I comply with Section 296 of the Criminal Procedure Code. The Mudaliyar informs the accused accordingly. The accused elects to give evidence". This entry would appear to indicate that Section 296 (1) of the Criminal Procedure Code was complied with only to the extent of informing the accused of his right to give evidence on his own behalf. Learned Counsel for the accused submits that it would be highly unsafe to conclude from this entry that on the accused electing to give evidence, his attention was called by the Magistrate to the principal points in the evidence for the prosecution which told against the accused, which is a further requirement under Section 296 (1). With this submission I agree.

The question is whether, in view of this omission, the conviction of the accused can be allowed to remain. A number of previous decisions of this Court were cited to me by learned Counsel for the accused as well as by learned Crown Counsel. Some of these authorities are in conflict with the others cited. Following the decision in *Sumanapala v. Jayatilake, S. I. Police*<sup>1</sup> and *Wilbert Singho v. Tharmarajah, S. I. Police, Fort*<sup>2</sup>, I would set aside the convictions of the accused and the sentences passed on him and remit the case for a fresh trial before another Magistrate.

*Remitted for fresh trial.*

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