

1963

*Present : Sri Skanda Rajah*

K. PONNUDURAI, Petitioner, *and* D. S. SUMANAWEERA (Sub-Inspector of Police), Respondent

*S. C. 341/63—Application for Revision in M. C. Point Pedro, 12834*

*Evidence—Meaning of term “ certified copy ”.*

A copy of a statement alleged to have been certified by a person who is not competent to read the language in which it was recorded is not a certified copy.

*Conditional release of an offender—Procedure—Criminal Procedure Code, s. 325 (1).*

An accused person against whom a conviction has been entered cannot be dealt with under section 325 (1) of the Criminal Procedure Code.

**A**PPPLICATION to revise an order of the Magistrate's Court, Point Pedro.

*G. F. Sethukavalor, with S. G. Wijesekera, for Petitioner.*

*N. B. D. S. Wijesekera, Crown Counsel, for Attorney-General.*

October 24, 1963. SRI SKANDA RAJAH, J.—

This application for revision is considered along with Appeals 567 and 568. The application for revision is by the 3rd accused, because he had no right of appeal, the sentence imposed on him being a non-appealable one. The appeals and the application have been pressed both on the facts and on the law. In view of the order I propose to make I do not wish to say anything on the facts.

It would appear that the statement of the injured man, who is a Tamil, had been recorded in the police information book in Sinhala, and it was certified by a Tamil sergeant who could not read Sinhala. Under those circumstances, by no stretch of imagination could such a copy be termed a certified copy. A copy of a statement alleged to have been certified by a person who is not competent to read the language in which it was recorded is not a certified copy. It is quite clear that the accused was prejudiced in that this copy handed to the accused could not be understood either by the accused or by his proctor, or even by the sergeant who purported to certify it. Such a course amounts to a denial of justice.

It is a pity that in predominantly Tamil speaking areas statements made in Tamil should be recorded in the police information book in Sinhala. One would expect a sufficient number of persons conversant with the language of the area to be stationed at such police stations so that the interests of justice would not suffer by statements being recorded in a language other than the one in which statements are made. I do hope that this matter will be brought to the notice of the powers that be, and that this unsatisfactory state will be soon remedied.

I would, therefore, allow the application for revision and also the appeals, and set aside the conviction and send the case back to the Magistrate's Court of Point Pedro for a fresh trial before another Magistrate.

I, further, find that though the Magistrate purported to convict one of the accused on two counts, he purported to discharge that accused on the 2nd count. Having convicted, i.e., having found him guilty, it was not open to the Magistrate to deal with the accused under section 325 (1) of the Criminal Procedure Code. He should have passed sentence on that count also. He could not have discharged him with a warning on that count. I have repeatedly pointed this out and I do hope that Magistrates will be careful about making use of section 325 (1) of the Criminal Procedure Code.

*Application allowed.*