1949 *Present :* **Wijeyewardene C.J. and Gunasekara J.**

BANDA, Appellant, *and* DAVID (S.I. Police), Respondent

S. C. 299—M. C. Matale, 7,954

Criminal Procedure Code—Recording of verdict by Magistrate—Forthwith—Is it immediately after the taking of evidence ?—Section 190.

Section 190 of the Criminal Procedure Code does not require a Magistrate who convicts an accused person to record his verdict immediately after he has concluded the taking of the evidence.

Vethanayagam v. Inspector of Police, Kankesanturai (1949) 50 N. L. R. 185, overruled.

APPEAL from a judgment of the Magistrate, Matale.

A question of law was referred by Windham J. for the decision of two or more Judges.

C. Jayawickreme, with *Malcolm Perera*, for the accused appellant.

H. A. Wijemanne, Crown Counsel, with *S. Wijesinha, Crown Counsel*, for the Crown.

Cur. adv. vult.

June 29, 1949. GUNASEKARA J.—

This case comes before us upon the following reference by Windham J. :—

> "There are no merits in this appeal on the facts. But a point of law has been raised, namely, that the learned Magistrate, having concluded the taking of the evidence on both sides, did not convict and sentence the accused immediately (i.e., without leaving the Bench) but did so on the following day. This, it is argued, was a non-compliance with section 190 of the Criminal Procedure Code, and was not curable under section 425. There are conflicting decisions on this point by single Judges of the Supreme Court ; I refer, among others, to *3 Balasingham 165*, *29 N. L. R. 10*, and *30 N. L. R. 185*. Magistrates and advocates have accordingly no authoritative judgment to guide them. I therefore consider that this is a proper question to be reserved for the decision of two or more Judges of this Court, under section 48 of the Courts Ordinance. I so reserve it accordingly ".

Section 190 of the Criminal Procedure Code is in the following terms :—

> "If the Magistrate after taking the evidence for the prosecution and defence and such further evidence (if any) as he may of his own motion cause to be produced finds the accused not guilty, he shall forthwith record a verdict of acquittal. If he finds the accused guilty he shall forthwith record a verdict of guilty and pass sentence upon him according to law and shall record such sentence ".

The question is whether this section requires a Magistrate who convicts an accused person to record his verdict immediately after he has concluded the taking of the evidence and, if so, whether a Magistrate's omission to record his verdict at that stage is fatal to the conviction.

This question came up for consideration in the case of *Rodrigo v. Fernando* [1] which was decided shortly after the present Criminal Procedure Code came into operation and Withers J. said :

> "It is very important that a Magistrate should observe the provisions of section 190 of the Criminal Procedure Code, 1898, which enacts that a Magistrate shall, after taking 'the evidence for the prosecution and defence, forthwith record a verdict of acquittal or guilt as he may find' ".

He took the view that the section "enacts that the Magistrate shall record his verdict of acquittal or guilt forthwith after hearing the evidence for the prosecution and defence". It is apparent from what purports to be a quotation from the section that this view was based on a misreading of the enactment.

In *Peris v. Silva* [2] decided in 1905, Wendt J. appears to have assumed the correctness of this view. He said, however, that he was "not prepared to hold that the mere fact of a Police Magistrate's judgment not having been pronounced 'forthwith', as required by section 190 of the Procedure Code, is fatal to its validity". Twenty-two years later,

[1] *(1899) 4 N. L. R. 176.* [2] *(1905) 3 Bal. 165.*

in 1927, the question was expressly considered in the case of *Samsudeen v. Suthoris* [1] and Dalton J. held that what the section requires is that the verdict should be recorded, not forthwith after the taking of evidence but forthwith after the finding of the verdict. This decision was followed for the next twenty-two years until it was dissented from in the judgment of Basnayake J. in *Vethanayagam v. Inspector of Police, Kankesanturai* [2].

Basnayake J. considers that Dalton J's interpretation is an impractical view of the section. It seems to me, however, that that interpretation is in accordance with the plain meaning of the words of the section, which are by no means ambiguous. I should say, with all respect, that there seems to be nothing impractical in a requirement that if the Magistrate finds the accused not guilty he shall record a verdict of acquittal forthwith after he finds him not guilty, and that if he finds him guilty he shall record a verdict of guilty forthwith after he finds him guilty.

There is, no doubt, everything to be said for the view that it is eminently desirable that the Magistrate should record his verdict forthwith after the conclusion of the cases for the prosecution and the defence. But it seems equally clear that if it was the intention of the Legislature to lay down such a procedure as an imperative requirement of law it had language adequate for the purpose. Thus, it is enacted in section 214 of the Code that—

> " When the cases for the prosecution and defence are concluded . . . . the District Judge shall forthwith or within not more than twenty-four hours record a verdict of acquittal or conviction ".

What is enacted in section 190, on the other hand, is that—

> " If the Magistrate . . . . finds the accused not guilty, he shall forthwith record a verdict of acquittal. If he finds the accused guilty he shall forthwith record a verdict of guilty . . . . "

Clearly, section 214 requires a District Judge to record a verdict forthwith (or within twenty-four hours) after the close of the cases for the prosecution and defence, but section 190 requires a Magistrate to record a verdict forthwith after he finds the accused guilty or not guilty as the case may be.

Basnayake J. refers to the cases of *Venasy v. Velan* [3] and *The Queen v. Kiriya* [4] as showing that the earlier decisions of this Court (under the Code of 1883) do not support the view taken by Dalton J. In the former case Bonser C.J. observed that it was " most desirable that Magistrates and District Judges should state their finding as to the guilt or innocence of the accused immediately at the conclusion of the trial, and that if the impression left upon their minds by the prosecution, after hearing all the evidence, is so weak and unsatisfactory that they are unable to say whether they consider the accused to be guilty or not, they should give the accused the benefit of the doubt and acquit."

I do not see anything in the view taken by Dalton J. that is inconsistent with this view : it is one thing to say that it is " most desirable " that a Magistrate should state his finding immediately at the conclusion of the trial, and quite another to say that there is an imperative statutory requirement that he should do so.

[1] *(1927) 29 N. L. R. 10.*
[2] *(1949) 50 N. L. R. 185.*
[3] *(1895) 1 N. L. R. 124.*
[4] *(1894) 3 S. C. R. 100.*

The reason for the view taken in *The Queen v. Kiriya* (*supra*), that upon the conclusion of a District Court trial the verdict should be given at once, appears to be that it is important that the verdict should be given while the impression made by the evidence is fresh in the mind of the judge. Bonser C.J. says in one of the passages quoted—

> "A subsequent reading over the notes of evidence is by no means the same thing as the fresh and lively impressions made by the oral testimony of the witnesses. A story which looks very cogent and convincing on paper may, when heard from the lips of the witnesses, be anything but satisfactory, and for a judge to wait until the impression made by the conduct and demeanour of the witnesses, which are often more important than their words, has faded from his mind, and nothing is left but the dry bones of notes of evidence, is in my opinion an irregularity which is fatal to the interests of justice."

The view taken by Dalton J. does not, as I understand it, suggest that a Magistrate may wait until the impression made by the conduct and demeanour of the witnesses has faded from his mind to arrive at his verdict.

I would answer the question referred to us as follows :—Section 190 of the Criminal Procedure Code does not require a Magistrate who convicts an accused person to record his verdict immediately after he has concluded the taking of the evidence.

WIJEYEWARDENE C.J.—I agree.