[COURT OF CRIMINAL APPEAL.]

1942 *Present :* **Moseley S.P.J., Hearne and de Kretser JJ.**

THE KING *v.* HEMASIRI SILVA.

65—M. C. Colombo, 38,765.

Court of Criminal Appeal—Application to argue new ground of appeal—Failure to apply for extension of time—Notice of appeal on four grounds—Supplementary notice—Arugument on new ground refused—Court of Criminal Appeal Ordinance, s. 8 (1).

The appellant was convicted on July 29, 1942. Application for copy of proceedings was made on August 4 and the copy was supplied on August 12, *i.e.*, on the day on which the time for giving notice of appeal expired.

On August 6, the appellant filed a notice of appeal on questions of law and a notice of application for leave to appeal under section 4 (*b*). In his notice of appeal he set out four grounds of appeal.

On August 12, he filed a supplementary notice, setting out a further ground, intimating that a copy of the charge had only been just available and it was not possible to formulate all the grounds of appeal. This notice was signed by Counsel. In the course of the argument in appeal, Counsel sought to address the Court on a point not set out in the notice of appeal.

Held, that the case not being a capital case application to argue the new ground of appeal should not be allowed, as there was delay in applying for a copy of the proceedings ; there was no application for extension of time and, although the charge to the Jury had been in Counsel's hands for three weeks, no supplementary notice setting out this particular ground had been filed.

The principles that should be applied when considering an application for extension of time within which to appeal are equally applicable to an application for leave to add a ground of appeal.

APPEAL from a conviction by a Judge and Jury before the 3rd Western Circuit.

J. E. M. Obeyesekere (with him *R. G. C. Pereira*), for appellant.

J. M. Fonseka, Solicitor-General (with him *E. H. T. Gunasekera, C.C.*), for the Crown.

Cur. adv. vult.

September 14, 1942. MOSELEY S.P.J.—

The appellant was convicted on July 29, 1942, of two offences against the Defence (Miscellaneous) Regulations, which may be stated shortly as follows :—

(1) Endeavouring to cause disaffection among His Majesty's subjects in Ceylon by printing and publishing a certain article, and

(2) Endeavouring to influence public opinion in Ceylon in a manner likely to be prejudicial to the public safety, defence of the Island, the maintenance of public order or the efficient prosecution of the war by printing and publishing the said article.

The article, the subject matter of the charges, appeared in a copy of a Sinhalese newspaper, "Kamkaruwa", dated March 21, 1942.

The first ground upon which the appeal was argued was that there was no evidence in law upon which the appellant could be convicted. One point upon which the appellant had to satisfy the Jury was that, on March 21, 1942, the appellant was not the printer and publisher of the newspaper, which on that date had been in existence for some eighteen months. The appellant is admittedly one of those responsible for the birth of the paper and it is he who made the declaration, required by section 2 of the Newspapers Ordinance (Cap. 138), to the effect that he was the printer, publisher, and proprietor. It was he who signed and sent, to the Registrar-General, as required by section 7 of the Ordinance, copies of the newspaper up to and including No. 137, which was dated March 14, 1942, and was that which immediately preceded No. 38, in which appeared the article in question. Further, each number of the newspaper, including No. 38, bore on it a notification, in compliance with section 6 of the Ordinance, that it was printed and published by the appellant.

The appellant sought, at the trial, to show that, for some considerable time before March 21, 1942, he had lost interest in the paper and, indeed, wished to stop its publication. As negativing such a state of mind in the appellant we have, in addition to the facts already mentioned, his omission to take any steps, prior to the publication of the article, to make any communication to the proper authority that there was any change in the personnel responsible for the production of the paper, as required by section 2 of the Ordinance. In cross-examination, he alleged that on March 16, and again on the 19th, he went to see Ambuldeniya, the actual printer of the newspaper, and told him not to print the paper in his (appellant's) name. Had he been able to establish the fact of those visits and requests there would have been a strong presumption that he was not privy to the publication of No. 38. But Ambuldeniya was not cross-examined on this point, and appellant's evidence is unsupported. Moreover, on March 19, he wrote to the Registrar-General, enclosing copies No. 31-37. One would suppose that if, at that date, he was desirous of ceasing publication of the paper, it was a convenient opportunity of notifying the Registrar-General that, as far as he was concerned, there would be no further issue. Further, if the alleged interviews with Ambuldeniya had taken place, there would seem to be no necessity for the letter of March 22, in which he says he stated that he could not be responsible thereafter, and which, it will be noted, was written on the day after the publication of the article.

I do not propose to review the evidence on this point in further detail. In our view, there was ample evidence that appellant printed and published the newspaper on March 21. Did he do so in the endeavour alleged in the respective counts of the indictments? That was a matter which was properly left to the Jury.

The point was then taken that the learned trial Judge misdirected the Jury inasmuch as, having told them that the witness Ambuldeniya was an accomplice, he did not warn them of the danger of accepting his evidence without corroboration. Without dealing with the question

whether Ambuldeniya was an accomplice, it is sufficient to say that, on the hypothesis that he was in fact an accomplice, there was sufficient corroboration provided by the evidence of the appellant, particularly as to his own conduct, to render a warning unnecessary. The appeal on the grounds set out in the notice, fails, as does the application for leave to appeal on the facts.

In the course of his argument, Counsel for the appellant sought to address us on a point not set out in the notice of appeal. He asked for this indulgence upon the ground that there had been a delay in supplying the appellant with a copy of the proceedings, including the charge to the Jury, in the trial Court. In that connection, the facts are that the appellant was convicted on July 29, application for the copy of the proceedings was made on August 4, and the copy was supplied on August 12, that is to say, on the day on which the time for giving notice of appeal expired. On August 6, the appellant had filed a notice of appeal, on questions of law, and a notice of application for leave to appeal under section 4 (*b*). In his notice of appeal he set out four grounds of appeal. On August 12, he filed a supplementary notice, setting out a further ground, and intimating that, as a copy of the charge had only just become available, it was not possible for him to formulate all the grounds of appeal that might be available to him at the hearing. This notice was signed by Counsel. It cannot, therefore, be contended that the appellant was in ignorance of the provision in the Court of Criminal Appeal Ordinance for an extension of time which may be granted by the Court, except in the case of conviction, involving a sentence of death, under section 8 (1). This power, under section 8 (1), may be exercised by any Judge of the Court. It cannot, therefore, be said that there was any difficulty in the way of making such an application. Not only was that not done, but, in the period between August 12 and September 3, no further supplementary notice was filed. As I have said, the matter cropped up only in the course of argument. It may fairly be said that the application is belated.

In *Rex v. Burke* [1], Counsel for the appellant at the outset had applied to amend the notice of appeal by adding a further ground. This was refused after considering *Rex v. Wyman and Another* [2], in which the Court wished it to be understood that substantial particulars of misdirection must always be set out in the notice of appeal, and of *Rex v. Cairns* [3] in which leave to add to the grounds of appeal was granted, *as it was a capital case.* Leave to amend the notice was also granted in *Rex v. Meade* [4], which was also a capital case. In *Rex v. Allen* [5], one of the grounds for refusing an application to include, in the application for leave to appeal, a point of law, was that Counsel defending at the trial had stated that there was no point of law. That is somewhat analogous, by implication, to the present case, as it might fairly be assumed that, five grounds having been stated by Counsel, the charge to the Jury was not open to further complaint. The present application was formulated, at our request, as one for an extension of time within

[1] *43 N. L. R. 465.*
[2] *13 Cr. App. R. 163.*
[3] *20 Cr. App. R. 44.*
[4] *2 Cr. App. R. 47.*
[5] *1 Cr. App. R. 18.*

which to appeal as it seemed to us that the principles which should be applied when considering an application of that nature are equally applicable to an application for leave to add a ground of appeal. In *Rex v. Rhodes*[1] an application for extension of time, made five weeks after conviction, was refused, the Lord Chief Justice observing that, while a short delay may be disregarded by the Court if it thinks fit, in the case of a substantial interval of time—a month or more—it must not be taken for granted that an extension of time will be allowed as a matter of course without satisfactory reasons. No reason has been advanced in the present case which appears to us in the least degree satisfactory.

This is not a capital case, there was delay in applying for a copy of the proceedings, there was no application for extension of time, and, finally, although the charge to the Jury had been in Counsel's hands for three weeks, no supplementary notice setting out this particular ground was filed. For these reasons the application for leave to argue this ground is refused.

Application refused.