

1964

Present : Sri Skanda Rajah, J.

HARAMANIS APPUHAMY, Appellant, *and* INSPECTOR OF POLICE,
BANDARAGAMA, Respondent

S. C. 257/1964—M. C. Panadura, 78,171

Appeal—Time limit for filing petition of appeal in criminal case—Computation—Criminal Procedure Code, ss. 306, 338 (1) (a).

Where an accused person is convicted and sentenced, the time within which an appeal should be preferred must be computed from the date on which the reasons for the decision are given, and not from the date of conviction and sentence.

Jones v. Amaraweera (1939) 41 N. L. R. 263, not followed.

Knives Ordinance—Section 3—Imposition of fine—Default sentence must be simple imprisonment—Criminal Procedure Code, ss. 312 (1) (c), 312 (1) (e) (v).

Under section 3 of the Knives Ordinance, only a fine can be imposed and, therefore, the default sentence should be simple, and not rigorous, imprisonment.

APPEAL from a judgment of the Magistrate's Court, Panadura.

No appearance for accused-appellant.

W. K. Premaratne, Crown Counsel, for the Attorney-General.

June 12, 1964. SRI SKANDA RAJAH, J.—

When this matter was taken up yesterday, Mr. Premaratne, Crown Counsel, who appeared for the respondent, there being no appearance for the appellant, brought to my notice the case of *Jones v. Amaraweera*¹, which followed *The King v. de Silva*² and *Kershaw v. Rodrigo*³.

In those cases it was held that the time within which an appeal should be preferred must be computed from the time on which the conviction and sentence were entered and not from the date on which the reasons for the decision were given. With great respect to the eminent judges who decided those cases I indicated that it appeared to me unreasonable

¹ (1939) 41 N. L. R. 263; 15 C. L. W. 18.

² (1916) 3 C. W. R. 235.

³ (1916) 3 C. W. R. 44.

to expect an accused who is convicted and sentenced to file the petition of appeal before the reasons for his conviction are known. I reserved judgment to consider this matter and today as Mr. Pullenayagam, Senior Crown Counsel, was in court I invited his assistance. This Court is obliged to him for it.

Section 338 (1) of the Criminal Procedure Code reads thus :—

“Subject to the provisions of the last three preceding sections any person who shall be dissatisfied with any judgment or final order pronounced by any Magistrate’s Court or District Court in a criminal case or matter to which he is a party may prefer an appeal to the Supreme Court against such *judgment* for any error in law, or in fact—

(a) by lodging within ten days from the time of such *judgment* or *order* being passed”

In this case the accused was convicted and sentenced to pay a fine of Rs. 50 in default 3 months’ rigorous imprisonment on the 2nd March, 1964. The reasons were delivered only on 16th March, 1964, and the petition of appeal was filed on 14-3-64.

If one follows these judgments one would have to hold that the accused’s appeal was out of time. Section 338 (1) (a), which I have quoted above, states that an appeal can be lodged within ten days from the time of “such judgment”. Section 306 states: “The following provisions shall apply to the *judgment* of courts other than the Supreme Court :— (1) The judgment shall be written by the District Judge or Magistrate who heard the case and shall be dated and signed by him in open court at the time of pronouncing it, and in cases where appeal lies shall contain the point or points for determination, the decision thereon, and the reasons for the decision”. This would clearly indicate that in cases where appeal lies the point or points for determination should be set out and the reasons for the decision should also be given. If one gives this interpretation to the word “judgment” in section 338 (1) one cannot resist the conclusion that an appeal can be filed within ten days of the delivery of the reasons (judgment). To take a different view seems to me to be unreasonable ; for, it would deprive the appellant of stating his objections to the reasons given in the judgment. Of course, it is true that in an appeal from the Magistrate’s Court all the grounds of appeal need not be set out. But that alone should not be taken into account in considering section 338 regarding the time within which an appeal should be filed. Why should the accused be deprived of the opportunity to complain against the reasons given by the Magistrate ? Therefore, with great respect, I would express my disagreement with the three judgments referred to above and I would hold that this appeal was filed within time.

Mr. Premaratne, very properly, drew my attention to the fact that under section 3 of the Knives Ordinance only a fine can be imposed and, therefore, the default sentence should be simple imprisonment and not rigorous, in view of section 312(1)(e)(v). That section empowers the Magistrate in such cases where there is no imprisonment mentioned as a punishment in the penal provision to pass a sentence of 3 months' simple imprisonment in respect of a fine of Rs. 50 as in this case.

That again seems to be inconsistent with the provisions of section 312(1)(c). Take, for instance, an excise case in which the accused is charged under section 46 of the Excise Ordinance. In that case the Magistrate is empowered to pass a sentence of imprisonment which may extend to 6 months' rigorous imprisonment, to a fine which may extend to Rs. 1,000 or to both. In such a case if the Magistrate imposed a fine, in default of the fine he can sentence the accused only to a term not exceeding one-fourth of the imprisonment of 6 months mentioned in the section, i.e. only six weeks.

Though section 46 of the Excise Ordinance prescribes both imprisonment and/or fine it seems unreasonable that in a case where a man is liable to pay a fine of Rs. 50 and not to imprisonment he should be liable to imprisonment in default to a term which may extend to three months. I think this matter should receive the attention of the Legislature.

I see no reason to interfere with the conviction or the sentence of fine but I alter the default sentence to three weeks' simple imprisonment.

Conviction affirmed.

Default sentence altered.