1946 *Present :* **de Silva J.**

HENRICUS, Appellant, *and* WIJESOORIYA (A.S.P.), Respondent.

208—M. C. Avissawella, 34,877.

Criminal procedure—Sentence passed on accused on date of verdict—Judgment subsequently written—Not pronounced in open court—Fatal irregularity—Criminal Procedure Code, ss. 304, 306.

Where, at the conclusion of a trial, the Magistrate found the accused guilty and passed sentence on him, but the judgment which was written at a subsequent time was not delivered in open court—

Held, that the irregularity was one which was not covered by section 425 of the Criminal Procedure Code.

APPEAL against a conviction from the Magistrate's Court, Avissawella.

H. V. Perera, K.C. (with him *G. E. Chitty* and *C. de S. Wijeratne*), for the accused-appellant.—Counsel argued at length that the conviction was contrary to the weight of evidence in the case, and then contended that judgment had not been delivered in the case in the manner required by sections 304 and 306 (1) of the Criminal Procedure Code. The judgment was not delivered in open court. The judgment was not available to the accused for nearly six weeks. Counsel cited judgments of Moseley J. (S. C. Nos. 521–523/M. C. Colombo 19,137—S. C. Minutes of October 26, 1944) and of de Kretser J. (S. C. 750/M. C. Balapitiya 38,574—S. C. Minutes of June 18, 1941). The requirements of sections 304 and 306 are no mere matters of form. They are based upon good and substantial grounds of public policy—See *Queen Empress v. Hargobind Singh* [1]. This case was approved in *Bandama Atchayya v. Emperor.* [2]

T. S. Fernando, C.C. (with him *E.P. Wijetunge, C.C.*), for the Attorney-General.—The two cases cited for the appellant have been considered in later Indian cases and have not been followed. The view taken in India has been that the non-delivery of the reasons at the same time as the pronouncing of the sentence is not fatal to a conviction—See the majority judgment in *Senapati v. Rajwar* [3], followed in *Tilak Chandra Sarkar v. Baisagamoff* [4]. The Calcutta view was followed in Bombay—vide *Emperor v. Thaver Issaji* [5]. Even if there be an irregularity, such irregularity is not fatal, and is cured by section 425 of the Criminal Procedure Code—vide *Emperor v. Morio Khan* [6].

The expression " judgment " is used in various senses in the various sections of the Criminal Procedure Code. In the case of *Mondul v. Banerjee*[7], it was held that "judgment " indicated some final determination of the case which would end it once for all, such as an order of conviction or acquittal. The finding of a verdict coupled with the sentence is the " judgment "—per Ennis J in *Kershaw v. Rodrigo*[8], followed by the same judge in *R. v. de Silva* [9]. See also *A. I. R. 1933, Madras 251.*

There are several Indian decisions holding that non-compliance with some part or other of sections 304 and 306 of the Criminal Procedure Code is not fatal to a conviction, *e.g.*, where judgment is pronounced in judge's bungalow by reason of his illness—See Chitaley's Criminal Procedure Code of India, Vol. II., p. 1898; judgment not written in English or in the language of the Code as required by the Indian Criminal Procedure Code.—See *Dhanukdari Singh v. Harihar Singh*[10]; omission to sign and date a judgment—See *Ram Sukh v. Emperor*[11]; affixing Magistrate's signature by means of a stamp—See *Subramanya Ayyar v. Queen.* [12]

[1] *(1892) I. L. R. 14 Allahabad, 242 at p. 272.*
[2] *(1903) I. L. R. 27 Madras, 237.*
[3] *(1893) I. L. R. 21 Calcutta, 121.*
[4] *(1896) I. L. R. 23 Calcutta, p. 502.*
[5] *(1911) 12 Criminal Law Journal, p. 457.*
[6] *(1911) 12 Criminal Law Journal, p. 610.*
[7] *(1901) I. L. R. 28 Calcutta, 652.*
[8] *(1916) 3 C. W. R., p. 44.*
[9] *(1916) 3 C. W. R., p. 235.*
[10] *(1906) 4 Criminal Law Journal, p. 162.*
[11] *23 Criminal Law Journal, p. 688.*
[12] *(1883) I. L. R. 6 Madras, p. 396.*

In the present case there is no question of any possible prejudice to the accused. The sentence was in order. On the day the sentence was passed an appeal was filed. It was open to the accused, this being a criminal case, to raise in this court any ground of appeal although not stated in his petition. An accused person is not aggrieved by the reasons given in a judgment, but by the order of conviction and the sentence.

Cur. adv. vult.

July 27, 1946. DE SILVA J.—

In this case three charges were made against the accused, namely (1) that being a public servant, to wit, Sub-Inspector of Police, Padukka, in June, 1945, he accepted for himself a gratification other than a legal remuneration, to wit, a sum of Rs. 50 from one Harankawatte Vidanelage Charlis Singho of Udugama for omitting to do an official act ; (2) that he accepted a similar gratification in July, 1945 ; and (3) that he accepted a sum of Rs. 50 and a bottle of Ceylon Arrack valued Rs. 10 as a gratification in similar circumstances. After trial, which was concluded on December 20, the Magistrate found the accused not guilty of the 1st and 2nd charges and guilty of the 3rd charge and postponed the case for the following day for sentence. On the 21st he sentenced the accused to rigorous imprisonment for a period of six weeks and ordered bail to be given in a sum of Rs. 250 in the event of an appeal. He also recorded that he would give his reasons later. Thereafter, no reasons appear to have been given in Court. A judgment has been written and is now in the record, but this judgment has not been delivered in Court. As the judgment had not been dated and there was nothing to show whether it had been delivered in Court or not an inquiry was made from the Magistrate whether the judgment had been delivered. In his reply he stated that he indicated orally to the accused in open Court, in the presence of his legal adviser, his findings on the facts and the substance of the reasons for his decision when he imposed sentence on the accused. With regard to the judgment which he had written, he stated it was not delivered in Court.

In these circumstances I have to consider whether there has been a substantial compliance with the provisions of sections 304 and 306 of the Criminal Procedure Code. Section 304 provides that the judgment in every trial under this Code shall be pronounced in open Court either immediately after the verdict is recorded or at some subsequent time of which due notice shall be given to the parties or their pleaders, and the accused shall, if in custody, be brought up, or, if not in custody, shall be required to attend to hear judgment delivered except when his personal attendance during the trial has been dispensed with and the sentence is one of fine only. Section 306 provides that 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. Sub-section (2) of that section states that it shall specify the offence if any of which and the section of the law under which the accused is convicted and the punishment to which he is sentenced. These two sections quite clearly show that the judgment must be contemporaneous with the sentence and that the sentence forms, in fact, a part of the judgment.

Various cases have been cited which show that an irregularity in not signing a judgment or not complying with all the requirements of these sections is considered to be fatal or not according to the circumstances of each case. It is not necessary to refer to these cases in detail because there is no indication in what circumstances such an irregularity will be considered to be fatal or not. In this case, however, the position is that so far there has been no judgment delivered at all but merely the sentence.

In the circumstances, I think the irregularity is one which is not covered by section 425 of the Criminal Procedure Code. I would, therefore, set aside the conviction and send the case back for trial in due course before another Magistrate.

Case sent back for retrial.