

1943

Present : Jayetileke J.

KANDASAMY, Appellant and DE KRETSEK, Respondent.

515—M. C. Point Pedro, 2,166.

Criminal Procedure—Accused tried on two charges—Verdict of acquittal on one charge—Verdict deferred on 2nd charge—Criminal Procedure Code, s. 190

Where an accused person was tried on two charges and the Magistrate at the close of the case acquitted him of one charge and deferred his verdict on the other charge as he had not reached a decision on the question of law raised regarding it,—

Held, that the procedure was regular and that it was in strict accordance with section 190 of the Criminal Procedure Code.

A PPEAL from a conviction by the Magistrate of Point Pedro.

L. A. Rajapakse (with him H. W. Thambiah and S. N. Rajah), for appellant.

E. H. T. Gunasekera, C.C., for complainant, respondent.

Cur. adv. vult.

October 5, 1943. JAYETILEKE J.—

In this case the accused was charged under sections 344 and 314 of the Penal Code (Cap. 15).

On May 5, 1943, the Magistrate appears to have come to the conclusion at the close of the case that the accused was not guilty on the first charge, but he had not reached a decision in regard to the second charge in view of a question of law that was raised. He thereupon recorded "forthwith" a verdict of acquittal on the first charge in terms of section 190 of the Criminal Procedure Code (Cap. 16).

So far as the second charge was concerned he could not, on that occasion, record a verdict because he had not found the accused guilty or not guilty and he deferred his verdict till May 8, 1943.

Mr. Rajapakse contends that under section 190 it was not open to the Magistrate to record his verdict on the two charges on two different dates.

The sole question then is whether the Magistrate should have deferred his verdict on the first charge till he reached a conclusion regarding the second charge. Section 190 does not say that he should do so. That section seems to contemplate the simple case of one charge, and must be

read, *mutatis mutandis*, in a case involving several charges. Each charge is, in reality, a separate case and would be tried separately but for the provisions as to the joinder of charges. Directly one charge is found not to be established the accused should, I think, be acquitted as early as possible.

In *Samsudeen v. Suthoris*¹ Dalton J. said:—"It seems to me that the condition precedent to the recording of the verdict is the finding of the verdict."

It would therefore have been open to the Magistrate to defer recording his verdict on the first charge till he had found on the second charge as well. But it seems to me that the Magistrate has acted in strict compliance with section 190 when he made the order above referred to.

I would dismiss the appeal.

Affirmed.