

Present : Drieberg J.

1929

KING v. HEVAL.

1—D. C. (Crim.) Kandy, 4,191.

*District Court—Criminal trial—Reading of the depositions of witness—  
Tendered for cross-examination—Criminal Procedure Code, s. 208.*

A trial on indictment in the District Court must proceed on evidence given in Court. It is irregular to read the depositions of the witnesses in the Police Court and to tender them for cross-examination.

**A** PPEAL from a conviction by the District Judge of Kandy.

*De Jong*, for accused, appellant.

*Samarawickreme, C.C.*, for the Crown.

March 14, 1929. DRIEBERG J.—

The appellant was charged under sections 400 and 403 of the Penal Code with cheating Gandara by obtaining from him Rs. 500 on a mortgage of his land on the representation that the mortgage was a primary one, whereas in fact it had been previously mortgaged by him to Sittamparam Chetty.

At the trial, after the Crown Advocate had opened his case, the appellant having pleaded not guilty, the following record appears :—  
“ Mr. Sproule (for accused) accepts the evidence recorded in the lower Court. I tender the witnesses for cross-examination. ”

The witnesses were then called, their evidence given at the inquiry was read over to them by the Crown Advocate, and they were cross-examined by Counsel for the defence.

The defence was that as there had been no sale on the decree obtained on the earlier mortgage, nor a realization by Gandara on his bond, there was no proof that Gandara had in fact sustained loss, the suggestion being that the property, if sold, would realize the amount of both mortgages.

It is not necessary to consider whether this amounts to a good defence or not, for it is not possible to recognize these proceedings as a trial on the indictment.

It should be remembered that the proceedings in a District Court after committal should be a trial by a Judge on evidence given before him ; they are not proceedings in which he has to give a decision on evidence recorded in the lower Court. I need only refer to section 208 of the Criminal Procedure Code, which provides

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that after prosecuting Counsel has stated his case the witnesses for the prosecution shall then be examined. It is necessary that there should be before the Judge, in evidence given before and recorded by him, a sufficient case made out against the accused on which he can base a judgment.

Where sufficient evidence has been led for this purpose in the opinion of the prosecuting Counsel, and where there are other witnesses on the indictment whose evidence is merely corroborative and who have not been called, it is open to the prosecution to tender these witnesses for cross-examination if the accused so desires. This, however, does not justify the course adopted in this case of not hearing or recording sufficient material to support a conviction but merely having it tendered to the Court by the depositions of the witnesses in the lower Court being read out.

I quite recognize that this is a case in which there was very little possibility, if any at all, of prejudice to the accused by the procedure adopted, and that it was done with the full consent of the Counsel for the accused, but it is not possible to disregard the requirements of the Code, which plainly require that proceedings after committal should be in the nature of a trial, on evidence led before the trial Judge.

The case against the appellant did not rest solely on the two mortgage bonds and the recitals in them, but also on the oral evidence of Gandara and the notary of verbal representations made to them, and their evidence on essential points such as these should have been recorded.

I, therefore, set aside the proceedings and remit the case for fresh trial.

*Sent back.*

