

1946

Present : Nagalingam A.J.

THE KING v. BEYAL SINGHO *et al.*

S. C. No. 117 (3rd Western Circuit)—M. C. Chilaw, 25,756.

Witness—Non-summary inquiry—Evidence recorded in absence of absconding accused—Competency of the witness to testify at the trial of the accused—Criminal Procedure Code, ss. 297, 407.

The evidence of a witness whose deposition at a non-summary inquiry was recorded in the absence of an absconding accused in terms of section 407 of the Criminal Procedure Code need not be recorded *de novo* but by virtue of section 297 of the Code it would be sufficient if the evidence so recorded is read over to the accused in the presence of such witness and the accused permitted a full opportunity of cross-examining such witness. Such a witness would be competent to testify against the accused at the trial.

THIS was a statement of reasons given by the presiding Judge, in a trial before the Supreme Court, for admitting certain evidence tendered by the prosecution and objected to by the defence.

G. E. Chitty, for the sixth accused.

B. Jayasuriya, C.C., for the Crown.

October 1, 1946. NAGALINGAM A.J.—

Mr. Chitty for the sixth accused raises a preliminary objection to the competency of the witnesses whose evidence was recorded at the non-summary inquiry by the Magistrate in the absence of the sixth accused to testify against him at the trial. He contends that after the sixth accused was arrested and produced in Court the learned Magistrate should have recorded *de novo* the evidence of all the witnesses who had been examined in the absence of the sixth accused so far as the charges related to him.

Section 297 of the Criminal Procedure Code specifically states that except as otherwise expressly provided all evidence taken at inquiries or trials shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in the presence of his pleader. The pregnant words in the section, so far as the objection is concerned, are, "except as otherwise expressly provided". Under section 407 of the Criminal Procedure Code there is express provision that where an accused has absconded and there is no immediate prospect of arresting him the Court may in his absence examine the witnesses produced on behalf of the prosecution and record their depositions. In this case the Magistrate had before him evidence that the 6th accused was absconding and in fact the Magistrate did record a specific finding on the point, so that the evidence was properly recorded in the absence of the sixth accused and therefore under the proviso to section 297 of the Criminal Procedure Code the evidence so recorded need only be read over to the accused in the presence of such witnesses and the accused permitted a full opportunity of cross-examining such witnesses. This has been complied with.

I am therefore of opinion that the witnesses having given their testimony against the accused in due form as required by law, they are competent to testify in this Court against the accused.

This question is now of purely academic interest as the Jury by their verdict have acquitted the sixth accused.

Objection overruled.