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 ERAN KHAN  
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 SANDERSON  
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question "What is your verdict with regard to each of the accused as regards the charge under section "147." He would then get a clear answer upon this charge. Then he would ask "What is your verdict with regard to each of the accused as regards the "charge under section 148?" He would get a definite answer to that question. Then he would proceed in the same way and ask "What is your verdict with regard to each of the accused as regards the charge "under section 304?" and so on. This is the practice which, in my experience, is always adopted at the Original Criminal Sessions of this Court, and I do not understand why such an obviously simple procedure should not be followed in the trial of cases in the mufussil. If this procedure had been adopted in this case, there would have been no difficulty whatever in ascertaining the real verdict of the Jury.

E. H. M.

*Appeal dismissed.*

### CRIMINAL REVISION.

*Before Newbould and Suhrawardy JJ.*

BAISNAB CHARAN DAS

v.

AMIN ALI.\*

*Judgment—Power of Magistrate transferred out of a district to exercise jurisdiction therein—Evidence heard in one local area in a district, and judgment written in and sent from another district after transfer thereto—Delivery of the judgment by a Magistrate in the former local area—Criminal Procedure Code (Act V of 1898), ss. 12 and 350.*

A Magistrate who has heard the evidence in a local area in one district cannot, after he has ceased to possess jurisdiction therein, by reason of an order of transfer to another district, complete the trial by delivery of judgment before departure, or by forwarding a written judgment from

\* Criminal Revision, No. 3 of 1923, against the order of C. G. G. Helme, Additional District Magistrate of Sylhet, dated Dec. 7, 1922.

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the new district to the Subdivisional Magistrate of the former local area for delivery, and the latter Magistrate has no authority under the Code to deliver the same.

*Empress of India v. Anand Sarup* (1) followed.

Section 350 of the Criminal Procedure Code gives a Magistrate jurisdiction to decide the case on the evidence recorded by his predecessor, but not to deliver a judgment written by the latter.

On the 22nd August, 1922, one Amin Ali filed a complaint of mischief against the petitioners and others before the Subdivisional Magistrate of Karimgunge, in the district of Sylhet. He sent the case for trial to Babu Srish Kumar Sen, a second class Magistrate at Karimgunge. After the latter had heard the whole of the evidence he was transferred to Hailakandi in the Cachar district. He took the records of the case with him, and sent a written judgment from Hailakandi, which was delivered at Karimgunge by the Magistrate in charge of the subdivision, convicting the petitioners under s. 426 of the Penal Code, and sentencing them to fines. An appeal against the conviction having been dismissed, the petitioners obtained the present Rule on the ground that the judgment, as pronounced, was illegal.

*Moulvi Syed Mahomed Saadulla*, for the petitioners. After the transfer of the Magistrate to another district he could exercise no jurisdiction in Karimgunge. Refers to *Empress of India v. Anand Sarup* (1). There is no provision in the Code enabling one Magistrate to deliver judgment for another.

*Babu Priya Nath Dutt*, for the opposite party. Under s. 350 of the Code the accused might have asked for a rehearing of the evidence, but did not do so. The delivery of judgment by a different Magistrate is an irregularity covered by s. 537: *Re Sankara Pillai* (2), *Savarimuthu Pillai v. Emperor* (3).

(1) (1881) I. L. R. 3 All. 563. (2) (1908) 18 M. L. J. 197.

(3) (1916) 1 Mad. W. N. 372.

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NEWBOULD AND SUHRAWARDY JJ. This case was heard by Babu Srish Kumar Sen, the Subdivisional Officer of Karimgunge, in the district of Sylhet, and after the hearing of evidence the trying Magistrate was transferred to Hailakandi in the district of Cachar, and from there he sent a written judgment which was delivered at Karimgunge by Moulvi Mahomed Chowdhury, the Magistrate in charge of that subdivision. The Code of Criminal Procedure makes no provision for delivery of judgment written by the Magistrate who heard the case after he had ceased to have jurisdiction in the district. Even if the Magistrate, Babu Srish Kumar Sen, after his transfer, had himself delivered this judgment, he would have acted without jurisdiction, as was held in the case of *Empress of India v. Anand Sarup* (1). It is contended on behalf of the opposite party that section 350 would apply. Section 350 would, under certain circumstances, give the Magistrate at Karimgunge jurisdiction to decide the case on evidence recorded by his predecessor, but it could not give him jurisdiction to deliver a judgment written by his predecessor. We must hold that the conviction and sentence passed on the accused were passed without jurisdiction.

We accordingly make this Rule absolute. We set aside the conviction and sentence, and direct that the petitioners be retried. The fines, if paid, will be refunded.

E. H. M.

*Rule absolute.*

(1) (1881) I. L. R. 3 AH. 563.