

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Benson.*

QUEEN-EMPRESS

1896.
March 23.

v.

GOPAL GOUNDAN.*

*Criminal Procedure Code—Act X of 1882—ss. 260 (d), 355, 537—Record
in summons case.*

A Native Sub-Magistrate, who had not been authorized to take down evidence in English, recorded the memorandum of the substance of the evidence taken under section 355 in that language :

Held, that there was no provision in the Code prohibiting this procedure and that at any rate it was merely an irregularity which would not vitiate the trial.

CASES reported for the orders of the High Court under section 438 of the Criminal Procedure Code by J. Twigg, Acting District Magistrate of Madura.

The case was stated as follows :—

“In calendar case No. 450 of 1895 on his file, the Second-class Stationary Magistrate of Periyakulam convicted the accused of the offence of theft under section 379, Indian Penal Code, and sentenced him to a fine of Rs. 20, in default to one month’s rigorous imprisonment.

“The accused appealed to the Joint Magistrate of Madura who set aside the finding of the Lower Court and ordered a retrial on the ground that the only record in the case is a memorandum of the evidence made in English by the Magistrate.

“The Sub-Magistrate recorded the memorandum under the provisions of section 355, Criminal Procedure Code, read with section 260, clause (d), but the Joint Magistrate following a decision of the Sessions Court has found that there is no legal record of evidence, as the memorandum has been written in English, while the Sub-Magistrate has not been authorized to take down evidence in the English language. I venture to think

* Criminal Revision Cases Nos. 658 and 659 of 1895.

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“that it is not illegal for a Native Magistrate to make the memorandum in English as nothing is said in the Code about the language in which the memorandum is to be made.”

The Public Prosecutor (Mr. Powell) for the Crown.

Vencata Subbajyar for the accused.

ORDER.—In all these cases, the Joint Magistrate has set aside the findings and sentences of a Second-class Sub-Magistrate and has ordered a retrial on the ground that, as the Sub-Magistrate made a memorandum of the evidence in English instead of in the Vernacular, there is no legal record of the evidence, and the trial was therefore wholly irregular and illegal. He refers to a judgment of the Sessions Court of Madura, in which the same view was taken.

We are of opinion that the decisions of the Joint Magistrate are erroneous.

The Sub-Magistrate was trying cases of the classes mentioned in section 355, Criminal Procedure Code. That section does not require him to record the *evidence* of the witnesses, but only to make a *memorandum* of the *substance* of the evidence of each witness as it proceeds. Section 357, Criminal Procedure Code, carefully prescribes the language in which the *evidence* of witnesses in the trials and inquiries referred to in section 356 shall be taken down, but the Code is silent as to the language in which a *memorandum* of the *substance* of the *evidence* in the less important cases enumerated in section 355 is to be recorded.

We are not aware of any provision of law which renders it illegal for a Native Second-class Magistrate to record the memorandum referred to in section 355 in English, any more than it is illegal for an English Magistrate to do so.

Even if the procedure were irregular, there is nothing to show that the accused were in any way prejudiced by the Magistrate's procedure, or that any failure of justice was thereby occasioned, and that being so, the irregularity would not justify the reversal of the convictions (section 537, Criminal Procedure Code).

We must set aside the order of the Joint Magistrate in all these cases and direct that the appeals be restored to his file and decided in accordance with law.