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a separate order, *held*, that the failure to write another full and elaborate judgment covering the same ground as the judgment in the trial by jury did not vitiate the trial but the charge to the jury read with the subsequent order composed a good judgment in law. *A. T. Sankaralinga Mudaliar* v. *Narayan Mudaliar* (1), relied on.

Mr. *K. P. Misra*, for the appellant.

The Government pleader (Mr. *H. K. Ghose*), for the Crown.

STUART, C. J. and RAZA, J.:—The learned Counsel for the appellant has taken a preliminary objection that there is no judgment such as is required by the Code of Criminal Procedure in existence against his client. The circumstances are these. Under special rules laid down by the Local Government certain sessions cases triable in the Lucknow district are tried by a Sessions Judge and a jury and other sessions cases are tried by a Sessions Judge with the aid of assessors. Under the provisions of section 269 of the Code of Criminal Procedure when an accused in these circumstances is charged at the same trial with several offences of which some are and some are not triable by jury, he is tried by the court of session and a jury for such of those offences as are triable by jury and by the court of sessions with the aid of the jurors as assessors for such of them as are not triable by jury. In this particular case the above procedure was followed. The appellant was tried by a jury for an offence punishable under section 395 of the Indian Penal Code and was found not guilty. He was accordingly acquitted on that charge. In the same trial he was tried for an offence punishable under section 396 of the Indian Penal Code. As this

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offence was not triable by a jury he was tried with the same jury sitting as assessors. It was necessary for the learned Sessions Judge to state both cases for the benefit of the jury. He did so. His summing up, which was very clear and very full, covered both charges. The heads of the charge, which he dictated, covered thirty typewritten pages and in his charge he has gone over the whole ground in respect of both the charges, has stated the law, has stated the facts, and has discussed the evidence for and against in respect of every one of the accused persons. As far as he possibly could, he refrained from indicating his opinion as to the value of the evidence. He would not have been in the wrong if he had indicated his opinion, provided he had not attempted to force his opinion on the jury; but he did not indicate his opinion against any accused. He had told the jury that in his opinion there was no evidence upon which they could convict the appellant on a charge under section 395. The jury, accepting that view, acquitted the appellant. As assessors they found him guilty under section 396. The Judge then wrote a further order in which he stated his agreement with the views of the jury as to the value of the evidence against the appellant on the charge under section 396. He then found him guilty and proceeded to convict him. Now it is argued that this procedure was wrong and that it was necessary for the Judge, after having summed up at great length, after having stated the heads of his charge to the jury and summarized them in a typewritten note of thirty pages to write again another full and elaborate judgment covering exactly the same grounds in so far as the section 396 charge was concerned. It is suggested that his failure to write this judgment vitiates the trial. The only decision which we can

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find reported in the regular law reports dealing with this point is the decision of a Full Bench of the High Court of Madras in *A. T. Sankaralinga Mudaliar* v. *Narayan Mudaliar* (1). In that case the Full Bench decided that the failure to write a regular judgment might be considered an error in procedure but that, if it were, it was a mere irregularity cured by section 537 of the Code of Criminal Procedure. There is no decision reported in the recognized law reports to the effect that the failure to write a separate judgment vitiates the trial. The learned Counsel for the appellant informs us that there is a decision in "Unreported Criminal Cases of the Bombay High Court" edited by Ratan Lal Ranchhor Das which supports that view; but we do not consider that under the law we should be justified in considering any decision other than the authorized decisions. We would go further than the Madras High Court in this respect and would look at the substance of the Code of Criminal Procedure on this point. The Code of Criminal Procedure lays down among the requisites of a judgment of this nature that it should be either written by the presiding officer of the court or taken down from his dictation. Here it was taken down from his dictation. Every page if dictated has to be signed by him. Here every page is signed by him. It has to be dated and signed by the presiding officer in open court at the time of pronouncing it. It was dated and signed by the presiding officer at the time of pronouncing it. The judgment should specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced. All these particulars are given. The judgment has to contain the point or points for

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determination. The point or points for determination are given in the charges to the jury. The judgment has to give the decision. The decision is given in the subsequent order. The judgment has to give the reasons for the decision. The reasons for the decision are given in the subsequent order. These are all the requisites. We consider that the charge to the jury read together with the subsequent order compose a good judgment in law and we would consider it most unfortunate if they did not do so. Nothing is gained by the accused or anyone else by repeating the same remarks in two separate documents and, if it unfortunately were the law that when the Judge has already said what was requisite in one part he should have to copy it over again into another, the law would stand in need of revision. But as we read the law the objection is not founded.

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We now examine the appeal on the merits. The appellant having been convicted by the Judge sitting with assessors has every right to challenge the conviction on the merits. The evidence against the appellant is that he was implicated by an approval. That in itself does not carry the case very far; but there is against him the strong evidence of one of the victims of the dacoity a man called Pirthi and of the wife of Pirthi. They identified the appellant distinctly as having been one of the dacoits. Pirthi did not know the appellant before but he has picked him out of a crowd as one of the men who had assaulted him. Pirthi's wife had seen the appellant before and she gave a good description of his appearance. She did not previously know his name. The evidence on the other side was evidence that the appellant had quarrelled with Pirthi's wife because she had taken some mangoes of his without his permission and that

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he had quarrelled with the approver at a fair. He further put up evidence of *alibi*. The learned Judge and the assessors believed the evidence of identification and disbelieved the evidence produced for the defence. After hearing the appellant's learned Counsel we have arrived at the same conclusion. We do not consider the sentence passed on the appellant excessive and dismiss the appeal.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.

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GANGA (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT).*

Criminal Procedure Code (Act V of 1898) as amended, section 162—Oral statement made by a person to a police officer in an investigation, whether can be used for contradicting defence witnesses.

According to the provisions of section 162 of the Code of Criminal Procedure as amended no oral statement made by any person to a police officer in the course of an investigation under this chapter and no record of any such oral statement can be used for any purpose in a court of law in respect of an offence under investigation at the time when such statement was made, except for the purpose of contradicting a prosecution witness, for which purpose only it can be used under special conditions. Such a statement cannot be used for the purpose of contradicting a defence witness.

Messrs. *Jagat Narayan*, *A. N. Mulla* and *Ram Nath Shanglu*, for the appellant.

The Government Advocate (Mr. *G. H. Thomas*) and Mr. *L. S. Misra*, for the Crown.

STUART, C. J. and RAZA, J. :—Ganga, Jaggu, Rama Shanker and Dwarka have been convicted by the

*Criminal Appeal No. 192 of 1929, against the order of Thakur Rachhpal Singh, Sessions Judge of Fyzabad, dated the 4th of April, 1929.