1924.

RUDRA NATH TEWARI v. BHUJANGA PRASAD SINGH.

JWALA PRASAD, J.

District Judge was about to terminate. The applicants were, therefore, too late to come to Court even if they had any right to do so.

Therefore, I agree with the view taken by the Court below and dismiss this application with costs: two gold mohurs.

Application dismissed.

REVISIONAL CRIMINAL.

Before Jwala Prasad and James, JJ.

1929.

March 6, 11. April 4.

JHARI LAL

v.

KING-EMPEROR.*

Criminal Procedure Code, 1898 (*Act V of* 1898), *sections* 367 *and* 369—*essential parts of judgment prepared long after the delivery of judgment in open court—conviction and sentence, whether can be sustained.*

Where the essential parts of the judgment, that is, the statement of points for determination and the reasons for the decision, were not prepared until three weeks after the pronouncement of the judgment in open court, *held*, that the defect vitiated the conviction and sentence.

Queen-Empress v. *Hargobind Singh*(1) and *Bandanu Atchayya* v. *King Emperor*(2), followed.

Damu Senupati v. *Sridhar Rajwar*(3), referred to.

The facts of the case material to this report are stated in the judgment of James, J.

H. L. Nandkeolyar (with him *Gopal Prasad*), for the petitioner.

*Criminal Revision no. 21 of 1929, from a decision of S. B. Dhavle, Esq., I.C.S., Sessions Judge of Darbhanga, dismissing an appeal from an order of A. B. Petter, Esq., Subdivisional Magistrate of Samastipur, dated the 10th September, 1928.

(1) (1892) I. L. R. 14 All. 242. (2) (1904) I. L. R. 27 Mad. 237.
(3) (1894) I. L. R. 21 Cal. 121.

4th April 1929.

JAMES, J.—In this case the Subdivisional Magistrate of Samastipur delivered sentences on the 10th of September, 1928. The persons convicted appealed to the Court of Session, but they were unable to obtain a copy of any part of the judgment, except the final portion consisting of the findings and sentences until the 1st of October when the judgment was completed.

Mr. H. L. Nandkeolyar argues that the failure to sign and date the complete judgment at the time of pronouncing it, vitiates the conviction and sentences. In *Damu Senapati*(1) two Judges of the Calcutta High Court held that the failure to complete judgment before delivering the sentence was curable by the provisions of section 537 of the Criminal Procedure Code; but it is not clear that the judgment in that case was not actually completed on the day when the sentence was delivered. In *Hargobind Singh*(2) Sir John Edge held that it was illegal to pass sentence before judgment was written, and in Madras, in *Bandanu Atchayya*(3) Sir Arnold White held that when the judgment was written some days after the passing of sentence, the defect vitiates the conviction and sentence. The provisions of section 367 of the Criminal Procedure Code are mandatory; the judgment must contain the decision and the reasons for the decision and it must be dated and signed by the presiding officer in open court at the time of pronouncing it. Under section 369, no court, after signing its judgment, can alter or review it; and as the judgment must be signed at the time of pronouncing it, this implies that no substantial alteration or addition can be made after delivery. In the present case, essential parts of the judgment, that is to say, the statement of the points for determination, and the reasons for the decision, were not prepared until three weeks after the pronouncement of the judgment in open court. This is clearly in contravention of sections 367 and 369 of the Criminal Procedure Code and

(1) (1894) I. L. R. 21 Cal. 121. (2) (1892) I. L. R. 14 All. 242.
(3) (1904) I. L. R. 27 Mad. 237.

1929.

JHARI LAL v. KING-EMPEROR

JAMES, J.

the convictions and sentences must be set aside. We do not consider it necessary that the accused should be subjected to the harassment of a retrial, particularly in view of the fact that the sentences imposed upon most of them were to run concurrently with the sentences passed in the case which has been disposed of in criminal revision no. 20 of 1929 in which the convictions were upheld. We therefore set aside the order of the Lower Court and direct that the petitioners in this case be acquitted.

JWALA PRASAD, J.—I agree.

Rule made absolute.

S. A. K.

APPELLATE CIVIL.

Before Macpherson and Dhavle, JJ.

1929.

Jan., 25.
April 8.

DEONANDAN MISRA

v.

GANGA PRASHAD.*

Appeal—valuation—decree for possession and mesne profits—appeal by defendant against whole decree—appeal, value of, must be value of the suit—absence of doubt as to the amount of court-fee payable—Code of Civil Procedure, 1908 (Act V of 1908), section 149, applicability of.

G brought a suit against *D* for a declaration that a certain rehan deed was valid, for recovery of possession of the rehan property and for antecedent mesne profits, and he valued the suit at Rs. 2,084-3-6, Rs. 900 being the value of the property and Rs. 1,184-3-6 being the amount of the mesne profits. The suit was decreed. *D* preferred an appeal to the District Judge against the whole decree but valued his appeal

*Appeal from Appellate Decree no. 139 of 1928, from a decision of A. C. Davies, Esq., I.C.S., District Judge of Shahabad, dated the 5th November, 1927, confirming a decision of Babu Tulsi Das Mukharji, Subordinate Judge of Shahabad, dated the 10th August, 1927.