1929

S. R. A. S. SIDAMBARAM NADAR v. D. R. MAGANLALL BROTHERS.

RUTLEDGE, C.J., AND BROWN, J.

We, therefore, modify the decree of the trial Court by deleting therefrom the declaration of a lien or charge in favour of the respondents.

The appellants are entitled to their costs in this appeal. In the trial Court, the 1st defendant, Po Nyan, will pay the plaintiffs' costs, and for the rest the parties will bear their own costs.

APPELLATE CRIMINAL.

Before Mr. Justice Maung Ba.

1929

Mar. 25[1]

MOHAMED HAYET MULLA
v.
KING-EMPEROR.*

Criminal Procedure Code (Act V of 1898), ss. 367, 531, 537—Magistrate's omission to sign judgment, mere irregularity curable under s. 537—Place of trial, error as to—No failure of justice, error immaterial.

An omission to sign and date a judgment by a Magistrate in open Court at the time of pronouncing it as required by s. 367 of the Criminal Procedure Code, amounts to a mere irregularity curable by s. 537.

Emperor v. *Ram Sukh*, 47 All. 284—*followed.*

Tilak v. *Baisagomoff*, 23 Cal. 502—*referred to.*

Bandamu v. *Emperor*, 27 Mad. 257; *Queen-Empress* v. *Hargobind*, 14 All. 242—*dissented from.*

Where there is no failure of justice owing to an error as to place of trial the irregularity does not vitiate the trial.

Rauf for the appellant.

MAUNG BA, J.—Appellant aged 64 appeals from a sentence of four years' rigorous imprisonment on three charges of cheating in the last case tried by the late U Po Nu as Additional District Magistrate, Rangoon.

The first legal objection taken is that the sentence is illegal as there is no judgment signed by the learned Magistrate. On the record there is a judgment prepared by the late U Po Nu. From the affidavits of

* Criminal Appeal No. 117 of 1929 from the order of the District Magistrate of Rangoon in Criminal Regular Trial No. 133 of 1927.

his two clerks, Maung Tha Tun and Maung Ba Sein, it would appear that that judgment consists of 12 paragraphs, out of which paragraphs 1 to 3 were written by Tha Tun at U Po Nu's dictation, paragraghs 4, 5, 6 and 7 were typed by U Po Nu himself, and the remaining 5 paragraphs were written by Maung Ba Sein at U Po Nu's dictation ; that the corrections in the judgment were made by U Po Nu himself ; that that judgment was pronounced in open Court and the accused sentenced to four years' rigorous imprisonment on the evening of the 22nd December 1928 ; that U Po Nu then handed that judgment to his Bench Clerk Maung Tha Tun to be fair typed ; and that unfortunately U Po Nu died before he could sign the fair copy.

The appellant's learned advocate relied upon the case of *Queen-Empress* v. *Hargobind Singh and others* (1). In that case Hargobind and two others were tried for murder, found guilty and sentenced to death. The sentence was passed first and the judgment written afterwards. The sentence was held to be illegal, and the learned Judges observe :—

"The requirements of sections 366 and 367 are no mere matters of form. The provisions of those sections are based upon good and substantial grounds of public policy, and whether they are or not, Sessions Judges must obey them and not be a law to themselves.

Any Judge at the conclusion of the evidence in a case, some of which may be not quite distinct in his mind owing to the length of the trial, might pass sentence on a prisoner and find it impossible afterwards honestly to put on paper good reasons for having convicted him, or, on the other hand, might direct that the accused be set at liberty and find it impossible afterwards honestly to put on paper good reasons for the acquittal. The law wisely requires that the reasons for the decision shall accompany the decision, and shall not be left to be subsequently inserted or recorded."

(1) (1892) 14 All. 242, p. 272.

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MAHOMED HAYET MULLA v. KING-EMPEROR.

MAUNG BA, J.

This decision was approved by a Bench of the Madras High Court in the case of *Bandaru Atchayya and others* v. *Emperor* (1). There too the Sessions Judge passed sentences on the accused persons and wrote the judgment some days afterwards. The learned Judges held that this was a violation of sections 366 and 367 of the Code of Criminal Procedure and was more than an irregularity, and that it was a defect which vitiated the convictions and sentences. But a Bench of the Calcutta High Court in *Tilak Chandra Sarkar & Others* v. *Baisagomoff* (2), held a contrary view. The learned Judges held that the omission of the Magistrate in recording a judgment before pronouncing his sentence was an omission or irregularity which fell within the purview of section 537 of the Code, and so the sentence itself, by reason of this irregularity, was not an illegal sentence so as to render the trial nugatory.

Sub-section (4) of section 366 reads: "Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537." I am inclined to think that, though it is desirable that Magistrates should obey the express provisions of the law, yet the omission to write a judgment before pronouncing a sentence should not necessarily vitiate the trial, unless such omission has in fact occasioned a failure of justice. In the present case it cannot be said that there was no written judgment at all. The learned Magistrate might have signed the judgment already prepared, though it looked untidy and might append a fair copy of it later. It is true that section 367 says that a judgment shall be dated and signed by the presiding officer in open Court at the time of pronouncing it. In my opinion the omission to sign the judgment amounts to a mere

(1) (1904) 27 Mad. 257. (2) 1896) 23 Cal. 502.

irregularity curable by section 537. In *Emperor* v. *Ram Sukh* (1), Mukerji, J. held such a view. There a Magistrate wrote a judgment with his own hand but forgot to sign and date it, and it was held that this did not amount to more than an irregularity, such as would be cured by section 537.

I now come to the second legal objection with regard to the jurisdiction of the Court. Three charges were framed against the appellant ; firstly that he cheated Dudumia at Mudon in the Amherst District by dishonestly inducing him to deliver Rs. 143, secondly that he cheated Maung Tun Gyaw at Taloktaw in the Hanthawaddy District by dishonestly inducing him to deliver Rs. 11 ; and thirdly that he cheated Hakim Khan at Thanatpin in the Pegu District by dishonestly inducing him to deliver Rs. 10-10-0. Section 177 lays down that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. In the present case the alleged cheating was committed in the Pegu, Hanthawaddy and Amherst Districts and the trial took place in Rangoon. The question is whether the irregularity has vitiated the trial. Section 531 provides that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, subdivision or other local area, unless it appears that such error has in fact occasioned a failure of justice. In my opinion there has been no failure of justice by this error relating to territorial jurisdiction.

On the facts his Lordship held that the charges failed and so acquitted the accused.

(1) (1925) 47 All. 284.