

1954

Present : Swan J.

D. R. M. PANDITHAKORALEGE (Excise Inspector), Appellant,
and V. K. SELVANAYAGAM, Respondent

S. C. 903—M. C. Point Pedro, 28,267

*Indictment—Particulars—Mistake as to date of alleged offence—Effect of error—
Criminal Procedure Code, s. 171.*

The date given in the plaint of an alleged offence was stated to be "on or about March 28, 1954". The evidence led at the trial gave the date as March 29, 1954.

Held, that a mistaken date in an indictment is not a material error unless the date is of the essence of the offence or the accused is prejudiced.

APPPEAL from a judgment of the Magistrate's Court, Point Pedro.

M. Kanagasunderam, Crown Counsel, for the Attorney-General.

No appearance for the accused respondent.

Cur. adv. vult.

October 28, 1954. SWAN J.—

In this case the accused-respondent was charged with possession of a preparation of the hemp plant commonly known as ganja under Section 28 read with Section 2 (2) and Section 76 (1) (a) of the Poisons, Opium and Dangerous Drugs Ordinance, an offence punishable under Section 76 (5) (a) of the said Ordinance.

The date given in the plaint of the alleged offence is stated to be *on or about* March 28, 1954. The accused-respondent pleaded not guilty and the case proceeded to trial. After the prosecution had closed its case it was pointed out that the evidence disclosed that the stuff was found on the 29th March, and the learned Magistrate acquitted the accused. From this order of acquittal the complainant appeals with the sanction of the Attorney-General.

The date in the plaint is obviously a mistake. In his evidence given on 12th May, 1954, the Excise Inspector mentioned the date as 28th March, 1954. That evidence was given with the object of obtaining an order for sending a sample to the Government Analyst for examination and report. In his evidence on the 23rd June, 1954, at the trial the Inspector gave the date as the 29th March. On the same day the Excise Guard in the course of his evidence gave the date as the 29th March.

Section 171 of the Criminal Procedure Code provides :—

"No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was misled by such error or omission."

There can be no doubt that the accused was in no way misled by the mistake as regards the date in the plaint. In the case of *William Edward James*¹ it was held that a mistaken date in an indictment, unless the date is of the essence of the offence or the accused is prejudiced, need not be formally amended. In the course of his judgment dismissing the appeal the Lord Chief Justice referred to the judgment of Atkin J. in the case of *Dossi*² where it was held that from time immemorial a date specified in an indictment has never been considered a material matter unless time was of the essence of the offence.

I set aside the order of the learned Magistrate acquitting and discharging the accused. The case will be sent back to the lower court for retrial. The learned Magistrate who hears the case will note that the Section quoted in the charge is not correct. It should be 26 and not 28.

Acquittal set aside.

¹ *17 Criminal Appeal Reports 116.*

² *87 L. J. K. B. 1024.*