

1945

Present: Dias, Commissioner of Assize.

IN THE MATTER OF AN APPLICATION UNDER SECTION 222 OF THE
CRIMINAL PROCEDURE CODE FOR SELECTION OF A JURY.

THE KING *v.* NADARAJAH *et al.*

M. C. Jaffna, 6,291.

*Jury—Selection of a jury by prisoners—Transfer of trial to another Circuit—
Application for a trial by different kind of Jury—Discretion of Judge—
Criminal Procedure Code, s. 224 (1).*

The prisoners when they were committed to stand their trial in the Northern Circuit at Jaffna elected to be tried by an English-speaking jury.

When the Attorney-General transferred the case from the Northern Circuit to the Western Circuit, the prisoners moved that they be tried by a Tamil-speaking jury.

Held, that the prisoners were bound by their election to be tried by an English-speaking jury and that the Court would not use its discretion under section 224 (1) of the Criminal Procedure Code to alter the panel, as the prisoners would not be prejudiced by their being tried according to their original election by an English-speaking jury.

THIS was an application by the prisoners to alter their original election to be tried by an English-speaking jury.

R. L. Pereira, K.C. (with him *H. W. Thambiah*), for applicants.

H. H. Basnayake, Act. S.-G. (with him *Abeyewardene, C.C.*), for Crown.

Cur. adv. vult.

May 15, 1945. DIAS, Commissioner of Assize.—

The prisoners when they were committed to stand their trial elected to be tried by an English-speaking jury. Ordinarily, the trial would have taken place in the Northern Circuit at Jaffna. The Attorney-General by his fiat, however, transferred the case from the Northern Circuit to the present sessions at Colombo.

The prisoners now move that they may be tried by a Tamil-speaking jury. Their application is opposed by the Crown.

I agree with the Solicitor-General that the application has been made under the wrong section. Section 222 of the Criminal Procedure Code deals with an application for trial before a Special Jury. The prisoners make no such application.

I am, however, prepared to deal with this matter as one made under section 224 (1).

The questions for decision are whether the prisoners can make this application at all, having once elected to be tried by an English-speaking jury, and if so, whether it should be allowed ?

Section 165B of the Criminal Procedure Code provides:—

“ On committing the accused for trial before any higher Court, the Magistrate shall ask the accused to elect from which of the respective panels of jurors the jury shall be taken for the trial in the event of the trial being held before the Supreme Court, and the Magistrate shall record such election, if made. The accused so electing shall, if the trial is held before the Supreme Court, *be bound by and may be tried according to his election*, subject, however, in all cases to the provisions of section 224.”

Section 224 (1) provides:—

“ That the jury shall be taken from the panel elected by the accused, *unless the Court otherwise directs.* ”

The language of section 165B shows that it does not necessarily follow that the prisoner will always be tried by the jury which he elected before the Magistrate. The words used are “ shall be bound and may be tried ” and not “ shall be bound and shall be tried ”. The position then is that while the accused is bound by his election, it does not follow that the trial must necessarily take place before a jury of the panel selected by the accused.

Section 224 (1) makes it clear that as a rule the jury shall be taken from the panel elected by the prisoners “ unless the Court otherwise directs ”. A common example of the practical working of these sections is to be found where a prisoner who, before the Magistrate elects to be tried by a Sinhalese-speaking jury, but on the opening day of the sessions expresses his desire to be tried by an English-speaking jury. The presiding Judge in such a case has power in his discretion to give effect to the prisoner's desire.

In my view, a prisoner who once makes his election under section 165B is bound by it: but there is nothing to prevent him subsequently from moving the trial Judge under section 224 (1) for trial before another panel. A judicial discretion is thus vested in the trial Judge which he will exercise one way or the other, after hearing both sides, and having considered the matter in all its aspects.

It is probable that at the time the election was made, it was believed that the trial would be held before an English-speaking jury at Jaffna, and it was hoped that the majority of, if not all, the jurors would be Tamil-speaking gentlemen, well versed in local conditions *et cetera*. The action of the Crown by transferring the case to Colombo may have frustrated that intention.

The question I have to address myself to is whether the case of these prisoners would be prejudiced by their being now tried according to their original election by a Colombo English-speaking jury ?

The language of our Courts is English. If a Tamil-speaking jury is empanelled a great deal of public time will be lost by the Tamil and English interpretation which will be required without any corresponding gain to the accused who are defended by eminent counsel, who will no doubt be adequately instructed in advance.

All jurors, whether English-speaking or Tamil-speaking, must be deemed to be honest men, so that no hardship would be caused to an

accused by his not being able to understand the language in which the trial is being conducted. In the majority of cases tried by juries, the accused do not understand the language of the Court, although the interpretation enables them to follow the questions put to and the answers given by the witnesses.

The reasons stated in paragraphs 4 to 8 of the affidavits are unsound. I cannot agree that "it is absolutely necessary that this case should be tried by a Tamil-speaking jury for the better appreciation of the evidence that would be given by the witnesses in this case." I am also unable to agree that because the majority of the witnesses in this case are Jaffna Tamils, who will be speaking the Tamil language, it is therefore expedient that a Tamil-speaking jury shall try the case.

The interpreters of the Supreme Court are efficient officers and can do justice to the evidence of any Tamil-speaking witness. Even if local customs, manners or the "local setting in which the alleged incident took place" are material, I do not see how a Tamil-speaking jury would be in a better position to understand them than an English-speaking jury. I do not understand how the charge against the accused can be prejudiced by the trial taking place before an English-speaking jury.

The argument that a trial before a Tamil-speaking jury will enable the accused to follow more readily the questions put by the jury is an unsound argument, as all questions put by the jury to witnesses will be translated into Tamil and the accused will then hear them.

The only matter which merits consideration is the one raised in paragraph 9 of the affidavits, namely that an English-speaking Jaffna jury is necessarily a Tamil-speaking jury, and that the action of the Crown in transferring the case to Colombo has prejudiced them. As there seemed to be some substance in these contentions I reserved my order.

Having carefully weighed all the *pros* and *cons*, I see no reason to direct that the trial should take place before a panel other than that which the accused elected. Convenience certainly indicates a trial before an English-speaking jury. I do not see how the prisoners will in any way be prejudiced by being so tried.

The application is therefore refused.

Application refused.
