

Present: Lyall Grant J.

[Second Southern Circuit 1927.]

KING v. PINDORISSA.

21—P. C. Tangalla, 19,895.

Deaf and dumb prisoner—Inability to understand proceedings—Treated as of unsound mind—Detention during His Excellency's pleasure—Criminal Procedure Code, ss. 368 and 369.

Where a deaf and dumb person was put upon his trial for murder and the jury found that he was unable to understand the nature of the proceedings and to make a proper defence,—

Held that the accused should be treated as a person of unsound mind and detained in custody until the pleasure of the Governor be made known.

THE accused, who was deaf and dumb, was charged with murder before the Supreme Court Criminal Sessions at Galle. After the evidence had concluded, his Counsel raised the point that the accused was unfit to stand his trial as he was unable to understand the proceedings against him. Thereupon the Judge charged the jury to consider the point first. The jury returned the verdict that the prisoner was not in a condition sufficiently to understand the proceedings against him.

William Silva, for accused.

J. E. M. Obeyesekere, C.C., for the Crown.

December 6, 1927. LYALL GRANT J.—

In this case the prisoner, who is accused of murder, was found to be deaf and dumb. The Magistrate, with the aid of an Interpreter, took the preliminary proceedings, and after reference to the Attorney-General committed the accused for trial. On the case being referred to me some time since, under section 288 of the Criminal Procedure Code, I made an order that the accused should be kept under observation by a Medical Officer for a fortnight and that he should be reported upon. The Medical Officer reported that he found the accused to be dumb, but from his general behaviour, appreciation of his surroundings, and his understanding by means of signs he formed the opinion that he was of sound mind, that he did not appear to be insane, and that he was capable of making his defence. On this the case was forwarded back by the Magistrate, who said: "I am of opinion that the accused is of sound mind." When the case came on for trial

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the question of the accused's unfitness to plead was not again brought before the Court, and the trial went through the ordinary stages. The accused himself went into the witness box and was cross-examined and, so far as I could judge, he appeared to understand all that was said to him. In his address to the jury Counsel for the defence suggested that the fact that the prisoner was deaf and dumb, and the doubt whether he was therefore capable of following the proceedings in Court might be a ground for the jury taking the view that he was unfit to stand his trial. The contention appeared to me to be a sound one, and I charged the jury that they should, in the first place, consider the question whether the accused was capable of making his defence, whether he sufficiently understood the proceedings, what was alleged against him, what he was entitled to do and say, and his power to bring forward witnesses in his own defence. I charged the jury that they should first consider this point, and that if their answer was that the accused was incapable of making a defence they should not apply their minds to the question of whether or not he was guilty. The jury upon this returned the following verdict: "The prisoner is not in a condition to sufficiently understand the nature of the proceedings and make a proper defence owing to the fact that he is deaf and dumb and not on account of unsoundness of mind." On my questioning the foreman as to the precise meaning of their verdict, he informed me that the jury thought that the prisoner was not able to understand the nature of the proceedings or to make a defence as he was deaf and dumb. They were not satisfied that he was able to understand the proceedings or to make his case understood through the special Interpreter. They said that he looked a man of sound mind, but still they thought that he was incapable of making his defence. They thought that it would not be safe on the evidence to make a finding in regard to the guilt of the accused.

The question which arose upon this verdict was, whether it amounted to a verdict in the sense of section 368 of the Criminal Procedure Code, that is to say, whether it was a finding by the jury under section 369 that the accused was of unsound mind and incapable of making his defence. On this point there is no local authority, and, accordingly, I adjourned the case for further consideration. At the adjourned hearing Crown Counsel referred me to several English cases, which by section 6 of the Criminal Procedure Code are admissible as guiding our practice in the absence of any local authority. The English practice in such cases is quite clear. It is that where a person is held to be incapable of making a defence by reason of his being deaf and dumb, he is held not to be of sane mind and he is treated exactly as a person of unsound mind would be treated. I refer to the case of *Rex v. Governor of*

Strafford Prison,¹ the case of *Queen v. Berry*,² and the case of *Rex v. Pritchard*.³ Counsel for the defence agreed that this view was a correct one and that the proper order for the Court to make was one postponing the trial and reporting the case to the Governor for his orders. Apart from authority, such an order appears to me to be the only one possible. The only alternative is to release the prisoner. To release an accused person who may have committed a serious crime, such as murder, on the ground that he is unable to put forward a defence, would appear to be a very dangerous thing to do, and it seems only right that some control should be put over his movements. For the reasons above set forth it seems to me that such control is permissible by our law, and accordingly my order is that the prisoner be detained in custody until the pleasure of the Governor is made known.

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