

1956

*Present: Dias, Commissioner of Assize.*APPLICATION UNDER SECTION 224 (1) OF THE CRIMINAL  
PROCEDURE CODE.THE KING *v.* THELENIS APPUHAMY *et al.*13—*M. C., Colombo, 37,123.**Jury—Election by accused of one panel of jurors—Application by Crown for trial before a different panel—Discretion of Judge—Criminal Procedure Code, ss. 165B and 224 (1).*

Where, in the Magistrate's Court the prisoners, who were all Sinhalese, elected, under section 165B of the Criminal Procedure Code, to be tried by a Tamil-speaking jury and the Attorney-General moved under section 224 (1) of the Criminal Procedure Code for a direction that the trial should take place before an English-speaking jury—

*Held*, that, as convenience demanded that the trial should take place before an English-speaking jury and, particularly, as there was no satisfactory reason given by the accused that any prejudice would be caused to any of them by being so tried, the Court ought to exercise its discretion under section 224 (1) of the Criminal Procedure Code and direct that the trial should be held before an English-speaking jury.

**A**PPPLICATION by the Attorney-General that a trial should take place before a panel of jurors different from that elected by the accused.

*H. H. Basnayake, Acting Solicitor-General (with him P. S. W. Abeyawardene, C.C.), for the Attorney-General.*

*Nihal Gunasekera for the respondents.*

*Cur. adv. vult.*

June 5, 1945. DIAS, COMMISSIONER OF ASSIZE.

In the Magistrate's Court the prisoners, who are all *Sinhalese*, elected under section 165B of the Criminal Procedure Code to be tried by a *Tamil-speaking* jury. The Solicitor-General has moved the Court under section 224 (1) for a direction that the trial should take place before an *English-speaking* jury.

It is submitted on behalf of the prosecution that the prisoners and all the witnesses are *Sinhalese*. It is urged that if the trial takes place before a *Tamil-speaking* jury every question put to the witnesses will have to be translated from English into Tamil for the benefit of the jury, and into *Sinhalese* so that the witnesses may understand the question.

Furthermore, the evidence would have to be interpreted from the *Sinhalese* language to English which is the language of the Court and then to Tamil. The Crown submits that the resultant delays in the progress of the trial would, while amounting to a waste of public time, confer no corresponding advantage on the accused. It is also submitted that no adequate reasons have been shown why these *Sinhalese* accused should be tried by a *Tamil-speaking* jury.

Counsel for the accused informed the Court that the accused persisted in their desire to be tried by a *Tamil-speaking* jury; and that he was instructed that his clients fear that "a *Sinhalese-speaking* jury will be influenced by the other side". The accused, however, did not anticipate that such a thing would happen were the trial to take place before a *Tamil-speaking* jury. Counsel suggested that it might be possible to select from amongst the *Tamil-speaking* jurors some gentlemen who could speak English, so that the double interpretation might thereby be avoided.

The last suggestion cannot be entertained. It would be quite improper and irregular to select *English-speaking* persons from amongst a panel of *Tamil-speaking* jurors and then treat them as if they were an *English-speaking* jury. The Court cannot be a party to such an arrangement. If a *Tamil-speaking* jury is summoned, they must be treated as such. The jurors must be selected by lot in the usual way regardless of whether they can speak English, and the questions to the witnesses, the evidence, the speeches of counsel and the summing-up must all be interpreted to them in Tamil.

A question similar to that which has now arisen was recently decided by me,\* and what I then decided applies to the facts of this case. Under section 165 when a prisoner elects his jury he "shall be *bound by and may* be tried" according to his election, subject however in all cases to the provisions of section 224.

\* *Vide (1945) 46 N. L. R. 198.—(Ed.)*

Section 224 (1) provides that the jury shall be taken from the panel elected by the accused "unless the Court otherwise directs". A judicial discretion is thus vested in the trial Judge as to whether he will "otherwise direct".

I cannot see on what grounds these accused fear that a Sinhalese-speaking jury would be influenced by "the other side". I presume the "other side" refers to the private aggrieved parties and not to His Majesty's Attorney-General who is the "other party" to this case. No affidavit has been filed or other evidence placed before me to show that these accused entertain any reasonable grounds for their fears. There is no material whatever before me to show that the fears entertained by the accused have any reasonable foundation in fact. One must assume that jurors are honest men. If the trial lasts for more than one day the oath of separation will be administered to the jury under section 241 (2). In proper cases the Court is empowered by section 241 (1) to direct that the jury shall be kept together during any adjournment. If a juror is proved to have held any improper communication with a person other than a fellow juror before the verdict is given, he renders himself liable to the penalties of contempt of Court in section 241 (3). If a Sinhalese-speaking jury can be tampered with, what reason is there for supposing that a Tamil-speaking jury or an English-speaking jury for a matter of that, will be immune from such attempts? I am clearly of the view that the reason given by the accused for their election of a Tamil-speaking jury does not carry conviction.

After careful consideration I am compelled to hold that no reasonable grounds exist for the apprehensions of the defence.

Convenience demands that this trial should take place before an English-speaking jury, particularly as no prejudice whatever will be caused to any of these prisoners by being so tried. Had the accused elected to be tried by a Sinhalese-speaking jury, an application by the Crown for a trial by some other jury would require cogent grounds to succeed. In this case the attitude of the accused is unreasonable, while the position taken up by the Crown is both fair and reasonable. I therefore think that this is a case in which the Court ought to exercise its discretion under section 224 (1).

I therefore direct that this shall be held before an English-speaking jury.

*Application allowed.*

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