

1938

*Present : Hearne J.*KING *v.* ROMANIS PERERA *et al.*2—*P. C. Kalutara, 32,233.*

Criminal Procedure Code—Four accused tried for murder—Evidence called by first accused only—Evidence applicable to second accused also—Crown has no right of reply—Criminal Procedure Code, ss. 237 (2) and 296 (2).

Where four persons were indicted for murder before the Supreme Court and the first accused adduced evidence on his behalf, which was applicable to the second accused also,—

Held, that the Crown had no right of reply to Counsel for second accused.

THIS was a trial before the Supreme Court Criminal Sessions (Western Circuit) in which four persons were indicted for murder.

The first accused adduced evidence which related to the case of the second accused. The question was whether the Solicitor-General was entitled to reply to Counsel for the second accused.

¹ (1908) *I. L. R. 33 Bom. 311 (316).*

M. T. de S. Amerasekere, Acting S.-G. (with him Nihal Gunasekera, C.C.) for the Crown.

U. A. Jayasundere (with him H. A. Chandrasena), for first accused.

R. L. Pereira, K.C. (with him V. F. Gunaratne), for second accused.

Sri Nissanka (with him O. L. de Kretser, Jnr.), for third and fourth accused.

Cur. adv. vult.

November 30, 1938. HEARNE J.—

The question which arises for decision is whether, the first accused having adduced evidence which is applicable to the case of the second accused, the Solicitor-General has a right of reply to Counsel for second accused. In the law of England relating to criminal procedure this would be so. Should that principle be applied here? Is it not inconsistent with our Code and can it be made auxiliary thereto? The provisions of our Code are most incomplete. In accordance with its provisions if Counsel for the accused announces his intention not to adduce evidence, Counsel for the Crown cannot speak. After his opening speech his mouth is closed. No provision is made in the Code to enable him to address the Jury at all where he loses the right of reply by reason of section 296 (2) of the Code. He is in practice accorded the right to speak only by virtue of section 6 of the Criminal Procedure Code. The present application for directions by the Solicitor-General involves a consideration of section 237 (2) of the Code which reads "the prosecuting Counsel shall subject to the provision of section 296 (2) be entitled to reply on any evidence given by or on behalf of the accused". The section seems to lay down quite categorically the circumstances in which a right of reply exists. Evidence on behalf of an accused is, in my opinion, the evidence of witnesses called at the instance of such accused. There may very well be circumstances where the first accused in a case calls evidence which relates exclusively to the case of the second accused in which the Court would rule that the evidence called was in reality on behalf of the second accused. But where the evidence touches the first accused's case as well, as it does in the present case (for he is charged with conspiracy in consequence of which second accused is alleged to have committed murder for which he equally with second accused is punishable) I refuse to take up on myself the responsibility, in the present state of the Code, of saying that the evidence called by the first accused is evidence which within the meaning of section 237 (2) is given on behalf of the second accused.

In all the circumstances and having regard to the wording of section 237 (2) I am not prepared to say that the application to this case of the principle of English law which I have quoted is not inconsistent with our Code.

I therefore rule the Solicitor-General has no right of reply to Counsel for the second accused.