

CRIMINAL REVISION.*Before Holmwood and Sharfuddin JJ.*

ASHRAF ALI

v.

EMPEROR.*

1914

April 23.

Bail—Grounds of admission to bail—Confession of a co-prisoner materially corroborated as to applicant—Relative powers of the High Court and Subordinate Courts to grant bail Criminal Procedure Code (Act V of 1898) ss. 497 and 498.

Section 497 of the Criminal Procedure Code contains a rule founded on justice and equity, and should be followed by the High Court, unless any thing appears to the contrary. The extended powers given to the latter by s. 498 are not to be used to get rid of the reasonable and proper provision of the law laid down in s. 497.

The High Court refused bail where a confession by a co-accused implicating himself and the petitioner was materially corroborated as to the latter by other evidence taken at the preliminary enquiry into offences under ss. 307 and 337 of the Penal Code.

On the night of the 25th January 1914, the house of F. W. Higgins, a tea-planter, who lived with his son in the interior, about 19 miles from the town of Chittagong, was raided by 13 men with the object of plundering a safe containing Rs. 2,000. One of them, named Niyamat Ali, was seized on the spot and made a confession implicating himself and the present petitioners, Ashraf Ali and others. Warrants were issued against them and they surrendered in the early part of February. The charge-sheet in the case was submitted on the 6th March, and the preliminary enquiry commenced on the same day. The

* Criminal Miscellaneous No. 60 of 1914, against the order of the Sessions Judge of Chittagong, dated March 21, 1914.

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whole of the evidence had been recorded except that of Higgins, who was under treatment in the Presidency General Hospital for the injuries he received from the assailants, but who was expected to be present in the Magistrate's Court within a fortnight. The confession was corroborated materially by the evidence on the record as to the present applicants, who were charged under ss. 307 and 337 of the Penal Code. The enquiring Magistrate refused bail, and his order was upheld by the Sessions Judge of Chittagong. The petitioners thereupon moved the High Court and obtained the present Rule.

Mr. E. P. Ghose and *Babu Chandra Sekhar Sen*, for the petitioners.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown.

HOLMWOOD AND SHARFUDDIN JJ. This was a Rule calling upon the District Magistrate of Chittagong to show cause why the petitioners should not be admitted to bail. It is opposed by the Crown represented by the learned Deputy Legal Remembrancer, and the District Magistrate has submitted an explanation in which he points out that one of the accused who was captured at the time has made a long confession implicating himself and the other persons who are now praying for bail before this Court, that the confession has been corroborated to a certain extent by evidence which has been recorded by the Magistrate, who was enquiring into the case, and in a few days' time Mr. Higgins, the complainant, who was assaulted, will be in a position to give his evidence and we do not know what light it may throw on the matter. But what we have to consider in this case is whether the corroboration is in the nature

of material corroboration at law, and from the account which has been placed before us by the learned counsel appearing in support of the Rule, we must say that, so far as it goes, it is what the law considers material corroboration. Of course we do not, and we should not think of throwing out any opinion as to whether this evidence is to be believed. We do not desire to prejudice the case in any way. We merely state that the evidence which is put before us through the learned counsel is, if believed, evidence which in law amounts to material corroboration, and we think that the rule laid down in section 497 for the guidance of Courts other than the High Court is a rule founded upon justice and equity and one which should be followed by us as well as by every other Court unless any thing appears to the contrary. The extended powers given to the High Court under section 498 are certainly not to be used to get rid of this very reasonable and proper provision of the law.

For these reasons we think that at the present stage of the case bail should not be given. It will, of course, be within the competence of the lower Courts to admit the petitioners to bail at any time after Mr. Higgins is examined, or whenever it should appear that the *prima facie* case against them has in any way been weakened.

The Rule is discharged.

E. H. M.

Bail refused.

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