

ORIGINAL CRIMINAL.*Before Pearson J.***EMPEROR***v.***GOPI MOHAN SAHA.***

1924

Feb. 12.

Practice—Sanity—Capacity to plead—Unsoundness of mind at the time of trial—Inquiry into the fact of unsoundness—Onus of proving sanity—Criminal Procedure Code (Act V of 1898) s. 465 (1).

In an inquiry under s. 465 (1) of the Criminal Procedure Code into the question of the soundness of mind of the accused and his capacity of making his defence, the Crown must begin and establish such soundness and capacity.

The prisoner was tried at the First Criminal Sessions of the High Court on a charge, under s. 302 of the Penal Code, of having shot Mr. Ernest Day in January last. The trial commenced before Pearson J. on the 11th February, when a plea was taken on the prisoner's behalf, under s. 465 (1) of the Criminal Procedure Code, that he was then of unsound mind and incapable of making his defence. The learned Judge adjourned the case to the next day, and directed the prisoner to be kept in the meantime under medical observation. He was produced in Court the next day, and the question arose whether the Crown or the prisoner's counsel should begin with proof.

The Standing Counsel (Mr. B. L. Mitter), for the Crown. The procedure in the present case is governed by s. 465 (1) of the Code. The onus is on

* Original Criminal Case, tried at the First Criminal Sessions, dated Feb. 12, 1924.

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the prisoner to begin, and prove his unsoundness of mind and incapacity. The presumption is that he is sane : *Reg. v. Turton* (1); Russell on "Crimes," 18th Ed., Vol. I, pp. 86, 88; Taylor on "Evidence," 11th Ed., p. 279; Best on "Evidence," 11th Ed., pp. 338, 347; Woodroffe on "Evidence," 7th Ed., p. 768. The case of *Reg. v. Davies* (2) was not followed in the later English case.

Mr. H. M. Bose, for the prisoner. The onus is on the Crown : see *Shib Das Kundu v. Emperor* (3).

Mr. Mitter, in reply. The case of *Reg. v. Turton* (1) was not brought to the notice of the Judges in the case cited. The decision of the Criminal Bench is not binding on a Judge on the Original Side. Under s. 114 of the Evidence Act sanity is to be presumed.

PEARSON J. The only question is whether the prosecution or the defence has to begin. There have been various English cases cited, some of which incline to one view and some to the other. It appears to me that the most satisfactory method to adopt in this case is that, if the enquiry is to be commenced under section 465 of the Criminal Procedure Code, it should be regarded, not so much, as has been stated in one of the cases, as the issue joined between the parties, but as a preliminary enquiry which is conducted for the satisfaction of the Court, and in that view I think the prosecution ought to commence and give their evidence.

E. H. M.

(1) (1854) 6 Cox C.C. 385.

(2) (1853) 6 Cox C.C. 326.

(3) (1924) I. L. R. 51 Cal. 584.