

APPELLATE CRIMINAL.*Before C. C. Ghose and Duval JJ.*

AH SAI

v.

EMPEROR*

1926

Feb. 25.

Interpreter—Witness for prosecution, employment of, as Court Interpreter condemned—Penal Code (Act XLV of 1860), ss. 302, 304.

A witness, who has taken an active part during the police investigation, who has given evidence in the committing Magistrate's Court on behalf of the prosecution, and who is ready and willing to give evidence in the Sessions Court on behalf of the prosecution against a man, who was charged with very serious offences under sections 302 and 304, Indian Penal Code, should not be chosen to act as an interpreter in that case.

APPEAL by Ah Sai, the accused.

One Ah Sai, a carpenter, was tried before the 3rd Additional Sessions Judge of the 24-Parganas at Alipore with the aid of a jury under sections 302 and 304, Indian Penal Code, convicted and sentenced to transportation for life. As the accused was a Chinaman, who did not know or understand the English language, in the proceedings before the committing Magistrate as also in the Sessions Court one S. Lewis' Manager of the Canton Restaurant, Calcutta, gave evidence on behalf of the prosecution, his evidence being recorded in both proceedings as prosecution witness No. 9, and as such he was a material witness for the Crown. S. Lewis was also present at the inquest held by the police on the body of Ah Li Fi, accused's brother, who met his death on or about the 21st April 1925, and in respect of whose death accused

* Criminal Appeal No. 696 of 1925, against the order of D. P. Ghose, Additional Sessions Judge of the 24-Parganas, dated July 22, 1925.

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was charged and convicted under section 304, Indian Penal Code, as aforesaid. Although the said S. Lewis was a material witness against the accused, he was employed both by the learned committing Magistrate and by the learned Additional Sessions Judge to interpret to the Courts in the respective proceedings before them the evidence of all the Chinese witnesses as also to interpret to the accused the said S. Lewis' own evidence, as well as that of all the European and Indian witnesses. In the course of the trial before the Sessions Court the accused was asked if he wished to say anything, and he made a statement, but the same was not read over to him, nor did he sign it. The accused preferred an appeal to the Honourable High Court, which, though filed out of time, was admitted by the Court, as there was good ground for extension of time, the papers having been unavoidably mislaid as disclosed in the affidavit sworn by the learned counsel for the accused.

Mr. N. Barwell and *Babu Sachin Banerjee*, for the appellant. Read the petition of appeal (which has been incorporated in the above statement of facts), and was about to read the learned Sessions Judge's charge to the jury.

[DUVAL J. Did such things actually take place?]

Yes. The employment of a material prosecution witness as interpreter has prejudiced the defence and occasioned a failure of justice.

[GHOSE J. We will hear the other side now.]

The Deputy Legal Remembrancer (Mr Khundkar), for the Crown. Lewis, the interpreter, did not give any material evidence for the prosecution, his

deposition dealing only with minor matters, and so the accused has not been prejudiced, nor has there been any failure of justice as the appellant has said.

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GHOSE AND DUVAL JJ. In this case the accused Ah Sai, who is a Chinaman, was tried before the learned 3rd Additional Sessions Judge of the 24-Parganas and a jury on the charges under sections 302 and 304, Indian Penal Code. The jury found him guilty of an offence punishable under section 304, Indian Penal Code, and thereafter the learned Judge sentenced him to transportation for life.

It appears from the record before us that the trial in this case has been conducted in a way which is highly irregular. Indeed, the irregularity is of such a nature as to border on illegality, and having regard to the facts stated below we have no further alternative but to set aside the conviction of and sentence passed on the accused.

It appears that a Chinaman named Lewis acted as an interpreter in this case. From a very early stage of the investigation by the Police, this Chinaman named Lewis had interested himself on behalf of the prosecution. The charge against the accused was that he had murdered his elder brother. The deceased brother of the accused was the head joiner in the Olive Jute Mills at Matiabruz and the accused was his assistant. Both the brothers used to live in the cooly lines within the mill compound. The deceased used to occupy one room and the accused occupied a room just immediately to the north of the deceased's room. It appears that the deceased used to pay the rents for both the rooms to the Mill authorities. On the 20th April last, the two brothers quarrelled between themselves over the payment of their wages. The deceased used to draw both his and his brother's wages but the

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accused did not like this, and on the 20th April last, which was a pay day, he complained to the clerk in charge of the workshop that his brother was extravagant and was not paying him his wages, and he asked for the issue of his pay ticket to him personally. Thereupon an order was made for the issue of pay tickets to the two brothers separately, but at the time of payment the elder brother did not turn up, and the accused received the wages on behalf of both the brothers. Some time later the accused came to the clerk and complained to him that his elder brother had taken away all the money from him and he wanted to go away from the place. The two brothers subsequently quarrelled between themselves in the lines where they were living. On the following morning, that is, 21st April 1925, a Chinaman who was working in the old mill as a carpenter came to the Assistant Manager and reported to him the death of the brother of the accused. Information was then sent to the Police, and the Sub-Inspector of the Matiabruz thana came to the mill and held an inquest on the dead body of the brother of the accused and sent the same to the Dead House at Mominpur. The Sub-Inspector came again at about 3 P.M. in the afternoon and examined the accused and the deceased's son and on the son having told the Sub-Inspector that the accused had murdered his father, the Sub-Inspector arrested the accused. He then searched the room of the accused which had been locked up and which was opened in the presence of the Manager of the Mill. Lewis, the Chinaman, referred to above, came with the accused and the deceased's son and was present at the search.

Thereafter, the committing Magistrate held an inquiry and sent the accused up for trial before the Sessions Court. Lewis was one of the witnesses

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examined for the prosecution before the committing Magistrate, and it appears from the record that he was employed as an interpreter in the Court of the Sessions Judge in this trial. The evidence of the witnesses was interpreted to the accused by Lewis. Lewis himself gave evidence as stated above on behalf of the prosecution in the Sessions Court, being the ninth witness for the prosecution, and it appears that he interpreted his own evidence to the accused in his own vernacular.

We regret to have to say that the procedure which was adopted by the learned Sessions Judge has had the effect of placing the accused more or less at the mercy of the interpreter Lewis. It was a procedure which was absurd from the very outset and opposed to elementary ideas of justice. That a witness who had taken an active part during the Police investigation, who had given evidence in the committing Magistrate's Court on behalf of the prosecution, and who was found to be ready and willing to give evidence in the Sessions Court on behalf of the prosecution against a man who was charged with very serious offences under sections 302 and 304, Indian Penal Code, should have been chosen to act as an interpreter in this case is a procedure which has only to be stated to call forth our severe condemnation. We trust that a thing like this will never happen again.

We must, therefore, set aside the conviction of and the sentence passed on the accused, and direct that he be retried by the 2nd Additional Sessions Judge of the 24-Parganas according to law on such charges as the prosecution may be advised to bring against him. Let the record be returned as soon as possible.