

## CRIMINAL REVISION.

Before Cunliffe J.

SUDHASINDHU DE

v.

EMPEROR.\*

1934

Nov. 13.

*Accused person—Presumption of innocence—Communication with counsel  
—Privilege—Statement to police—Advice of counsel.*

Until an accused person is actually found guilty, he is entitled to be considered innocent, both during the preparation of his trial and during the hearing of his case.

All communication between an accused person and his legal advisers are privileged and confidential.

Held further that counsel may properly advise his lay client, who is accused of a serious crime, that he should, in no circumstances, make any statement to the police.

### CRIMINAL REVISION.

On October 6, 1934, the accused, who was a prisoner, made an application to the District Magistrate, Hooghly, for bail and for permission to have interviews with his lawyers. On October 8, 1934, the District Magistrate refused to grant bail and on the question of interview with lawyers made the following order :—

“This (the interview) may be allowed in the presence and hearing of a police officer as the case is still under investigation.”

On the prisoner's application to the High Court, a Rule was issued on November 5, 1934, on the District Magistrate, Hooghly, to show cause why the prisoner should not be granted bail and also why the prisoner should not be allowed interviews with his lawyers in jail, but not in the presence, or within the

\*Criminal Miscellaneous Case, No. 189 of 1934, against the order of K. C. Basak, Sessions Judge of Hooghly, dated Oct. 28, 1934, confirming the order of D. Macpherson, District Magistrate of Hooghly, dated Oct. 8, 1934.

hearing, of any police officer. The prisoner was charged under sections 396, 302 and 120B of the Indian Penal Code. At a previous hearing of the Rule, the order of the District Magistrate, refusing bail, was confirmed and further hearing of Rule was adjourned for considering the question as to whether or not any police officer should be present at the prisoner's interview with his lawyer.

Arguments of counsel appear sufficiently from the judgment.

*A. C. Banerjee* and *Praphullakumar Banerji* for the petitioner.

*The Deputy Legal Remembrancer, Khundkar*, and *Anilchandra Ray Chaudhuri* for the Crown.

CUNLIFFE J. This is an application in relation to an interview with an accused person which was originally made to me in chambers sitting as a Vacation Judge on the criminal side of this Court. It was then coupled with an application for bail. After an adjournment the application for bail was dismissed. According to the report, which has reached me from the District Magistrate, the petitioner is in custody accused of a very serious crime. He is charged with the crime of dacoity with double murder. This dacoity is said to have been undertaken for the purpose of obtaining funds for revolutionary or terrorist purposes.

I was particularly anxious to obtain in full the explanation of the learned District Magistrate of Hooghly, who made the order, because I felt that possibly a very serious principle was involved. The order, to which exception is taken, was in regard to an interview between the accused and his counsel.

It was to the following effect :—

This (the interview) may be allowed in the presence and hearing of a police officer as the case is still under investigation.

It is interesting to note that the original order was written without the words "and hearing" forming a

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part of it. These words were interpolated above the line. I am told by the petitioner's counsel that this was done at the request of the police representing the prosecution, but the learned magistrate in his report has not dealt with this point. What actually happened appears to have been this: When counsel went to see his client in custody, there were a number of police officers in the room and it was impossible to take the accused's instructions or advise him without the police officers hearing every word that was said.

Now it seems to me that, due no doubt to overzeal, the magistrate, in making this order, infringed two elementary but cardinal principles of British criminal jurisprudence. They are these: Firstly, an accused person is entitled to be considered innocent, until he is actually found to be guilty, both during the preparation of his trial and during the hearing of his case, although it may be that, for the purpose of bringing the trial about and bringing the accused person before the court, he must be forcibly placed under restraint. Owing to the recognition of this rule in the British Empire, a person in custody, charged with an offence, is always permitted reasonable facilities to consult his professional legal advisers. Secondly, all communication between an accused person (or indeed any litigant) and his legal advisers are privileged and confidential. It is impossible to have anything confidential about communications between an accused person and his lawyer if they are surrounded by police officers. It would be equally impossible to have anything confidential, if there was only one police officer sitting on a chair within earshot. I should imagine that, after the interview, the officer would go and recount to his superiors everything of importance that had been said; and it would, probably, in the circumstances, be his duty to do so.

The principle of a prisoner's right of defence is enshrined in the Criminal Procedure Code. It is also a well known principle at common law. The question of the confidential nature of communications between

a litigant or an accused person and his legal advisers is dealt with in the Indian Evidence Act. This again is a statutory enactment of another well known common law right. It may here be observed that the custom in England of depriving a treason felon of a full defence, so noticeable in the reports contained in the State Trials series, has long fallen into desuetude.

The learned magistrate, in his explanation, has laid stress on what induced him to make the order in such strict terms. It seems to have been solely that it had been reported to him that the accused's advocate, instead of advising his client that he should be cautious in making a statement to the police, or that he should consult him before he made it, or something to that effect, advised his client, quite roundly, that he should in no circumstances make any statement at all. It is very difficult for me to say that, however serious the crime a person may be accused of, advice like this should never be given by an advocate. There might conceivably be circumstances in which it would be improper for a lawyer, with special knowledge of the guilt of his client, to advise him not to make a confession; but, for the moment, I am unable to visualise them.

It seems to me that the learned magistrate has entirely overlooked the two principles that I have mentioned—that of the presumption of the innocence of all accused persons and their right to confidential communications with their legal advisers. I have mentioned the serious nature of this alleged crime, as one knows that a very serious crime or a very serious movement of crime may, and often does, necessitate the tightening up of procedure, the institution of special tribunals and so on. But it seems to me that, unless in the case of certain offences accused persons are directed by Government to be tried by drumhead court martial, it is of paramount importance that advocates should have free access to their clients and should obtain all the support they are entitled to look for in seeking such access. The more serious the

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offence the greater the need of the advocate's help, and more especially where persons are charged with taking part in what I may term "group" crimes. But I need hardly say that the professional privilege of advocates can only be upheld, if they honourably bear in mind that they are officers of the court and do not lend themselves in any way to act as go-betweens to facilitate improper communications with other undetected criminal associates of the accused. I should stress, however, that I have no evidence before me to show that anything of this kind is going on in this case.

In these circumstances I shall, in part, set aside the order of the learned magistrate and substitute an order that the accused person's legal adviser shall have access to him at times which are reasonable and convenient to the prison authorities; but that, although the interview may take place in the presence of a police officer, he must be stationed out of earshot.

*Order varied.*

P.K.D.