

1947

Present : Dias J.

THE KING v. VIDANAGAMAGE EDWIN

3—M. C. Gampaha, 30,237.

Jury—Bias of one of the jurors—Ground for discharging the jury—Criminal Procedure Code, s. 230.

Where, at an early stage of a trial before the Supreme Court, counsel for one of the accused informed the Court that it was brought to his notice that one of the jurors was related to one of the chief witnesses for the prosecution—

Held, that the jury should be discharged under section 230 of the Criminal Procedure Code, in view of the partiality, real or apparent, of the juror in question.

ORDER made in the course of a trial before the Supreme Court, 2nd Western Circuit.

C. Jayawickreme, for the 1st and 2nd accused.

Nihal Gunasekera, for the 3rd accused.

A. C. Alles, C.C., for the Attorney-General.

¹ (1910) 13 N. L. R. 176.

April 21, 1947. DIAS J.—

Mr. Nihal Gunasekera, learned counsel for the 3rd accused, has informed me that about 1.15 P.M. today, it was brought to his notice that one of the jurors, Mr. C. C. Gunawardena, is related to one of the chief prosecution witnesses, known as Hettiaratchi. I have questioned the juror and he admits that Hettiaratchi's sister is married to one Alfred Gunawardena, whose first cousin the juror in question is.

Mr. Nihal Gunasekera says that had he known these facts he would have exercised his right of challenge, but now he is precluded from doing so as the jury has been empanelled and sworn. He therefore relies on section 230 of the Criminal Procedure Code which provides. "The Judge may also discharge the jury . . . whenever in the opinion of the Judge the interests of justice so require".

The rule of the English Law is precisely the same as our law. In Archbold, 1944 edition, page 196. it is laid down that it is established law that a jury sworn and charged with a prisoner, even in a capital case, may be discharged by a Judge at the trial without giving a verdict, if a "necessity", i.e., a high degree of need for such a discharge is made evident to his mind.

It is, therefore, clear that a judicial discretion is vested in the trial Judge to discharge a jury in case of a grave necessity, or as our Code puts it, "whenever in the opinion of the Judge the interests of justice so require".

The only question I have to decide now is whether on the admitted facts a case has been made out for me to stop this trial and discharge the jury and order the case to be retried. The jurymen, himself, protests that he has not seen this first cousin of his for many years, but I do not think his views matter very much. It is a cardinal principle of our law that not only must justice be free from bias, but it must also be free from the faintest suspicion of bias. Furthermore, no great harm will be done by discharging the jury at this stage, because only the first witness is in the box and only a portion of his cross-examination has yet transpired.

Therefore, in the exercise of my discretion, I think the interests of justice demand, in a case of this kind, that the objection should be upheld and the jury discharged.

It is a matter for regret that proctors who are retained to watch the interests of accused persons do not take a little trouble to find out who the jurors are and to instruct counsel in time if any of them are disqualified or biased. It is true that owing to the unforeseen death of the learned Commissioner of Assize a little confusion has arisen in our work, but this case would have been tried by this panel, and therefore, the proctor could have, with the exercise of a little diligence ascertained what he did in fact ascertain later.

I, therefore, make the following order: The jury will be discharged under section 230 of the Criminal Procedure Code in view of the partiality, real or apparent, of this juror, and the case will be retried by another panel of jurors.

Case to be tried by another panel of jurors.

