

1946

*Present : Nagalingam A.J.*

**THE KING v. GIRIGORIS APPUHAMY.**

*9—M. C. Gampaha, 27,953.*

*Bail—Courts Ordinance (Cap. 6), s. 31—Scope of—Accused not brought to trial owing to ill-health—Effect of such postponement.*

The accused was indicted on a charge of murder. He was committed on July 16, 1945, and a copy of the indictment was served on him on December 27, 1945. There were criminal sessions between July 10, 1945, and October 9, 1945, between October 10, 1945, and January 9, 1946, between January 10, 1946, and March 19, 1946, and between March 20, 1946, and July 9, 1946.

<sup>1</sup> (1935) 37 N. L. R. 285.

<sup>2</sup> (1936) 38 N. L. R. at p. 374.

In an application for bail under section 31 of the Courts Ordinance—

*Held*, that the first criminal sessions after the date of his commitment at which the accused might properly have been tried was the one held between March 20, 1946, and July 9, 1946.

*Held, further*, that the fact that the accused was not brought to trial at that sessions owing to his ill-health was good cause for the Crown to rely upon in opposing the application for bail.

**A** PPLICATION for bail made before the Assize Court under section 31 of the Courts Ordinance.

*C. Jayawickreme*, for the accused.

*B. Jayasuriya, C.C.*, for the Crown.

*Cur. adv. vult.*

October 7, 1946. NAGALINGAM, A.J.—

This is an application under section 31 of the Courts Ordinance for the discharge of the prisoner or in the alternative for an order admitting him to bail.

The prisoner is indicted at the instance of the Attorney-General on a charge of murder. He was committed on July 16, 1945, and it has been argued on his behalf that the first criminal sessions at which he might have been properly tried was the one that commenced on July 10, 1945, and which ended on October 9, 1945. Crown Counsel disputes this and it is obvious that the sessions that commenced on July 10, 1945, that is to say, six days anterior to the date of commitment of the prisoner, is not the first criminal sessions after the date of his commitment. I would therefore hold that the prisoner could not properly have been tried at the sessions that commenced on July 10, 1945.

It was next argued that the prisoner should have been brought to trial at the next criminal sessions which commenced on October 10, 1945, ending on January 9, 1946. Although the prisoner was committed by the Magistrate on July 16, 1945, the indictment on him was served only on December 27, 1945. In view of the amendment introduced in 1938 to the Criminal Procedure Code, the prisoner could not have been properly tried at any sessions unless and until a fortnight had elapsed after the service of the indictment on him. The fortnight after date of service of indictment on him would elapse only on January 10, 1946, so that he could not properly have been brought to trial even at the sessions that commenced on October 10, 1945, because that sessions did not extend to January 10, 1946.

The next point to consider is whether he could properly have been tried at the sessions that commenced on January 10, 1946, and which concluded on March 19, 1946. As the first date on which the prisoner could have been brought to trial was January 11, 1946, that is the day following that on which the sessions commencing on January 10, 1946, began the first criminal sessions after the date of his commitment at which he might properly have been tried would not have been the one that commenced on January 10, 1946. The first criminal sessions, therefore, after the date of his commitment at which the prisoner might properly have been tried was the one that commenced on March 20, 1946, and that ended on July 9, 1946. The case, as a matter of fact, was set down for trial on May 30, 1946, but had to be postponed as the prisoner

was suffering from an attack of mumps. The case was thereafter postponed for July 18, 1946, that is, for the following criminal sessions commencing on July 10, 1946. The criminal sessions that commenced on July 10, 1946, would therefore have been the second criminal sessions at which the prisoner could have been brought to trial, but the second criminal sessions did not commence till at least 6 weeks after the close of the first criminal sessions, and therefore the provisions that the prisoner should be discharged does not apply. In fact, the application for discharge of the prisoner was abandoned and learned counsel for the accused person merely relied upon his application for bail, depending upon the first part of the section. But as I have already pointed out, the reason why this prisoner was not brought to trial at the first criminal sessions at which he could properly have been tried was that he was in ill-health. I think that is good cause for the Crown to rely upon in opposing the application for bail.

Apart from these considerations, in the case of *de Mel v. Attorney-General*<sup>1</sup> Nihill J. expressed the view that "in murder cases it is only in the exceptional case that bail will be granted in the first instance". If I may say so, I respectfully agree with this expression of opinion. In that case it was the second application for bail made on behalf of the prisoner that was granted. In this case this is the first application and what is more the allegation of Crown Counsel that a strong *prima facie* case has been made out on the record is not controverted by Counsel for the prisoner.

In view of these circumstances, I reach the conclusion that this is not a fit case to admit the accused to bail. The application is refused, but I trust that the Crown will bring the accused to trial on the date for which the case now stands postponed.

*Application refused.*

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