

(1934) 11 CAL CK 0005
In the Calcutta High Court

Sudha Sindhu Dey

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 13-11-1934

Acts Referred:

Citation : AIR 1935 Cal 101

Hon'ble Judges : Cunliffe, J

Bench : Division Bench

Judgement

Cunliffe, J.—This is an application relating to an interview with an accused person which was originally made to me in chambers sitting as a vacation Judge on the Criminal Side of this Court.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 another application for bail. After an adjournment the bail application 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 under-taken for the purpose of obtaining funds for revolutionary or terrorist purposes.

2. 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.

3. It is interesting to note that the original order was written without the words "and Searing" forming a part of it. These words were interpolated above the line. I am told by the petitioner's counsel 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;

4. 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 now always permitted reasonable facilities to consult his professional legal advisers.

5. Secondly, all communications between an accused person (or indeed any litigant) and his legal advisors are privileged and confidential. It is impossible to have anything confidential about communications with your lawyer if you and he are surrounded by police officers. It would be equally impossible to have anything confidential, I should think, even if there was only one police officer sitting on a chair within earshot. I should imagine that after the interview the officer would go off 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 question of a prisoner's right of defence is, of course, enshrined in the Criminal Procedure Code; but it is also a well known principle of common law. The principle of the confidential nature of communications between the litigant or an accused person and his legal advisers is also dealt with in an India Statute, namely, in the Evidence Act. Again however this is merely 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 Trial Series-has long fallen into desuetude.

6. 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 quite roundly that the accused should in no circumstances make any statement at all. It is very difficult for me to say that however serious a crime a person may be accused of, advice like this should not 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 visualize them.

7. It seems to me that the learned Magistrate has entirely overlooked the two principles that I have mentioned-the principles 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 certain offences persons are directed by the 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 success. The more serious the 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" crime. 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 whatever before me to show that anything of this kind is going on in this case.

8. 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 ear-shot.