



in evidence of the confessional statement allegedly made by the Appellant to the police; and

- 2. That the learned trial Judge erred in law and in fact in failing to direct the gentleman assessors that the weight to be attached to the alleged confessional statements depended upon all the circumstances in which the alleged confession was made, and that the gentleman assessors ought to give the alleged confessional statements such weight as they thought fit. Consequently there has been a miscarriage of justice."

On 5th March, 1985, the house of one Din Mohammed at Wainibokasi was burgled and a video screen valued at \$500 was stolen. As a result of information received by the police, the appellant was interviewed on 1st April, 1985 but he denied all knowledge of the missing screen. A search of his house produced nothing.

With regard to the alleged admissions, the prosecution evidence was that the appellant spoke to one Shankar Singh about searches carried out by the police of houses belonging to his relatives and offered to return the stolen video screen to Din Mohammed in order to stay out of trouble. By arrangement he was taken to Din Mohammed's house on the evening of 16th April, 1985, where he again made the same offer but wanted a few days to do it as the screen was then with a relative at Labasa. In the meantime, he offered to let Din Mohammed have another video screen, a different make, until he could retrieve the stolen one from Labasa. They went to the appellant's house to get the screen but, according to Din Mohammed and Shankar Singh, there were visitors at the appellant's house watching the video and they returned without it. Discussion of the matter continued between the appellant and Din Mohammed who, without informing the appellant, had sent word to Inspector Sami

of Nausori Police to come to his house. As soon as he saw the Inspector the appellant, taken by surprise, repeated what he had already told Din Mohammed viz. that he had bought the video screen from a rician for \$55 and that he was willing to return it. After being cautioned he, according to Inspector Sami, repeated the admissions. Later at the police station he signed a written statement to the same effect and when formally charged afterwards, he again repeated the admission.

The appellant, in his evidence in trial within a trial, gave an entirely different version of events leading to the making of the alleged admissions. He had been lured, he said, to the house of Din Mohammed by an offer of a building contract. Once there he had been asked, over a few drinks, to admit receiving the stolen screen and, upon his refusal, had been tied with a rope and assaulted. It was at this juncture that Inspector Sami had arrived but, instead of stopping the assault, had asked for it to be continued. Reaching the limit of his endurance he had falsely admitted buying the video screen from a Fijian and giving it to a brother-in-law at Labasa. He had then been taken to the police station where the men who had beaten him at Din Mohammed's house also arrived. He was threatened with a repetition of similar violence which so terrified him that he made the written confessions alleged in the record of the interview and the charge statement. The contents of the statements, he claimed, were untrue and extracted from him by coercion.

The learned Judge rejected the allegations of violence and admitted the statements as voluntary.

Counsel for the appellant does not complain of the view taken by the learned Judge of the common law aspect of voluntariness. His submission is that even if

the allegations of coercion were unfounded, there was before the court evidence of circumstances which would call for exclusion of such evidence on ground of unfairness. The circumstances, he says, are to be found in the prosecution evidence itself, accepted as reliable by the learned Judge. The appellant, according to this evidence, had offered reconciliation and was taken to Din Mohammed's to discuss terms. The latter, however, says Counsel, used this opportunity to lay a trap and called in the police creating a situation of unfair psychological pressure.

The learned Judge gave full consideration to this submission but, in view of his earlier finding as to voluntariness, did not consider the circumstances surrounding the making of the admissions such as to warrant the exercise of his discretion in favour of exclusion. We agree with learned Crown Counsel's submission that there is nothing about the exercise of that discretion which would justify this court's intervention. (See R. v. Keeton and cases cited thereunder 1970 Crim. L.R. p.462.) There is nothing extraordinary about the use of an informer by the police. Whether or not to expose his identity and to invite risks that might be involved in such exposure is a matter entirely for the police consideration. The learned Judge also, quite correctly in our view, held it not to be fundamentally unfair for a private citizen to whom a confession has been made to hand the matter to the police. In most cases it would be his duty to do so.

Had this been a case of inducement, the position may have been somewhat different, for in such a case, Din Mohammed, being the owner of the burgled house, would, in appropriate circumstances, be treated as a person in

authority (R. v. Wilson 51 Cr. App. R. 194). There was no submission, however, either at the trial or before this court, that any inducement was at any time held out to the appellant by Din Mohammed. Nor indeed was there any such suggestion either in the prosecution or in the defence evidence.

The ground, therefore, must fail.

The second ground complains of the learned Judge's failure to give to the assessors specific directions as to their function with regard to the weight to be attached to the confessional statements. We cannot see any such failure in the summing-up. The learned Judge first dealt with what he described as "the evidence relating to the events of the 16th and 17th April" including the admissions made to Din Mohammed and, later, to the police.

He then said :-

" Having heard all the witnesses you will assess their evidence and ascertain the circumstances under which this evidence supplied by the accused came to be made.

This evidence is about what the accused is alleged to have said and done on the 16th and 17th of April this year. You must balance that against the accused's sworn repudiation of it and his account of how he came to make it.

The weight or importance you attach to it then depends on all the circumstances you conclude took place at that time. It is over to you what that weight or importance should be. "

We consider these directions perfectly adequate and the assessors could not but have understood them to cover what the accused had said to Din Mohammed and the police on 16th and 17th of April, 1985.

The ground, therefore, has no merit.

The appeal is consequently dismissed.

There is, however, one matter that needs mentioning. The learned Judge in his ruling on the voir dire said :-

" Shiu Shankar Singh admitted to a conviction for Robbery with Violence for his involvement in that affair the details of which I know nothing apart from the brief allusions to it in this trial within trial.

I would be loathe to say to members of the public to leave these matters entirely to the police. Public involvement is necessary to control crime. But for a civilian and an ex police officer such as Din Mohammed to be using a man still on Compulsory Supervision Order in an affair such as this was to say the least unwise. "

We agree entirely with the comment.

We also consider extremely undesirable leave given and the facilities provided to Din Mohammed, the main prosecution witness, to see the appellant, after he had been arrested and formally charged, to obtain from him a signed agreement which was typed by the police typist on a police typewriter and was handed to Inspector Sami immediately afterwards. It is difficult from the circumstances to escape the impression that the main purpose of the exercise was to obtain additional evidence to bolster up the prosecution case. It could not have been done at the appellant's request as Din Mohammed himself says the agreement was typed by the police as a favour to him (Din Mohammed). We consider it utterly wrong for an accused who is in police custody after being

formally arrested and charged to be harassed or questioned further as has occurred in this case.

The agreement, however, does not affect the voluntariness of the confession statements made several hours earlier and it has not been made a subject of this appeal. We, therefore, say no more on the subject.

Counsel for the appellant asked this court to consider making an appropriate order relating to the video screen (not the stolen video screen) which was brought to the police station by the appellant's son and was exhibited at the trial. A similar application was made by Counsel for the Crown at the end of the trial.

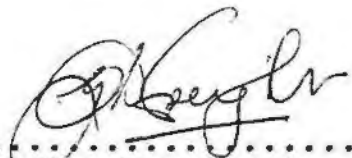
Section 164(1)(c) of the Criminal Procedure Code is in following terms :-

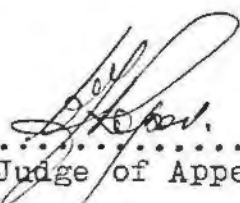
"164(1). It shall be lawful for any court in any proceedings to make orders for -

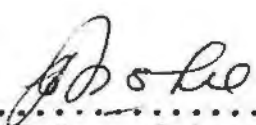
- (a) .....
- (b) .....
- (c) the restoration or awarding of possession of any such property or thing to the person appearing to the court to be entitled to possession thereof, without prejudice however to any civil proceedings which may be taken with respect thereto; "

The appellant's father has given sworn evidence that the video screen in question was his property and the appellant and his son Ravendra who brought the video screen both support this. There is very little evidence of any consequence (apart from the agreement) to the contrary.

On the evidence the appellant's father Chinsami appears to this court to be the person entitled to possession of the video screen exhibited in the court below and we, therefore, make an order awarding its possession to him without prejudice to any civil proceedings which may in future be taken with respect thereto.

  
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 Vice President

  
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 Judge of Appeal

  
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 Judge of Appeal