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SAMBHU LAL alias PRABHU LAL

v.

B

REGINAM

[COURT OF APPEAL, 1971 (Gould V.P., Marsack J.A., Tompkins J.A.) 30th August, 7th September]

Criminal Jurisdiction

C *Criminal law—practice and procedure—statement by accused person—practice of having accused interviewed by Justice of the Peace—purpose of interview to ascertain whether accused has complaints regarding his treatment by the police—evidence of interview confined to that purpose—rights of accused—Penal Code (Cap. 11) s.233—Judges' Rules (Legal Notice No. 14 of 1967) rr. 2, 3.*

Criminal law—evidence and proof—statement by accused—evidence of interview with accused by Justice of the Peace after charge—rights of accused—evidence to be confined to sole legitimate purpose of interview.

D

There is nothing intrinsically unlawful in the procedure of having an accused person interviewed by a Justice of the Peace after he has been charged, but it is nevertheless a practice which can only be adopted with strict regard to the rights of the accused. One such right, which should be made clear by the Justice of the Peace, is that the accused need not E answer any questions at such an interview if he objects. Evidence of such interviews should be strictly confined to their only legitimate purpose which is (as should be made plain to the accused at the outset) to ascertain whether the accused has any complaint regarding his treatment in relation to any particular statement alleged to have been made by him. It is not the function of the Justice of the Peace at an interview of this nature to question the appellant as to the truth of his statement and F evidence of such questioning was rightly ruled inadmissible by the trial judge.

Case referred to:

Kandar Sami Naikar alias Gandhi v. Reginam (1968) 14 F.L.R. 235.

G Appeal from a conviction of murder in the Supreme Court.

K. C. Ramrakha for the appellant.

D. I. Jones for the respondent.

7th September 1971

Judgment of the Court (read by Gould V.P.):

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The appellant was convicted by the Supreme Court of Fiji at Labasa on the 13th March, 1971, of the murder of his daughter Meena Mani, a baby only a few months old. The circumstances of her death, as presented in the case for the prosecution, are revolting and it is not necessary, for the

purposes of this appeal, to relate them. It is necessary only to say that it has never been questioned that, if the facts put forward by the prosecution are accepted, as they were by the learned trial Judge and five Assessors, the appellant caused the death of the deceased with malice aforethought as defined in section 233 of the Penal Code (Cap. 11). A

During the proceedings in the Supreme Court the learned Judge held a trial within a trial to determine the admissibility of certain statements alleged to have been made by the appellant. As a result he excluded one statement on the ground that (though the evidence showed a caution had been given to the appellant under Judges' Rule 2) he considered that the appellant should have been informed that he might be charged with murder and cautioned by use of the slightly different wording of Judges' Rule 3. Two statements were, however ruled admissible by the trial Judge, one oral and the other a writiten statement made after the appellant was charged. These statements, which amounted to confessions, supported by some corroborative detail, formed the basis of the case for the prosecution. At the trial within a trial, the trial Judge, after police witnesses had been called, heard evidence from Sami Subramani Pillay, who is both a Justice of the Peace and a District Officer, he gave evidence as follows :— B C

> "I remember in August last year when Police coming to my house on early part of the morning. I don't remember the date. Corporal Sabir Hussein, Inspector Singh no Inspector Salabogi and I think the driver of the van. The Accused sitting in the box was with them. He was brought in my house and Inspector Salabogi brought a statement and handed to me and asked me to confirm with defendant whether it was taken by force, whether Police induced him to give statement or whether he was offered any bribes to make the statement. Then he left Accused with me and went to Land Rover. He handed a statement to me. There was no other Police Officers with me. D E
>
> I see this statement Ex. 3. This was given to me.
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> First of all I said to Accused I was District Officer and nowhere connected with Police and he was at liberty to give me any information, whether the Police assaulted him threatened him. F
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> I read the statement read to him in Hindustani slowly and I asked him line by line whether it was correct, or whether he wanted any deletion or correction. He said no. I read slowly and talked to him in ordinary Hindustani and he said he understood. He did not want to correct it. He did not want to add or alter it in anywhere. G
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> He said there was no intimidation from Police.
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> I asked him whether the contents of this statement was true and he said "yes". He looked quite normal." H

As to this, the trial Judge said (very properly in our opinion) that the function of Mr. Pillay was certainly not to question the appellant as to the truth of his statement and he ruled to be inadmissible Mr. Pillay's evidence "relating thereto".

The grounds of appeal to this court were formulated by counsel as follows :—

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(a) the learned trial Judge erred in law, and in fact in ruling that part of the evidence given by Sami Subramani Pillay was admissible inasmuch as the said Sami Subramani Pillay was a person in authority within the meaning of the Judges' Rules, and in the entire circumstances of the case, his evidence should have been ruled as inadmissible;

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(b) alternatively, the learned trial Judge having ruled in the trial within a trial that the said Sami Subramani Pillay could not question the appellant as to the truth of his statement nevertheless erred in later traversing his own ruling and admitting questions by the said Sami Subramani Pillay which in effect elicited the truth of the statement;

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(c) the learned trial Judge further erred in ruling that the confessions were admissible and in acting on them.

Ground (c) was not supported by any material other than the submission that if the arguments under grounds (a) and (b) were considered to be well founded, the exclusion of the confessions might be a proper consequence. Ground (a) and (b) were in effect argued together and the points relied upon were :—

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(a) Mr. Pillay was a person in authority.

(b) It was the duty of the police under section 26 of the Criminal Procedure Code to take the appellant, once charged, before a Magistrate as soon as practicable — there is no provision for taking him before a Justice of the Peace. The police investigation so far as the appellant was concerned was complete, and their action, being unauthorised, was illegal.

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(c) Although in the trial proper the question and answer concerning the truth of the statement were not included in the evidence, to read the statement slowly line by line, and ask the appellant whether he wished to alter, add or correct anything was in effect to question him as to its truth.

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(d) That in the circumstances the Justice of the Peace became an agent of the police and should at least have cautioned the appellant. The agency is shown also by Mr. Pillay's evidence at the trial that the police, when they brought the appellant to him, asked him to "confirm" the statement.

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(e) That the procedure contravened Judges' Rule 3(b) in that it amounted to questioning the appellant on matters relating to the offence after he had been charged.

This Court has already, in *Kanda Sami Naikar v. Reginam* (1968) 14 F.L.R. 235 pointed out that there is inherent danger in the practice of having an accused person interviewed by a Justice of the Peace after he has been charged. No doubt the prosecution wishes to take every precaution in order to be able to counter the very frequent allegations that statements by accused persons have been extorted by violence or threats, or fabricated. Nevertheless it is a practice which can only be adopted

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with strict regard to the rights of the accused. One of these rights, it appears to us, would be that he need not answer any questions at such an interview if he objects to it, and this, we think, should be made clear by the Justice of the Peace. In the present case, Mr. Pillay's procedure would not convey to the appellant that he was obliged to say anything, but for complete fairness his full rights might have been conveyed more explicitly. At the same time it must be remembered that an accused person might have complaints, and wish to make them at the first opportunity. Every case must be looked at on its own particular facts.

As to the first argument, it may well be that Mr. Pillay was a person in authority but he was not an investigating officer and his function was not to record a statement or confession. Nor did he hold out any threat or inducement which could be said to have affected the conduct of the appellant in the remainder of the interview. As we pointed in *Kanda Sami Naikar's* case, there might have been a danger, when the appellant was told that he could say anything without fear, that he might regard the Justice of the Peace as a father confessor and make an incriminating statement, but in the event he did not.

Subject to the comment already made that an accused person should know that he is not compelled to answer any questions at the interview, we see nothing intrinsically unlawful in the procedure. The duty to take the appellant before a Magistrate as soon as practicable is something apart, not connected with the matter complained of. Nor do we agree that Mr. Pillay became an agent of the police. He explained that he was, in fact, a District Officer in no way connected with the police — the police were not present. The actual reference to "confirming" the statement in its context at the trial within a trial was, "asked me to confirm with defendant whether it was taken by force, whether Police induced him to give statement or whether he was offered any bribes to make the statement." It would have been better if this explanation had been given at the trial proper, but it was in evidence before the trial Judge upon whom lay the duty of ruling on admissibility, and we have no doubt at all that the minds of the assessors were not affected by the use of the word "confirm". We think also, that there is no substance in the contention that the procedure amounted to questioning the appellant on matters relating to the defence after he had been charged.

There may be some basis for counsel's contention that going through the statement line by line in order to ascertain whether the appellant wished to correct, alter or improve the statement, might have conveyed to the minds of the assessors that the appellant was confirming his statement in the sense that he was confirming its truth. This procedure does not appear to have been necessary merely to identify the statement as that of the appellant. We think that the evidence of a Justice of the Peace in these circumstances should not go beyond what is necessary for that purpose or the purpose of ascertaining whether the accused person has any complaints. What we desire to say, and to say strongly, is that evidence of such interviews should be strictly confined to their only legitimate purpose, which is to ascertain whether the accused person has any complaint regarding his treatment in relation to the particular statement and this should be made plain to the accused person at the comencement of the interview.

In the present case, even if the assessors might possibly have construed Mr. Pillay's evidence as importing confirmation by the appellant of the truth of his statement we are entirely satisfied that no miscarriage of justice was occasioned thereby. In this we have regard in the first place to the fact that there were two confessions — one oral and one in writing — both to the same effect, either one of which would provide ample evidence for conviction. The oral confession was not touched by the evidence of Mr. Pillay and its admissibility is not challenged. Secondly, it is obvious from the detailed and scrupulously fair ruling of the trial Judge on the trial within a trial that his decision that the two confessions were made voluntarily was based on the evidence of the police witnesses; although he did accept Mr. Pillay's evidence, the findings on each statement were made before he mentioned it. His main purpose in doing so may well have been to rule inadmissible the portion of it referred to above. In any event, the trial Judge would exclude from his mind, and his ruling showed that he did, any implication that the appellant was then confirming the truth of his statement. The two confessions were therefore properly admitted and properly before the assessors. With reference to the appellant's written statement, his case was, both in cross-examination and in evidence, that the statement read to him by Mr. Pillay was another statement altogether and that he had never made the written statement produced in court. The truth of this defence, which they obviously rejected, would be the main issue present to the minds of the assessors in relation to Mr. Pillay, rather than the evidence which could imply that he confirmed the truth of the statement Mr. Pillay actually had.

We find therefore that if Mr. Pillay's evidence went further than was advisable, the irregularity occasioned no miscarriage of justice. There has been no challenge on appeal to any aspect of the summing up or judgment and the conviction of the appellant was abundantly justified on the evidence.

The appeal is accordingly dismissed.

Appeal dismissed.