

BETWEEN : R E G I N A M v. SUBARMANI s/o Shiu Narayan

AND : JOSEPH NARAYAN RAJU s/o Yenkat Raju

For the Crown: Mr. M. Raza, Principal Legal Officer

For the Accused Persons: Mr. G.P. Shankar

RULING IN TRIAL WITHIN THE TRIAL

Cases referred to:

- (1) R v Pountney & Anor (1836) 7 C & P 302; 173 E.R. 182
- (2) R v Taylor (1839) 8 C & P 733; 173 E.R. 694
- (3) R v Laughler (1846) 2 C & K 225; 175 E.R. 93
- (4) R v Cleary (1964) 48 Cr. App. R 117 (C.A.)
- (5) R v Moore (1972) 56 Cr. App. R. 373 (C.A.)
- (6) DPP v Ping Lin (1975) 3 All E.R. 175

The learned Counsel for the defence Mr. Shankar has objected to the admission of a statement made by the second accused on the grounds of involuntariness.

Detective Constable Ranvir Singh testified that on 22nd August, 1983 both he and Detective Sergeant Ramaiya transported both accused from their homes at Korotale to Rakiraki police station, arriving at the station between 6.30 p.m. to 7 p.m.; he commenced taking a statement from the second accused, aged 19 years, at 7.25 p.m. and finished doing so at 8.10 p.m. Shortly thereafter the second accused was released and left the station with his uncle Ram Raju, the first accused aged 26 years, and a fellow suspect Amar Nath aged 30 years being retained in custody.

Detective Sergeant Ramaiya who had testified in the main trial that both accused were brought to the station "about 2 p.m." testified in the Trial Within the Trial that he brought them to the police station "at any time between 2 p.m. and 5 p.m." He explained that he had taken a statement from someone at Korotale and thereafter by the time that he picked up both accused from their homes it was 4.15 to 4.30 p.m. and he arrived back at the station before 5 p.m. The witness had been in court during portion of Detective Constable Singh's evidence. Nonetheless, in retelling his

memory from his records however he testified that Detective Constable Singh and he had left the station at 1.53 p.m. and returned thereto from Korotale at 4.59 p.m. that day. 126

Detective Constable Singh was sure that he had remained at the station that day up to 5.30 p.m. when he had gone with Detective Sergeant Ramaiya to pick up both accused persons. Mr. Shankar points to this inconsistency and submits that the Detective Constables evidence lacks credibility. As I see it, Detective Sergeant Ramaiya was equally unsure of the time involved, until he refreshed his memory from records. Detective Constable Singh did not make any such record, and without such record I do not see that a discrepancy of 1½ to 2 hours in reference to date over a year ago necessarily weakens a witness' credibility. Mr. Shankar submits that Detective Constable Singh testified that no confrontation between the accused persons had been arranged, whereas Detective Sergeant Ramaiya and Amar Nath not to mention the accused persons, had testified otherwise: it was the Detective Constable's evidence however that he had not been present during any such confrontation.

The second accused testified that he had been assaulted. The first accused gave evidence in defence of the second accused and testified that he also was assaulted. According to the second accused he even heard the first accused crying out while being assaulted. The paternal uncle of both accused, Ram Raju was present at the police station at the time and testified that he would have heard any such cry if made but that he heard nothing of the sort. The first accused's evidence I found intrinsically unrealistic. He was obviously shaken in cross-examination. The first accused made a statement to the police which was produced without objection. In it he denied having taken any part in the commission of the offence, despite his evidence of a beating, on and off over a period of six hours.

As for the second accused, I am satisfied that he was not subjected to physical force or threatened in any way. I find it utterly unrealistic that a Detective Constable would behave in the manner suggested, while the suspects uncle, apparently on friendly terms with the police, a much respected member of the community, was sitting in the verandah of the police station drinking yaqona with other police officers. The allegations put to both police officers were that the second accused had been stripped of his clothing, poured hot water thrown on him and been thrown in a cell. In his evidence however the second accused testified that the Detective Constable had punched him in the stomach and forcibly pushed a stick into his mouth. Despite the latter assault in particular he bore no injury. Despite being in pain

he made no complaint to his uncle, who, as will be seen, spoke to him before his release. Ram Raju testified, in cross-examination, but not in chief, that the second accused told him that the police were "harrasing him". When asked if the second accused had told him of having a stick pushed into his mouth and being punched, the witness enlarged his evidence to say that the second accused had said the police "were harrassing him and wanted to assault him". Considering the witness' good standing with the police and that he in turn made no complaint in the matter, I am satisfied that the latter enlargement constituted an embellishment by a close relative, reluctant to depart from the truth. The second accused's recollection of the time of arrival at and departure from the police station was quite exact, but his evidence as to any intermediate timings was vague. He could not say in particular if he was at the station for half an hour or some hours after making his statement. Considering that his uncle was present and that he was released that evening, unlike the first accused and Amar Nath, and that he was not charged with the offence for another three weeks, I fail to appreciate why the police should keep him at the police station for some hours after making his statement. Both accused would have it however that they arrived at the police station some 2½ to 4½ hours earlier than the police say, and that the intervening time was utilised in assaulting them. I am satisfied that they arrived at the police station about 5 p.m. I am also satisfied that whilst they were both closely interrogated, neither were subjected to physical force or threats thereof.

There is however the evidence of Ram Raju that he spoke to both police officers concerned at the police station and that both 'explained' to him that "if he (the second accused) tells the truth he will be made a Crown witness". The witness testified that the second accused was nearby, inside a room at the time, and could hear the conversation. He approached his nephew and said to him,

"If you were with them you had better come out with the truth and you will save yourself".

He subsequently explained that when his nephew said he was being harrassed he told him he should become a Crown witness. This evidence corroborated that of the second accused, as Mr. Raza submits, both police officers in cross-examination denied having made any such suggestion to Ram Raju. There is however the aspect that the latter had clearly established a co-operative and cordial relationship with the police and might well be considered an ideal agent in the matter. There is also the aspect that the second accused was the youngest of the three suspects; his father was deceased, Ram Raju stood in loco parentis to him and he might

therefore be more receptive than the first accused to such suggestion. There is further the aspect that the second accused was in fact allowed to go home with his uncle that night and was not charged with the present offence for another three weeks, whereas the first accused and Amar Nath were charged that same night, 22nd August, 1983. Suffice it to say that Ram Raju's evidence is sufficient to raise a doubt in my mind and I am not satisfied that such suggestion was not made to the second accused. I proceed therefore on the basis that it was made.

In 2 Russell on Crimes, 839, it is observed that

".....an inducement held out by.....a person having authority in the matter, or by a person in the presence of one in authority, with his assent, whether direct or implied, will be sufficient to exclude a confession made in consequence of such an inducement".

In the case of R v Pountney & Anor (1) Alderson B was of the opinion that a confession was inadmissible which had been procured by inducements held out by an inn-keeper in the presence of a police constable, approving of the following submission by counsel:-

"I am aware that, as a general rule, a confession procured after inducements held out by an unauthorized person is receivable; yet, here, as the prisoner was in the actual presence and custody of the constable at the time of the procuring of the confession, the constable must be considered as giving his authority to and adopting by his silence the inducements by which it was procured; and, if so, it is certainly not receivable in evidence".

In the case of R v Taylor (2) a female servant made a confession to her mistress, the wife of the prosecutor, as a result of an inducement held out to her by another person not in authority, in the presence of her mistress, the latter not dissenting therefrom. Patterson J. observed (at p. 695):

"It is the opinion of the Judges that evidence of any confession is receivable, unless there has been some inducement held out by some person in authority, and in this case I should have received the evidence of the statement made to Mr. Winders, if the inducement had been held out by him alone. But here the inducement does not rest with him alone, because Mrs. Lyford, who was the wife of the prosecutor, and also the mistress of the prisoner, was present with Mr. Winders, and must, as she expressed no dissent, be taken to have sanctioned the inducement. I think, therefore, that the inducement must be taken, as if it had been held out by Mrs. Lyford, who was a person in authority over the prisoner, and that, therefore, the evidence is inadmissible".

There followed the case of R v Laugher (3) where a confession procured by an inducement from the husband of a married woman in the

presence of a police officer was held inadmissible. Polbck, C.B. observed (at p.94):

"The fact of the constable being present, and not dissenting from what was said, places the expressions used by the husband on the same footing as if they had been used by the constable; and I think, that, as the constable was a person in authority, such an inducement ought to be sufficient to exclude the admission".

The rule formulated in Russell has not changed over the years. It was applied once again R v Cleary (4) where the accused's father, in the presence, at a distance, but also in the hearing of two police officers said to his son,

"Put your cards on the table. Tell them the lot...
If you did not hit him they cannot hang you".

The confession made thereafter was held inadmissible. The Court of Criminal Appeal (per Finmore J.) observed:

"What is plain is this, that any kind of inducement made by a person in authority will make the statement inadmissible. It has also been decided that, though the inducement be made by a person not in authority, if in fact it is made in the presence of persons in authority, the position is the same as if they had made it themselves unless they take steps to dissent from it".

Again, R v Cleary (4) was followed in R v Moore (5). In that case the accused's father in the presence of police officers told his 16 year old son,

"Come on, make a statement and then we can go home".

The trial judge declined to entertain a submission that the resultant confession was inadmissible. Megaw L.J. in delivering the judgment of the Court of Appeal (Criminal Division) observed at pp.375/376:

"The judge, it may be, had failed to remember and counsel, perhaps it may be said, in the circumstances should be forgiven for not reminding him specifically of authorities relating to an inducement offered by one who is not in a position of authority, but offered by him in the presence of one who is in a position of authority".

In the present case, whether or not the second accused actually heard the suggestion made by the police to Ram Raju or whether or not they heard the inducement held out in turn by the latter to the second accused is immaterial. Here it is not simply a case that they did not dissent from the inducement: the inducement was held out not alone with their assent but at their very suggestion. The second accused testified that he was influenced by his uncle in the matter. Clearly the

inducement involved was considerable, that is, the hope of not being charged at all with the offence but instead of giving evidence for the prosecution. Under the circumstances I am not satisfied that the statement was not made because the second accused was caused to hope that he would have an advantage if he did make it DPP v Ping Lin (6) (at pp.177/178).

Under the circumstances therefore I am not satisfied beyond reasonable doubt that the statement made by the second accused was voluntary and I accordingly ruled that it is inadmissible.

Delivered In Open Court At Lautoka This 19th Day of September, 1984.

(B. P. Cullinan)

Judge