IN THE SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA. CORAM : MANN, C.J.

HOLDEN AT MADANG.

THE QUEEN v. BERNARD

R E A S O N S

I have to decide whether evidence of a conversation between Inspector Parry and the accused should be admitted as an admission of guilt. There is no suggestion that the statements made by the accused were not voluntary or that they were improperly induced. The question is whether as a matter of discretion of the Court, the statements were made under such circumstances that the Court might think it proper to admit them or not. It is a very wide discretion designed to meet the situations arising from a Police Constable's right and duty to demand an explanation from a suspect and the privilege of the accused not to be required in any way to admit or confess a crime or give evidence against himself.

The Judges Rules are not a code regulating the Court's discretion but are an attempt by the English Judges to guide the Police as to a course of conduct which is likely to produce a statement that a Court will admit. Whether the Rules are followed or not, the statement may be admitted or rejected at the Court's discretion. Rejection does not necessarily involve any criticism of the Police, for a voluntary statement may be a valuable source of information for the Police, but whether it should be used as part of the evidence, for or against the accused is another matter, and this must be left finally to the Court's discretion. It is never possible for a Police Officer to say with certainty that any statement of the accused will be admitted at the trial.

In the Territory we have many circumstances usually not found in England. Many natives have little or no idea of the ingredients of particular offences, and no idea of the difference that an admission will make in a case like this which requires corroboration. Many natives would find it

very difficult to deny an allegation to an officer in authority, especially if the officer appears to know the truth, simply because he has little idea of the limits of authority. It is for example almost impossible for a Court to persuade some natives to plead "Not Guilty" even where there is an obvious defence, not understood by the accused. Some have strong motives, not always understood, to confess crimes they did not commit.

It would be wrong to lay down rules to limit the effect of an unlimited discretion which has long been recognized as essential to justice, and I will not attempt to do so.

In the present case there was only one witness and the only possible way of obtaining the necessary corroboration was by inviting the accused to make a statement. Inspector Parry already had all the other evidence he could get, and quite reliable information. On the answer of the accused would depend the whole question whether a charge could be laid or not. In these circumstances it has become a common practice for the Police to warn the accused at the outset of the conversation. I think this practice is wise.

Inspector Parry fully understood all these circumstances, and asked the accused a series of detailed questions, each designed to obtain an admission (if answered in the affirmative) as to specific elements of the offence charged or the alternative offence of indecently dealing.

In the circumstances of this case, I do not feel disposed to admit more than the first two questions and answers after the first warning.

At this time the Inspector had neither arrested nor charged the accused and knew that he could not properly do so without asking in effect, "Did you do it?" Such a question he was entitled to put, and I think it was his duty to do so. He gave an appropriate warning first, and I think that the accused was capable of understanding his position.

The rest of the questioning was designed to secure evidence to sheet home the two possible charges and I think that it would have been more appropriate from the evidentiary viewpoint if the accused had been asked whether he wanted to make any further statement, which should be taken, if offered, without prompting. I think that the charge should have been laid in the circumstances of this case, as soon as the accused stated that he had had intercourse with the girl three times, and had given the dates.

C.J. 27/5/60