IN THE SUPREME COURT )
)
OF THE TERRITORY OF ) CORAM : OLLERENSHAW, J.
)
PAPUA AND NEW GUINEA.)

Friday,
26th March, 1965.

THE QUEEN

v.

RODNEY BRUCE SKELLY

JUDGMENT UPON ADMISSIBILITY
OF EVIDENCE.

Mr. Cory has objected to evidence being led of what the accused person said to the Police Officer of a confessional nature at an interview between them in the accused's house at Teapopo after the Police Officer had read to the accused what he told him was the complainant's statement made to him through interpretation.

Mr. Cory does not suggest that the accused's statement is inadmissible pursuant to Section 68 of the Evidence and Discovery Ordinance, 1913-1957, forbidding the reception of confessions induced by a [illegible] promise of a person in authority nor until

after he had completed his submissions did he rely upon the common law, not incorporated in that section, which makes inadmissible confessions obtained by any kind of compulsion or coercion, or, in other words, not made in the exercise of a free choice on the part of the accused to speak or remain silent: See R. v. Toronome-Tombarbui 1963 P. & N.G.L.R. 55 and the cases there collected and also R. v. Wendo & ors. 14th August, 1962, (Not yet reported).

He submitted that although the confession may be strictly legally admissible the circumstances in which it was obtained were such that I should exercise my discretion and reject it. He relied solely upon the discretionery rule and he urged me to reject the evidence in the exercise of the discretion under that rule on the basis that it contains a confession that was improperly or unfairly obtained by the Police Officer.

However, at a later stage in the course of Mr. Shaw's address and with his consent, he made a further submission that the confession was not admissible at common law because it was not voluntary 77

inasmuch as the accused person was under a kind of mental coercion when he made it.

Logically I should deal with this submission first; however in the circumstances I will now consider what I apprehend is Mr. Cory's main submission that I should reject the confession in the exercise of my discretion and I will set out my conclusion on his submission under the imperative common law rule at a later stage.

The discretion is, of course, one that must be exercised judicially and it is a question

> "of forming a judgment upon the propriety of the means by which the statement was obtained by reviewing all the circumstances and considering the fairness of the use made by the police of their position in relation to the accused."

McDermott v. The King (1948) 76 C.L.R. 501, Per Dixon, J., as he then was, at page 514, and see also R. v. Wendo (supra).

Firstly, Mr. Cory asks me to accept the evidence of the complainant, Naki, given in this trial,

and of her father, Dugi, given on the voire dire, to the effect that Naki did not in fact make a statement to the Police Officer but that, although she was present, she was too frightened to speak to him and that what Dugi translated to the Police Officer was not what she was then saying but what she had previously told him. Mr. Cory submits that the Police Officer must have known that it was not Naki's statement and that when he read it to the accused he fraudulently represented to him that it was.

The evidence of the Police Officer is that Naki did speak to her father in his presence, when he was using the father as an interpreter, that she was dictating a statement through, interpretation and that she spoke for some length of time. I accept the evidence of the Police Officer. I can see no reason, in the circumstances, for Naki being frightened to speak to her father although she may have been frightened or reluctant to speak directly to the Police Officer. I think that he believed that he had obtained Naki's statement made in his presence through the interpreters and I do not think that

he made any such fraudulent representation as is submitted.

Secondly, Mr. Cory submits that it was improper or unfair and in the nature of a trap for the Police Officer to tell the accused that the statement which he read to him was Naki's statement because he had used her father as an interpreter and there was a danger of distortion or exaggeration in the statement on the part of the father. This submission does not appeal to me. It would be quite a different matter if it were a question of the reception of Naki's evidence against the accused if her father were her interpreter. I may mention here that before reading Naki's statement to the accused the Police Officer did tell him that he had had a talk with Naki "and her father".

Thirdly, Mr. Cory submits, and this I think is the main question for my determination, that it was improper for the Police Officer to have read the complainant's statement to the accused and then to have waited to see what the accused would say after saying to him : "That is what Naki dictated to me

through translation, would you like to think about it for a while". After some twenty minutes, during which neither the Police Officer or the accused person said anything and the accused appeared to be thinking, the accused said : "I am ready to make a statement, what the girl says is true". The Police Officer then said : "Hold it a minute. You do not have to tell me anything if you do not wish to do so. If you do say something I shall note it down and tell it to the Court", to which the accused replied, "It's all right. I want to make a clean breast of it. I have been worried since it happened", and so on.

Mr. Cory has cited from authorities when confessional statements obtained from accused persons after the reading to them of statements by fellow prisoners have been rejected and has referred to Phipson on Evidence, 9th edition, at the foot of page 268 and R. E. Carter's Criminal Law at page 389 and Rule 8 of the Judges' Rules and he has also read (inter alia) the case of Reg. v. Male and Cooper 17 Cox's Criminal Law Cases at p. 689. 81

He invites me to apply by analogy this principle or practice to the reading of the complainant's statement to the accused in this case.

I am not aware of any Australian authority condemning generally the reading of such a statement to an accused person and I do not think I should make the extension submitted. I think that it has to be considered together with everything else that happened at the interview between the Police Officer and the accused person and I would refer again to the citation which I have made above from the judgment of Dixon, J., as he then was in McDermott v. The King. While I agree that there could well be circumstances in which the reading of a complainant's statement to an accused person could be part of unfair or improper conduct, in this case I think that the whole interview was conducted moderately and properly and I do not think that any unfair or improper use was made of Naki's statement. I think that what the Police Officer did in reading it to the accused amounted to no more than acquainting him with what it was that was alleged against him. I do not consider that a case has been

made out for the exercise of the direction against the admission of the evidence proposed to be led.

I return now to the submission that the evidence of what the accused said to the Police Officer is not admissible inasmuch as it contains a confession, which was not made voluntarily, and here the onus is upon the Crown to prove that it was a voluntary statement within the meaning of the common law rule.

I have already referred to the circumstances in which the accused made the statement to the Police Officer and Mr. Cory has stressed the evidence of the Police Officer that during the period that followed the reading of the complainant's statement while the accused appeared to be thinking he fiddled with his fingers, twiddled his thumbs and rubbed the side of his neck. Mr. Cory submits that this shows that the accused was under a kind of mental coercion and he argues that what the Police Officer did in reading the complainant's statement and asking the accused if he would like to think about it and then waiting amounted to the Police

Officer saying in effect : "Well you can't very well deny that".

It is of course important to note that the Police Officer did not say this or anything like it and I do not consider that it could possibly be implied from what he did say or anything in his conduct. He is quite a young Police Officer who appears to me to be not much older than the accused himself and he left the accused to grapple with his problem on his own and without any suggestion that he was obliged to say anything.

There was no intimidation, importunity, insistence, pressure or questioning on the part of the Police Officer and I do not see any basis for considering that the accused was overborne or influenced by anything the Police Officer said or did. I consider that when the accused did speak it was after deliberation and that what induced him to speak was his own conscience.

I hold that the evidence is admissible. 84