

1045/04/20

JOINT COURT OF THE NEW HEBRIDES

(Criminal Case N° 2280)

PUBLIC PROSECUTOR

v

KALTANG ALBERT

RULING ON ADMISSIBILITY OF EXTRAJUDICIAL CONFESSION

The rule of common law as to the admissibility of an extrajudicial confession is set out in the 35th edition of Archbold's Criminal Pleading, Evidence and Practice in para. 1105, quoting Hale, as follows :-

"In order to be admissible a confession must be free and voluntary, and unless it be shown affirmatively on the part of the prosecution that it was made without the prisoner's being induced to make it by any promise or favour, or by menaces or by undue terror, it shall not be received in evidence against him."

I refer also to Cave J.'s judgment in the leading case on the admissibility of confessions of Regina v. Thompson (1893) 2 Q.B. 12 at p.15, in which he said: "By that law (i.e. the law of England), to be admissible, a confession must be free and voluntary. If it proceeds from remorse and a desire to make reparation for the crime, it is admissible. If it flows from hope or fear, excited by a person in authority, it is inadmissible. On this point the authorities are unanimous."

In this case objection has been taken by the defence to the admissibility of the confession alleged by the prosecution to have been made under caution to Const. John Laban by the accused on the grounds that it was not made voluntarily.

The burden is on the prosecution to prove beyond reasonable doubt that the confession alleged to have been made by the accused, and sought by the prosecution to be admitted in evidence against him, was made without any promise or favour or threat or undue fear being made use of to induce the accused to confess.

Const. Laban said in evidence that he saw the accused at Pango Village at 8 a.m. on the 22nd January, and took him with three other suspects to the C.I.D. office at Police Headquarters. He there proceeded to question the suspects one by one. At 11.30 he said he returned the suspects to Pango for lunch, but added that it was possible that he had taken them to the British Prison for lunch - he was not sure. At 2.45 p.m. he interviewed the accused. He said that he interviewed the accused in the C.I.D. officer's dark room. He stated that suspects were often embarrassed at giving statements in the main C.I.D. office where two other police officers worked at their desks and where people were constantly coming and going.

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It appeared from his evidence that the dark room was an air-conditioned room, having no windows but having three lights, one of which was a red printing light. It appears that what Constable Laban referred to as the fingerprinting machinery was kept in the dark room. I take it that this machinery is a camera and enlarger for the purpose of photographing and blowing up photos of fingerprints. It appears that the room also contains other printing and photographic apparatus.

Const. Laban said that having gone into the dark room with the accused, he asked the accused whether he had any knowledge of taking money from Miss Shaw's car on the 17th January. He said that although the accused looked worried he said he knew nothing about it. Const. Laban told him to think about what he was going to say while he went to get his papers. (I pause here to remark that as Const. Laban went into the dark room with the express purpose of interviewing the accused, it is odd that he had not his papers already with him.) Const. Laban says he told the accused he should make up his mind whether he had taken the money or not. He said that he returned in about three minutes and that when he asked the accused whether he had taken the money the accused admitted it. Const. Laban denied that he had told the accused that if he did not say he had taken the money he would turn off the lights and leave the accused in the dark. He denied holding out any threat to the accused. He said that on the accused's admission he cautioned the accused and took his statement from him. He said that the statement was made quite voluntarily; that he read it back to the accused who agreed that it was correct and signed it.

The accused in evidence said that having been taken to the C.I.D. office by Const. Laban he remained there until 11 a.m. when he was taken to the British Prison for lunch. In the afternoon, he said, Const. Laban took him from the main office to the dark room, where he said the constable told him to tell him who had taken the money or he would "put his hand into the machine". The constable then left him telling him that he was leaving him to think whether or not he had taken the money. The accused said he was frightened. When the constable returned he told the accused that they were alone in the room and that whatever the accused said was simply between them and no one else would hear. He said the constable frightened him by telling him he would start the engines and take his fingerprints. The accused said he was frightened of the engines and that this caused him to say that he would make a statement, at which, he said, Const. Laban returned him to the main room where he gave his statement in answer to the constable's questions. He concluded by saying that he was not happy that he had made the statement.

In cross-examination he at first denied having said any of the incriminating parts of his statement. Later he admitted having said what was recorded but that the incriminating parts were untrue. He at first said that he had signed his statement but that the signature on the statement shown him was not his. Later he said he had never signed his statement. He denied that the statement shown him was true. He said he could think of no reason why the constable should have concocted the statement put to him. He admitted that he had made a statement, but said that he was forced to do so. He said that he had at

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first said he knew nothing about the money but that when he was put in the room with the machine he was frightened and had agreed to tell the constable.

In answer to questions by the Court, the accused said that when the constable told him he would turn on the engine he thought the engine would eat his hand. He said he was frightened of having his fingerprints taken.

Having observed the accused in court, we have formed the opinion that he is of a nervous disposition. We consider it extremely probable that a youth of his disposition would have been considerably affected by his long wait at C.I.D. headquarters. Added to which it seems he was taken to the British Prison for his lunch. On his return, when he was at length interviewed by Const. Laban, he was interviewed in an air-conditioned room having no windows, only electric lights and containing a large camera and other machinery.

The accused says that he was frightened by this room and by the camera. He said that he was frightened by Const. Laban's threats to turn on the machine and take his fingerprints and that because of these threats he agreed to talk to the constable. Such threats are denied by the constable. Such threats, in any event, if made to a man of reasonable fortitude would have little effect upon him. As already stated, in our view, however, the accused appears to be a timid and nervous person and we are of the view that even such silly-threats as those described in his evidence could well have played on his imagination and caused him considerable fear.

According to the accused, as soon as he had agreed to talk, he was returned to the main office, where his statement was recorded. Constable Laban was never asked where the accused's statement was recorded, but if it is true that the accused was returned to the main room for his statement to be taken down, (and there would seem little reason to doubt this evidence) it appears strongly to us that the accused was taken into the darkroom as much to impress him as to seek privacy.

The fact that the accused made many completely contradictory statements in cross-examination as to the contents of his alleged statement is only of interest insofar as it affects his credibility. It may well be that he is lying about the contents of his statement, but the matter in issue is whether or not that statement was made voluntarily.

In our view the prosecution has not discharged the burden of proof upon it that the accused was not induced by menace or fear to make a confession. Weighing Const. Laban's account of his taking of the accused's statement against that of the accused, we are not satisfied beyond reasonable doubt that threats of the kind described by the accused were not held out to him. Such threats in our opinion would be sufficient to induce a youth of the accused's temperament to make a confession. Furthermore we are of the view that the conditions leading up to the taking of the accused's statement were sufficiently oppressive to frighten the accused into making a confession: that is to say, his removal with three other suspects to Police Headquarters early in the morning, his long wait at the C.I.D. office, his being taken to lunch at the prison and finally his being taken into the darkroom for his final questioning. The cumulative effect of these circumstances were sufficient in our view to induce a state of fear in the accused's mind causing him finally to make a confession which he would not otherwise have made.

Accordingly we find that the confession made by the

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accused and tendered by the prosecution was not a voluntary confession and that it is not therefore admissible in evidence.

We wish to add the following comments arising from the evidence on the taking of the accused's statement :-

(1) Whatever may have been the general practice up to date and without having actually seen the C.I.D. darkroom, we have formed the view from the evidence heard in this case that the practice of interviewing suspects in the darkroom is undesirable as being open to abuse and suggest that, some other room, less suggestive to an impressionable suspect, be made available for this purpose.

(2) Const. Laban in evidence British said that it was possible that the accused had lunch in the British Prison prior to his being questioned. The accused confirmed that he was taken to lunch at the British Prison. It appears to us most undesirable, and thoroughly irregular, that suspects at Police Headquarters for questioning should be taken for their midday or any other meal to the British Prison. If this has been the practice it should be discontinued and other arrangements to supply such persons with food should be made.

GIVEN at Vila the 25th April 1975

*L. Benda*

French Judge

*J.R. Davis*

British Judge