HASWELL MVULA v THE PEOPLE (1963 - 1964) Z and NRLR 171 (CA)

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COURT OF APPEAL

[Before the Honourable the Chief Justice, Sir DIARMAID CONROY, the Honourable Mr. Justice BLAGDEN and the Honourable Mr. Justice CHARLES on the 7th December, 1964.]

Flynote

Voluntary statements of accused persons - allegations by accused that police used force to extract statements - necessity for evidence to be called in support of allegations - duty of counsel.

Headnote

The accused alleged at his trial that he had been ill - used and brutally treated by the police so that he would make a statement. He called no evidence in support of these allegations.

Held:

That if such allegations are made in cases where accused persons are represented by counsel, it is the duty of counsel to see that evidence in support of the allegations is called.

Appeal dismissed.

Cases cited:

(1) *O'Neill and Ackers v R* 34 Cr. App. R 108.

A B Mitchell - Heggs for the people

M Mitchell - Heggs for the appellant

Judgment

Conroy CJ: The appellant in this case is appealing from a conviction for murder, by the High Court sitting at Fort Jameson on the 2nd October. The particulars of the offence were that the appellant, on the 3rd August, 1964, at Lundazi, murdered Mohamed Yousuf Suleman. (*The learned Chief Justice outlined the facts of the case, and continued -*)

There is, however, one matter to which I wish to refer which falls outside the grounds of appeal in this case and which may be helpful to counsel in future cases. It arises out of the allegations made against the police in the trial within a trial. This followed a pattern which I have noticed followed in a number of cases, that the defence made allegations against police officers, in cross - examination, of ill treatment and brutality and that no evidence was then called by the defence in support of these allegations. I know how often it is difficult for defence counsel in this country to get proper instructions. They have no instructing solicitor to prepare a brief for them, they have to do the solicitor's work themselves. I know how particularly difficult it is in the provinces where defence counsel has little time in which to interview his client, and has difficulties of

interpretation, because the number of interpreters available is limited and their time is also called on by the prosecution counsel and by the courts. But I would draw the attention of all counsel in this country to the impropriety of making allegations against police officers in cross - examination of this nature, when they are not going to be supported by evidence called by the defence. I cannot do better than quote a passage from the judgment of the Court of Criminal Appeal in *O'Neill*

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and Ackers v R 34 Cr. App. R 108 at 110. The court there consisted of Goddard, L.C.J., Humphreys, J, and Jones, J - a very strong court. That was a case in which application was being made for leave to appeal, and one of the applicants at the trial at the Liverpool Assizes had alleged that a confession had been extracted from him by violence, and the learned trial judge held a trial within a trial, in the course of which these allegations were made. The Lord Chief Justice delivering the judgment of the Court of Criminal Appeal said this:

"The importance of this case is that it appears from the transcript that Ackers especially, through his counsel, alleged that the statement was dragged out of him and obtained by threats and violence on the part of the police. That is an exceedingly serious matter. To say, as is too often said, that the police threatened and pummelled and beat a prisoner to get a statement out of him is about as serious an accusation as can be made against the police. If there were any foundation for the allegation, it would have to be investigated, and if it were found to be true, the police officers concerned would be dealt with both criminally and also by being dismissed from the Service.

However, what the court desires to call attention to is this: having suggested this in cross - examination to the police, and having repeated the suggestion before the jury, counsel did not call his client to support what he had been instructed to say and the court has no hesitation in saying that this is not the proper practice. It is one thing to cross - examine a witness about credit, in which case one is bound by the answer of the witness. It is quite wrong and improper conduct on the part of counsel to make a charge against the police or against any other witness by way of defence if he does not intend to call his client to give evidence to support the charge. "

I concede that in this country it is more difficult for counsel, for the reasons I have stated before, but I would ask counsel in future to pay attention to the practice as set out by the Lord Chief Justice of England in that passage which I have quoted, and if they are going to make allegations such as this, warn their client that he must go into the witness box in support of it, otherwise allegations such as these should not be made.

I would dismiss this appeal.

Judgment

Blagden JA: I agree.

Judgment

Charles J: I agree.