

R. v. SINGOMBE AND SIABABWA.

CRIMINAL CASE No. 9 OF 1936.

Admissibility of evidence of second confession in cases where evidence of an earlier confession is inadmissible—question whether inducement leading to earlier confession since dispelled—difference in mentality of Europeans and Natives must be considered.

In the course of the trial before the High Court of two natives for murder, the Crown proposed to put in evidence confessions made by the two accused subsequent to confessions made at an earlier date by these accused; the earlier confessions were not free and voluntary and so were clearly inadmissible; subsequently, however, both accused after being warned and cautioned, repeated their confessions to a European police officer and the Crown contended that these later confessions were free from the objections attaching to the earlier confessions and consequently admissible in evidence.

The learned Judge reviewed the law and dealt also with the circumstances in which both the earlier and the later confessions were obtained. He was unable to satisfy himself that the improper influence which had been present when the earlier confessions were made was no longer present in the mind of these simple natives when they were subsequently charged in the ordinary way by a European police officer, no special caution or explanation having been given by that officer to the effect that they were under no obligation to say anything and that anything they had previously said would be disregarded.

Evidence of these later confessions was accordingly held to be inadmissible.

See also on the subject of the admissibility of a second statement after a prior inadmissible confession *R. v. Smith* 1959 2 A.E.R. 193.

Fitzgerald, A.J.: A question of considerable importance has been raised here. The Solicitor-General with characteristic fairness has intimated that he did not call the detective Benjamin because he had satisfied himself that the statements made to the detective by the prisoners were inadmissible in evidence against them. In such cases this court must assume, in favour of the prisoners, that they were induced to speak by improper means.

The statements now tendered are in effect, though not in detail, similar to the ones made to the detective; they were made to Constable Humphrey after the statutory caution had been given. The administration of the caution is not denied by the prisoners, but it is contended on their behalf that the statements were made before the delusive hope or fear that induced the original statements to the detective had been effectually dispelled.

Now, it is a fundamental principle of justice that a confession, and this in effect is what the statements were, to be admissible must be free and voluntary, that it must not be extracted by any sort of threat or violence nor obtained by any direct or implied promise, however slight, nor by the exertion of any improper influence. In order to ensure this end both the statute law and the settled practice of the courts insist on the rigorous observance of certain conditions precedent to the admissibility of the statements at the trial of accused persons. One of these safeguards is that where a confession has been obtained from a prisoner by undue means any statement made afterwards by him under the influence of that confession is inadmissible unless there is clear evidence to show that the impression caused by the undue means has been removed. The learned Solicitor-General and counsel for the defence have quoted exhaustively from authorities and particularly from Russell on *Crimes and Misdemeanours*. It is therein stated that in determining whether an inducement has ceased to operate it will be material to consider the nature of such inducement, the time and circumstances under which it was made, the situation of the person making it, the time which has intervened and whether there has been any caution given and if so whether that caution has been given generally or expressly and specifically with reference to the inducement held out.

The Solicitor-General has emphasised the great weight attached to the time factor in English cases. I am in complete agreement with him that in the reported cases the lapse of time between the improper influence and the subsequent confession is the paramount consideration, but it must be borne in mind that it has assumed this importance not because of any specific rule of law or practice, but because when applied to educated people it can safely be regarded as indicating whether or not the undue influence has had time to wear out. Had these accused been Europeans the lapse of time between the statements made to Detective Benjamin and those taken down by Constable Humphrey might well have proved fatal to the contention of the defence. In the case, however, of unsophisticated natives it would, in my opinion, be extremely dangerous to draw similar inference from the passage of time. Unlike persons brought before English courts I doubt whether one native in a hundred appreciates the true function of a police officer; to him a policeman represents physical force and as such the most potent of all influences. I doubt also whether he is capable of appreciating that subtle distinction suggested by the Solicitor-General between making a statement to a native constable and confirming it before a European officer. To his mind the native constable when he induced the statement was acting on the orders of his European master, and the first instinct of the prisoner, on being brought before Constable Humphrey, would be to tell the same story as he told the native detective.

In these cases, therefore, it seems to me that something more than the mere passage of time is necessary to justify the presumption that the effects of the improper inducement have been dissipated.

It becomes necessary to consider the mentality of the prisoners and the surrounding circumstances. The accused were arrested on 24th October and brought to the Mazabuka gaol. There was presumably no,

or very little, evidence against them because they were not formally charged with any offence. At this period they did not display any desire to unburden themselves. Singombe was then taken back to the village by the detective Benjamin, a person who, it is significant to note, has since been dismissed or discharged as unsuitable for membership of the police force.

Statements very prejudicial to the accused, and, in the absence of which no charge could possibly have been preferred, were made by both Singombe and Siababwa to the native detective. They were then taken to the Mazabuka gaol. Some time later they were brought before Constable Humphrey for the purpose of being formally charged with murder. It is obvious that Constable Humphrey must have been aware that statements which were not admissible in evidence had been made to the detective, because these statements constituted the only vestige of evidence, at least against Singombe, upon which a charge of murder, or any charge, could have been formulated. Indeed the constable admits the fact with that candour which has characterised all his evidence before this Court. The statutory caution was then administered to the accused and they again made substantially the same admissions as they did to the detective.

At this point I find it necessary to observe that Constable Humphrey conscientiously observed every rule of procedure laid down for his guidance. But in my view the circumstances of this case were such that they demanded something more than an adherence to the rules which are intended for the protection of arrested persons before they are asked whether they wish to say anything. Here the prisoners had already been induced by improper means to compromise themselves and it was essential that they should have understood that the original statements could not have been utilised by the police. The wording of the statutory caution is such that even semi-educated people might be excused for failure to appreciate its full significance. How much more involved must it have appeared when translated into Chila, to the two prisoners who are confronted, probably for the first time in their lives, by a European police officer in uniform.

Now if I admit these statements I must conclude that the effect of this technical caution which, in the absence of any simple explanation, must have been meaningless, was such as completely to remove the effects of the influence exerted by Benjamin who at this period was still in the police force and present near enough for the prisoners to see him.

It may well be that I have conceived an exaggerated opinion of the influence exerted by a policeman on the native mind, but speaking for myself, I shall examine all confessions made to the police with extreme caution and I should never be prepared to admit a second confession made after a previous inadmissible one, unless I was assured that the prisoner had been told in unambiguous language that what he had already said could not be given in evidence against him and it was for him to consider whether he would make a second confession. For want of this information he might think that he could not make his case worse than he had already made it, and under this impression might sign the second confession.

It follows that I am not satisfied that the influence which had been created on their minds by the detective Benjamin had ceased to operate when they made these statements which I must now rule to be inadmissible.