06B/70

SUPREME COURT OF VICTORIA

R v ZEMA and JEANES

Gowans J

26 August 1964 — [1970] VicRp 73; [1970] VR 568

CRIMINAL LAW – ADMISSIBILITY OF RECORD OF INTERVIEW – DOCUMENT SIGNED BY ACCUSED – QUESTIONING DONE IN ENGLISH AND ANSWERS GIVEN IN THAT LANGUAGE – ANOTHER POLICE OFFICER READ THE RECORD OF INTERVIEW IN THE ITALIAN LANGUAGE AND THE ACCUSED ADMITTED THE TRUTH OF WHAT HAD BEEN WRITTEN – DOCUMENT ADMITTED INTO EVIDENCE.

GOWANS J: The Crown has tendered as evidence a document alleged to contain admissions of a confessional nature made by the accused Zema. The circumstances are these. A police officer interviewed the accused Zema in the presence of two other police officers about an alleged stabbing which forms the subject of the wounding charges referred to in the presentment. The evidence is that as each question by the interrogating officer was asked, it was typed by one of the others, and as each answer was made, it was likewise typed. The questioning was done in English and the answer given in that language. The accused is an Italian and the third police officer present spoke the Italian language.

At the end of the questioning the accused was warned that he would be charged and need not make a statement, but that if he did, it would be taken down in writing and might be used in evidence. He was asked if he wished to make a written statement. He said he did not wish to do so, but that what he had told the police was true. He was asked if he wished to read what had been typed and he answered that he could speak English well, but could not read it "too much". He was then told that the third police officer would read it to him in Italian and he (the accused) could follow it on a copy and that if he did not understand any part of it, he could ask the officer and it would be explained to him. The original record of the interview was then handed to the accused and the third police officer translated the same document into Italian. The accused admitted the truth of what had been written and, when asked, said that he was willing to sign that original record. He then wrote on the original, in Italian, words which, translated, mean: "This has been read to me by Mr Munzone. It is the truth as I have told it." He then signed this document. What is objected to is not the admission in evidence of the questioning and the answers or of the reading (which, in fact, has been given in evidence), but the admission in evidence of the document itself.

Reliance has been placed on the authorities of *R v Kerr (No 1)* [1951] VicLawRp 27; [1951] VLR 211; [1951] ALR 490, and *R v Lapuse* [1964] VicRp 7; [1964] VLR 43. But those are cases where the truth of the contents of a record of interview had been admitted by the accused, but it was read out aloud by a police officer and the accused had not read it himself, and he had refused to sign it or acknowledge it in any way as a document.

In *Dawson v R* [1961] HCA 74; (1961) 106 CLR 1, at p13; [1962] ALR 365; 35 ALJR 360, Dixon CJ said of a comparable situation:

> "Because Side and McLennan swore what the accused had said was written down and that what was written down was handed to him and read by him aloud, the document became admissible in evidence."

There is a difference in the present case because the accused did not read the document itself aloud (if at all). What was said aloud was a translation, or a purported translation, of what was written. But what distinguishes this case further from the others I have mentioned is that the accused wrote on the document a signed acknowledgment of its truth. If he had been able to read English, then whether he read the document or not, that would be a sufficient acknowledgment or adoption of it. But it is said the result is different because the circumstances show that the

accused relied for his understanding of the contents upon the alleged translation spoken to him.

I think the matter can be tested by considering the case of an illiterate person who could neither read nor write, but who, after having had the document read over to him, had affixed his mark thereto. Would such a document be admissible as confessional evidence? In *R v Kerr (No 1), supra*, at (VLR) p212, O'Bryan J said:

> "There are two kinds of admissions: admissions in writing and verbal admissions. In order to get a written admission in, you must get some adoption of the paper itself. That adoption may be in many ways: by the signing of the document, by the placing of a mark on the document, by the reading of a document."

This appears to accept the position that the placing of a mark on a document is sufficient to make it a written admission. I can see no difference between the case where a confessional document of itself is unintelligible to the accused by reason of his being blind or illiterate, and that where it is unintelligible by reason of its being in a language foreign to him. In either case he must rely upon what the apparent reading of it tells him of the contents. I do not believe it to be the law that a blind or illiterate person, or a foreigner ignorant of the language, cannot, in any circumstances, sign or authenticate a document.

It is clear it is otherwise. If such a person accepts a proper reading or interpretation of the document, and marks it as his, he is bound. If a person accepts a true interpretation of a record of interview, he is in no different position from that which flows from his acceptance of an interpretation, duly proved, in the questioning itself: see *Gaio v R* [1960] HCA 70; (1960) 104 CLR 419; [1961] ALR 67; 34 ALJR 266. If pursuant to his acceptance of the reading or interpretation he adopts the document by marking it, he makes it his document. It then becomes admissible accordingly. The weight of the evidence by which this result is reached is a matter for the jury.

I am aware that in the recent case of *R v Tsingopolous* [1964] VicRp 86; [1964] VR 676, O'Bryan J in circumstances which are indistinguishable, took a contrary course and rejected the document. But I do not think I am bound to follow this interlocutory ruling and I think I should not perpetuate a view which, with due respect, I consider to be wrong.

The document will therefore be admitted.

Solicitor for the accused: George Madden, Acting Public Solicitor. *R v Zema and Jeanes*
Solicitor for the Crown: Thomas F Mornane, Crown Solicitor.
Solicitors for the accused Zema: S Plotkin, Skot and Opat.
Solicitor for the accused Jeanes. Alan Douglas, Public Solicitor.
