62/79

HOUSE OF LORDS

R v SANG

Lord Diplock, Viscount Dilhorne, Lord Salmon, Lord Fraser of Tullybelton and Lord Scarman

21, 22, 23 May, 25 July 1979

[1979] UKHL 3; [1980] AC 402; [1979] 2 All ER 1222; [1979] 3 WLR 263; (1979) 69 Cr App R 282

CRIMINAL LAW – EVIDENCE – DISCRETION TO REFUSE TO ADMIT OTHERWISE ADMISSIBLE EVIDENCE – EXTENT OF DISCRETION – EVIDENCE OF COMMISSION OF CRIME OBTAINED THROUGH POLICE OFFICER AND INFORMER ACTING AS AGENTS PROVOCATEUR – ALLEGATION THAT CRIME WOULD NOT HAVE BEEN COMMITTED EXCEPT FOR THEIR ACTIVITIES – WHETHER COURT HAD A DISCRETION TO EXCLUDE THEIR EVIDENCE – WHETHER THE DEFENCE CALLED ENTRAPMENT EXISTS IN ENGLISH LAW.

The appellant was charged with conspiring with others to utter forged United States banknotes. On his arraignment he pleaded not guilty to the charge. Before the case for the Crown was opened, counsel for the appellant applied to the court to hold a trial within a trial in order that it might consider whether the involvement of the appellant in the offence charged arose out of the activities of an agent provocateur. He said that he hoped at such trial to establish, by cross-examination of a police officer and by evidence-in-chief from an alleged police informer, that the appellant had been induced to commit the offence by an informer acting on the instructions of the police and that but for such persuasion the appellant would not have committed the offence. Counsel then hoped to persuade the judge to rule, in the exercise of his discretion, that the Crown should not be allowed to lead any evidence of the commission of the offence thus incited, and to direct that a verdict of not guilty be returned. Without hearing the evidence, the judge ruled that he had no discretion to exclude the evidence. The appellant retracted his plea of not guilty, pleaded guilty and was sentenced to a term of imprisonment. His appeal against the judge's ruling was dismissed by the Court of Appeal. On appeal to the House of Lords—

HELD: Appeal dismissed. Decision of the Court of Appeal affirmed.

1. As part of the judge's function at a criminal trial was to ensure that the accused received a fair trial according to law, the judge always had a discretion to refuse to admit evidence if in his opinion its prejudicial effect outweighed its probative value.

2. Because the court was not concerned with how evidence was obtained but merely with how it was used by the prosecution at the trial, a judge had no discretion, except in the case of admissions, confessions and evidence obtained from the accused after the commission of the offence, to refuse to admit relevant admissible evidence merely because it had been obtained by improper or unfair means. If evidence against the accused had been improperly obtained by the police by the use of an agent provocateur or by a policeman and an informer inciting the accused to commit the crime alleged that was not a ground on which the judge could exercise his discretion to exclude the evidence, although it could be a factor in mitigating the sentence imposed on the accused and might also be a matter for civil or disciplinary action against the police or for criminal proceedings against the policeman and the informer as principal offenders. It followed that what was effectively a defence of entrapment (a doctrine which had no place in English law) could not be accepted by the judge by means of the procedural device of exercising his discretion to exclude the prosecution's evidence of the commission of the crime.

3. There was therefore no justification for the exercise of the discretion to exclude the evidence, whether or not it had been obtained as a result of the activities of an agent provocateur, and it followed that the appeal would be dismissed.

Decision of the Court of Appeal, Criminal Division, affirmed.

LORD SALMON: My Lords, this is a strange appeal which plainly has no hope of succeeding. The appellant was convicted at the Central Criminal Court of conspiring with others to utter counterfeit United States banknotes knowing them to be forged and with intent to defraud. Before the case for the Crown was opened, counsel for the accused adopted the rather strange course of applying to the trial judge to have a trial within a trial before the trial itself began. He asserted

that if he succeeded on the trial within the trial, the judge would be obliged to rule that the Crown could adduce no evidence against the accused and the jury would then be directed to bring in a verdict of not guilty. Counsel then explained to the judge the facts on which he proposed to rely. They were as follows. Whilst the accused had been a prisoner in Brixton Prison, he met a fellow prisoner called Scippo who, unbeknown to the accused, was alleged to be a police informer and an agent provocateur. Shortly before the accused was about to be released, Scippo who seemed to think (rightly) that the accused's business, or part of it, was to deal in forged banknotes, told the accused that he knew of a safe buyer of forged banknotes and that he would arrange for this buyer to get in touch with the accused by telephone. Soon after the accused left prison he was telephoned by a man who posed as a keen buyer of forged banknotes and enquired whether the accused would sell him any. The accused said that he would, and a rendezvous was arranged at which the deal was to be completed. The accused had no idea that the man with whom he had been speaking may, in fact, have been a sergeant in the police force.

The accused and some of his associates went to the rendezvous carrying with them a large number of forged United States dollar banknotes and walked straight into a police trap. The forged notes were confiscated and the accused and his comrades were arrested.

Counsel for the accused hoped to prove the facts which he had opened by the evidence of the police sergeant and Scippo during the trial within the trial for which he was asking. Counsel submitted that if these facts were proved: (1) they would establish that the accused had been induced by an agent provocateur i.e. the sergeant or Scippo or both, to commit the crime with which he was charged and which, but for the inducement he would never have committed, and that accordingly the law required the judge to disallow any evidence of the accused's guilt to be called by the Crown, alternatively (2)(a) the trial judge had a discretion to reject any evidence of the offence because it had been unfairly obtained and (b) he was bound by the authorities to exercise that discretion in the accused's favour.

The judge held, rightly, in my view, that he had no such discretion and rejected the submissions made on behalf of the accused. The accused then withdrew his plea of not guilty, pleaded guilty and was sentenced to 18 months' imprisonment.

The Court of Appeal (Criminal Division) dismissed the appellant's appeal from the trial judge's findings and the appellant now appeals to your Lordships' House.

My Lords, it is now well settled that the defence called entrapment does not exist in English law. A man who intends to commit a crime and actually commits it is guilty of the offence whether or not he has been persuaded or induced to commit it, no matter by whom. This being the law, it is inconceivable that, in such circumstances, the judge could have a discretion to prevent the Crown from adducing evidence of the accused's guilt.
