06A/70

SUPREME COURT OF VICTORIA

R v FAJKOVIC

Gowans J

18 March 1970 — [1970] VicRp 73; [1970] VR 566

CRIMINAL LAW – ADMISSIBILITY OF RECORD OF INTERVIEW – DOCUMENT SIGNED BY ACCUSED – DOCUMENT WRITTEN IN ENGLISH – QUESTIONS WRITTEN DOWN INTERPRETED TO THE ACCUSED AND REPLY INTERPRETED AND WRITTEN DOWN BY POLICE OFFICER – DOCUMENT ADMITTED INTO EVIDENCE.

GOWANS J: Mr Macleod, for the accused, has objected to the admission in evidence of a document proved to have been signed by the accused on the ground that the document is written in English and the accused has no knowledge of that language, and that it should be, therefore, taken that in signing the document the accused has not authenticated the document itself, but only what was said to him by the interpreter as to what was set out in the document.

The circumstances are these. The accused was being questioned by a detective officer at Russell Street. The procedure followed was for the detective to write down the question which he proposed to ask, writing the question out in English. He then asked the question, which had been so written out, and the question was interpreted to the accused by an interpreter who spoke the Yugoslav language, as the accused did. The accused made his reply to the question in Yugoslav and it was then interpreted into English by the interpreter and written down by the detective. There was no objection taken to the giving in evidence of what was said to the interpreter by the detective, and what was said in answer by the interpreter to him, after the accused had presumably made his reply in the Yugoslav language.

That evidence has been given. No objection could be taken to it, having regard to the judgment of the High Court in *Gaio v R* [1960] HCA 70; (1960) 104 CLR 419;]1961] ALR 67. But after that procedure had again been followed, producing confessional matter, the police officer, after explaining to the accused through the interpreter what he proposed to do, read out the contents of the record which he had made in English, setting out the questions and the answers as they were recorded. The interpreter, without himself reading that document, interpreted to the accused in Yugoslav what the police officer read. The accused was then asked whether he was prepared to sign the English record of the interview, and through the interpreter he said that he was prepared to do so, and he did sign it. It is in these circumstances that the objection is taken to the receipt in evidence of the record itself.

This situation arose with me in substantially the same circumstances on 24 August 1964 in the case of *R v Zema and Jeanes* (reported at [1970] VR 568), and I then gave my reasons for admitting in evidence the written record itself, so signed by the accused. There are some minor differences with respect to the mechanics by which the questioning took place. But there is no substantial difference so far as that is concerned. In *Zema's Case* one police officer asked the question in English and another typed it out: in the present case the police officer asking the question wrote it out and then repeated what he had written. That makes no difference.

In *Zema's Case* also the interpreter read from the document itself in the Italian language, whereas in the present case the police officer asking the questions read the document himself in English and what he said was interpreted into the Yugoslav language by the interpreter. In my view, that makes no difference to the principle which is to be applied.

One other distinction rests upon the fact that, unlike this case the accused in *Zema's Case* was, during the reading, given a copy of the document in English which he was being asked to sign, but he had, according to the evidence, a very limited knowledge of the English language, and

the ruling was given on the assumption that he would not understand what was written there, or at all events, would understand very little of it. That, in my view, makes no difference so far as the principle is concerned.

Finally, in *Zema's Case*, the accused person, besides writing his name wrote in Italian the words, "This has been read to me, by Mr Munzone. It is the truth as I have told it", and he then signed it; in the present case the accused has merely appended his signature to the document. In my view, the principle is the same as I applied in *Zema's Case*, and as I have been informed that the practice has been for this Court to follow the ruling which I gave in that case, I propose, since I believe it to be correct, to apply it. I will, therefore, admit the document in evidence for the reasons which I set out in giving the ruling in *Zema's Case*.

The document will be admitted absolutely.
