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COURT OF APPEAL (ENGLAND)

R v RENNIE

Lord Lane CJ, Mustill & McCullough JJ

15 October, 6 November 1981

[1982] 1 All ER 385; [1982] 1 WLR 64; 74 Cr App R 207; [1982] Crim LR 110

CRIMINAL LAW – EVIDENCE – CONFESSION – ADMISSIBILITY – TEST TO BE APPLIED TO DETERMINE ADMISSIBILITY IN EVIDENCE.

The appellant objected at his trial on a charge of conspiracy to the admission in evidence of an oral confession and a statement made by him under caution. The ground of objection was that he had confessed because words used by an interrogating police officer, who had a statement from the appellant's sister, led to the belief that, unless he admitted his guilt, the officer would interview and perhaps arrest and charge other members of the appellant's family with the offence. In cross-examination on the *voire dire* the officer agreed that the appellant had confessed because he feared that the officer would bring the appellant's family into the offence. The judge ruled that the confession evidence should be admitted; he stated that he did not accept that the officer was right about the reason for the confession, and the jury were directed to make up their minds about the confession, the essence being whether the appellant was telling the truth. The appellant was convicted. On appeal, on the ground that, in view of the officer's evidence about the motive underlying the confession, the judge could not properly have held that it was voluntary—

HELD: Appeal dismissed.

1. That the principle of admissibility in evidence of a statement by an accused person was that no such statement was admissible unless the prosecution established it to be a voluntary statement in not having been obtained either by fear of prejudice or hope of advantage exercised or held out by a person in authority, or by oppression.

2. That, when a defendant deciding to confess not only realised the strength of the evidence known to the police and the hopelessness of escaping conviction, but was also conscious of possible advantage to himself or someone close to him if he confessed, and such thoughts were prompted by an interrogating police officer, a judge determining whether a confession by the defendant was admissible had to apply the principle of admissibility in evidence of the statement by understanding the principle and the spirit behind it while bearing in mind that the common meaning of "voluntary" was "of one's own free will" and that, since the trial judge had not been shown to have made a wrong assessment of the evidence or failed to apply the correct principle, the appeal failed.

***Dictum* of Lord Sumner in *Ibrahim v R* (1914) AC 599, 609; 30 TLR 383; 111 LT 20, PC applied;**

***DPP v Ping Lin* (1976) AC 574; [1975] 3 All ER 175; (1976) 62 Cr App R 14; [1975] 3 WLR 419, HL (E) explained.**

LORD LANE CJ: (part of the joint judgment) … The question whether the confession had been shown to be voluntary raised an issue of fact. The evidence material to this issue consisted of (i) the evidence of the officer as to what was said and done at the interview, both by himself and by the appellant, (ii) the evidence of the appellant on the same matters, and (iii) the evidence of the appellant as to his motives for making the confession. But the speculations of the officer as to the motives of the appellant were not admissible in evidence. The drawing of inferences from the course of events at the interview was a matter for the judge, not the witness. It is true that in this particular instance the opinion of the officer was elicited without objection, but that does not mean that a decision on the issue was to be taken out of the hands of the judge.

Even if it were the fact that the appellant had decided to admit his guilt because he hoped that if he did so the police would cease their inquiries into the part played by his mother, it does not follow the confession should have been excluded. Very few confessions are inspired solely by remorse. Often the motives of an accused person are mixed and include a hope that an early admission may lead to an earlier release or a lighter sentence. If it were the law that the mere presence of such a motive, even if prompted by something said or done by a person in authority, led inexorably to the exclusion of a confession, nearly every confession would be

rendered inadmissible. That is not the law. In some cases the hope may be self-generated. If so, it is irrelevant, even if it provides the dominant motive for making the confession. In such a case the confession will not have been obtained by anything said or done by a person in authority. More commonly the presence of such a hope will, in part at least, owe its origin to something said or done by such a person. There can be few prisoners who are being firmly but fairly questioned in a police station to whom it does not occur that they might be able to bring both their interrogation and their detention to an earlier end by confession.

We do not understand the speeches delivered in the House of Lords it *DPP v Ping Lin* (1976) AC 574; [1975] 3 All ER 175; (1976) 62 Cr App R 14; [1975] 3 WLR 419 to require the exclusion of every such confession. The essence of their Lordships' opinions in that case can be summarised as follows. The law relating to the admissibility of confessions is much simpler than appears to have been through in the years immediately preceding 1975. It is as stated by Lord Sumner in *Ibrahim v R* (1914) AC 599, 609; 30 TLR 383; 111 LT 20;

> " ... no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority,"

(Or, as must now be added, by oppression.) It is unnecessary and undesirable to complicate this question by considerations of whether conduct was "improper' or constituted an "inducement." The sense and spirit of the principle are more important than the particular wording in which it is expressed. Above all it is to be applied with common sense. The person best able to get the flavour and effect of the circumstances in which the confession was made is the trial judge, and his findings of fact and reasoning are entitled to as much respect as those of any judge of first instance.

How is this principle to be applied where a prisoner, when deciding to confess, not only realises the strength of the evidence known to the police and the hopelessness of escaping conviction, but is conscious at the same time of the fact that it may well be advantageous to him or, as may have been so in the present case, to someone close to him, if he confesses? How, in particular, is the judge to approach the question when these different thoughts may all, to some extent at least, have been prompted by something said by the police officer questioning him?

The answer will not be found from any refined analysis of the concept of causation nor from too detailed attention to any particular phrase in Lord Sumner's formulation. Although the question is for the judge, he should approach it much as would a jury, were it for theme In other words, he should understand the principle and the spirit behind it, and apply his common sense; and, we would add, he should remind himself that "voluntary" in ordinary parlance means "of one's own free will."

Returning to the present case; we must ask ourselves whether it has been shown that the trial judge made a wrong assessment of the evidence before him, or failed to apply the correct principle. In our view, it has not. On the contrary, his approach was flawless. Complaint is also made that prior to the trial-within-a-trial the judge said that, if he ultimately formed the view that the evidence of Dr Wolff had been unnecessary, he would not allow her costs to be paid from the legal aid fund. Accordingly it is said that the defence decided not to call her on the *voire dire*, so that she could, if need be, be called before the jury, as she was.

We see nothing in this complaint. There is no reason to think that her evidence might have altered the conclusion reached by the judge on the *voire dire*; and we are in any event far from saying that his observation was improper. The jury later heard her evidence, with that of the appellant, and concluded that the confession was true. In addition the appellant made certain criticisms of the manner in which the judge summarised the evidence in his summing up. We need only say that we have considered these criticisms, and find no substance in them.

Accordingly the appeal is dismissed.
