

13(1)/83

HIGH COURT OF AUSTRALIA

JACKSON v R

Dixon CJ, McTiernan, Taylor, Windeyer and Owen JJ

20 September 1962 — [1962] HCA 49; (1962) 108 CLR 591; 36 ALJR 198

EVIDENCE – CONFESSION – WEIGHT – ADMISSIBILITY OF ALL FACTORS RELEVANT TO EVIDENCE – EXPERT OPINION OF PSYCHIATRIST – STATEMENTS TO EXPERT WITNESS BEING FOUNDATION OF OPINION – WEIGHT OF OPINION IF STATEMENTS NOT CONFIRMED IN EVIDENCE – EXPERT – PSYCHIATRIC EVIDENCE – STATEMENTS TO PSYCHIATRIST HELD TO BE INADMISSIBLE – WHETHER TRIAL JUDGE IN ERROR.

J. was convicted of rape. At the trial, the Crown sought to tender a written confession made by J. This was objected to, and on the *voir dire*, a psychiatrist called on J's behalf, expressed the view that based on what J. had told him, J. was in a state of mind at the time of making his confessional statement, which could be described as a temporary and acute delusional system with paranoid content. The trial judge, nevertheless, admitted the confessional statement and further held, in advance, that if the evidence of the psychiatrist was tendered in J's case, it would be rejected as inadmissible.

HELD: Conviction and sentence set aside. New trial ordered.

All the circumstances surrounding the making of the confession of guilt which tend to show either that it can be safely relied upon or that it would unwise to do so, are admissible. Further, that since J. in his statement from the dock repeated in substance what he had previously told the psychiatrist, then the psychiatrist's opinion of J's mental state at the time of the confession was relevant and should have been admitted.

DIXON CJ, McTIERNAN, TAYLOR, WINDEYER and OWEN JJ: (at CLR p596) "... The defence wished to place before the jury material designed to show that little or no weight should be placed upon the confessions because they were made by a man who was, at the time, mentally abnormal and suffering from acute fear based upon an irrational belief that he was in danger of death and who thought that he might secure his removal from that danger by confessing to the commission of a crime of which he had heard but which he had not committed. The fact that there was no suggestion that on other occasions the applicant's mental condition was abnormal was not to the point. His mental condition when he confessed was the relevant matter and, where a question arises as to the weight to be given by the tribunal of fact to a confession of guilt, no authority is needed for the proposition that all the circumstances surrounding the making of it which tend to show either that it can safely be relied upon or that it would be unwise to do so are admissible. It would for example be clearly permissible to show that, at the time a person confessed to the commission of a crime, he was drunk or insane or had made it as the result of fear or under some other form of pressure and to base upon that evidence an argument that the confession had little or no probative value..."