ASSIZE COURT OF PAPHOS 1908

Sept. 22

(ASSIZE COURT OF PAPHOS.)

[BERTRAM, ACTING C.J., HOLMES, ACTING J., BROS, P.D.C., SAMI EFFENDI AND DEMETRIADES, JJ.]

REX

v.

HAJI YANNI HAJI SAVA SYNCHOREMENO AND ANOTHER.

CRIMINAL PROCEDURE—EVIDENCE—ADMISSION BY ACCUSED—PRINCIPLE GOVERNING EVIDENCE OF ADMISSIONS OR CONFESSIONS—STATEMENTS MADE TO POLICE OFFICERS IN ANSWER TO QUESTIONS—CONFRONTATION.

In order that a statement made by a prisoner to a police officer may be given in evidence as a confession or admission of his guilt, or as an admission of some circumstance tending to establish his guilt, it must appear:

(1) (as in the case of all confessions) that it was made voluntarily;

(2) that the prisoner was not induced to incriminate himself by questions of an inquisitional nature.

It is not necessarily fatal to the admissibility of the statement that the prisoner was not cautioned, or that it was made in answer to a question, but it is in each case a question of fact for the Court whether the statement was made under conditions in accordance with the above principles.

The prisoners were charged with committing homicide by strangling. A piece of rope said to correspond to another piece found round the neck of the strangled person was found on premises used by one of the prisoners. A police officer sent for the prisoner, then in custody, and, showing him the rope, said "Look here." The prisoner then made a statement, admitting the ownership of the rope.

HELD: That the statement was admissible.

The prisoners were charged with having killed with premeditation one Aphendrou Haji Nikola at Ktima. The woman in question was murdered by strangulation and her body was found with a fragment of a rope tied round the neck. Shortly after the arrest of the prisoners another fragment of rope said to correspond to that found round the neck of the murdered woman was found in the upper story of an old wind-mill used as a store-house by the prisoner Haji Yanni. The Inspector, on the rope being brought to the police station, sent for the prisoner, then in custody, and showing him the rope, without addressing any caution to him, said, "*Παρατήρα*" (Look here). The prisoner thereupon made a statement which was tendered in evidence.

Nikolaides for the defence objected to the admission of the statement on the ground that the prisoner was not cautioned, and that the statement has been elicited by what was in effect a question.

The Court ruled that the statement was admissible.

Judgment: As it does not seem clearly understood what are the principles which govern the admissibility in evidence of statements made by prisoners to police constables, we think it well in deciding this point to say something in explanation of those principles.

When these statements are tendered in evidence they are tendered as admissions or confessions, either as actual admissions of guilt, or as admissions of some fact that supplies a link in the chain of proof of guilt, and in either case the principles governing them are the same.

The first of these principles is one that applies to all admissions and confessions. It is that they will not be received in evidence unless they are made voluntarily. If therefore it is shewn that an admission was induced by any promise or threat made to the prisoner by some person standing to the prisoner in a relation of authority, so that he may be supposed to have made the statement under the influence of either hope or fear, the evidence of the admission is rejected. It is for this reason that a caution is customarily administered to the prisoner, warning him that he is not bound to make any statement (so that he may realise that he is not acting under compulsion), but that whatever he says will be used in evidence against him (so that he may realise that he has nothing to gain by making the statement). It is proper that such a caution should always be administered, but it is not necessarily fatal to the admissibility of such a statement, that no caution was administered, if the Court is satisfied that the statement was actually of a voluntary nature.

The second principle has special reference to statements made to police officers. It is a rule of the English law of evidence (which is enforced by these Courts) that a man shall not be bound to incriminate himself. This rule which applies to persons giving evidence in the witness box, also applies in principle to persons in the custody of officers of the law, on a charge of having committed an offence or on suspicion of having committed it. The law will not allow persons in this position to be submitted to an inquisitorial examination. In this respect the English law differs from that of France, where immediately upon his arrest the accused is submitted to rigid and searching interrogatories by a responsible judicial officer specially appointed for this purpose. It is for this reason that police officers are always discouraged from asking any questions of persons in their charge. But the fact that a statement was made in answer to a question by a police officer is not necessarily fatal to its admissibility. It is a question of fact for the Court in each case whether the question addressed to the prisoner was of the nature we have indicated, or whether in the circumstances of the prisoner's position it was improper for the officer to put it to him.

Now in this case the Inspector did not actually question the prisoner. He merely showed him the rope that was found and gave him an opportunity of making a statement about it, though the circumstances were such that the prisoner was in effect asked to make a statement. What the officer did was something in the nature of what in France is known as " confrontation." It is not usual in the English system of criminal law but not necessarily improper. We do not think there was anything in the circumstances to make the statement otherwise than voluntary, nor do we think that there was anything in the proceeding of an inquisitorial nature, or that the officer exceeded his duty in taking it.

The statement is therefore admitted.

Prisoners acquitted.