

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N

(1) STEPHEN ALEXANDER and Appellants

(2) DON MITCHELL

and

THE STATE Respondents

SPECIAL CASE
under rule 25

Ingledeu Brown Bennison & Garrett
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Respondents

1. This is an appeal from the judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali C.J. Corbin J.A. and Rees J.A.) dated 24 October 1975 dismissing the appellants' appeals against their convictions for murder, wounding with intent and breaking and entering. Special leave to appeal to Her Majesty in Council was granted by the Judicial Committee of the Privy Council on 19th May 1980.

2. The Appellants, together with one Arnold Wilkins, were tried at the Port of Spain assizes before Mr. Justice Cross and a jury on an indictment alleging that they

- a) murdered John Law
- b) wounded Cecil Hinkson with intent to do him grievous bodily harm, and
- c) broke and entered the shop of John Law and robbed him of £624 in cash

On 8th April 1975 the Appellants were convicted and sentenced to death for murder, and to 5 years imprisonment on each of the other two counts, these sentences run concurrently.

3. The case for the Crown was that on 28th October 1973 the three accused broke into the Wing Luck restaurant owned by John Law, whereupon they wounded Cecil Hinkson, fatally wounded John Law, and stole money from the restaurant till. The evidence on which the Crown relied to support the charges against the Appellant Alexander consisted of admissions in a statement which he allegedly made to the police, and the discovery of his fingerprint on a cheque left in the restaurant till. The case against the Appellant Mitchell was founded entirely upon admissions in a statement he allegedly made to the police.

4. In the course of the case for the prosecution objection was taken to the introduction into evidence of the alleged statement by Alexander, on the grounds that

- a) the Appellant was aged 17, and had been interviewed in the absence of a parent or independent witness.
- b) the Appellant had been beaten by a police officer with a bull-whip, in consequence of which, in fear and under threat of further beating, he had been induced to append his signature to a confession which had been prepared by the police, and which did not contain any words spoken or written by him, or read over to him before he was induced to sign.

A trial within a trial was held in the absence of the jury. After hearing police evidence, the learned trial judge rejected the submission for Alexander based on the absence of an independent party. The Appellant then gave evidence of the threats and violence to which he had been subjected, but in the course of cross-examination his Counsel withdrew his objection to the admissibility of the confession statement on this ground. The jury returned to Court and the statement was admitted in evidence.

5. In respect of the confession statement alleged to have been made by the Appellant Mitchell, his Counsel informed the judge, prior to its reception in evidence, that his case was that no such statement had been made. Mitchell would say that he appended his signature to a document prepared by police

officers the contents of which he was unaware, in consequence of certain threats of violence made to him. The learned trial judge ruled that in these circumstances the confession was admissible in evidence, its weight being a matter for the jury. The confession was in due course admitted, and constituted the only evidence against the Appellant Mitchell.

6. Both Appellants chose to give unsworn statements from the dock. They both said, in effect, that they were in no sense responsible for the contents of the statements which they had signed, that these statements had been devised by police officers, and presented to them for signature in circumstances which gave them no opportunity to read or understand the contents, and that they had been forced to sign by beatings and/or threats of beatings if they did not sign. The learned trial judge left the jury to consider these allegations as matters which might affect the weight to be placed on the confessions. He accepted that the confession statement, in the case of Alexander, was "extremely important, because it is the main evidence, apart from the fingerprint" and that, on the murder count, "the statement ... is the only evidence against Stephen Alexander". In the case of Don Mitchell, he instructed the jury that "the only evidence is a statement which he is alleged to have made. There is no other evidence against him".

7. In the Court of Appeal, no point was taken by Counsel for the Appellants in relation to whether the confessions were properly admitted as voluntary statements. Any such argument would have been bound to fail, in view of previous decisions by the Court of Appeal of Trinidad and Tobago that the allegation by a defendant that he has been improperly induced to sign a

statement not made by him raises no issue of voluntariness for the trial judge: see Williams v. Ramdeo & Ramdeo (1966) 10 W.I.R. 397 and Herrera and Dookeran v. R (1966) 11 W.I.R. 1. These decisions were overruled by the Privy Council in Seeraj Ajodha & Ors. v. The State (1st April 1981).

8. It is respectfully submitted that the case for the Appellants is indistinguishable from the case for the Appellants in Ajodha (above), and that the disposal of their appeal is governed by application of the principle in that decision. The question for decision in Ajodha was as follows:

"when the prosecution proposes to tender in evidence a written statement of confession signed by the accused and the accused denies that he is the author of the statement but admits that the signature or signatures on the document are his and claims that they were obtained from him by threat or inducement, does this raise a question of law for decision by the judge as to the admissability of the statement?" (transcript of reasons for decision of the Lords of the Judicial Committee of the Privy Council, p 3).

This question was decided in the affirmative:

"if the prosecution tender in evidence a statement in writing signed in one or more places by the accused, they are relying on the signature as the acknowledgment and authentication by the accused of the statement as his own, and that from this it must follow that, if the voluntary character of the signature is challenged, this inevitably puts in issue the voluntary character of the statement itself." (Transcript, p8)

It follows that both Appellants, by the case presented on their behalf in cross-examination of police witnesses and in their statements from the dock, raised an issue as to the voluntariness of their signatures and then of their statements, on the ground that they were threatened into signing. They were deprived of their entitlement to have this issue decided by the trial judge.

9. The Appellants respectfully submit that their present appeal is unaffected by the failure of Counsel for Alexander to press his objection at the trial, or the failure to take the point in the Court of Appeal. Reliance is placed upon the approach of the Board to this matter in Ajodha:

"Counsel for the respondent invited the Board to uphold the convictions of the present appellants on the sole ground that no formal objection to the admissibility of the confession statements was taken by defending Counsel in any of the four cases. Their Lordships are satisfied that it would be quite wrong to accede to this invitation. Even if, in the normal case, a point of law is only open to an appellant if the point has been duly taken in the court of first instance, the almost irresistible inference here is that the only reason why no formal objection to admissibility was taken at either of these trials was because judge and Counsel all supposed, rightly as matters stood, that, if any such objection had been taken, the Court would have been bound by authority to overrule it. Thus, in the event, each of these four appellants has been deprived, through no significant fault of his own or his advisers, of the all-important safeguard of a judge's ruling as to the admissibility of the central - in Ajodha's case the only -

evidence relied on by the prosecution against him. This was, in their Lordships' view, an injustice of such a substantial character, especially in a capital case, that no appellant should be disentitled to rely on it on the narrow technical ground that his advisers omitted what would have been, in the circumstances, the pure formality of taking the point in order to keep it open on appeal."

(Transcript)

10. The Appellants respectfully submit that their appeals should be allowed, their convictions quashed and verdicts of acquittal entered on each count on which they stand convicted.

11. The Respondents agree with the submissions made herein on behalf of the Appellants and respectfully submit that the Appeals should be allowed, the convictions quashed and verdicts of acquittal entered on each count on which they stand convicted, for the following

R E A S O N

Because the learned trial judge failed to appreciate that each Appellant's case raised an issue of the voluntariness of his confession statement, requiring a judicial determination of admissibility as a condition precedent to the reception of the statement in evidence.

GEOFFREY ROBERTSON
(Appellants)

JONATHAN HARVIE
(Respondent)

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