

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 7 of 1992

BETWEEN:

GABRIEL STEPHENSON

Appellant

and

THE QUEEN

Respondent

Before: The Hon. Mr. Justice Dennis Byron - President
The Hon. Dr. Nicholas Liverpool - Justice of Appeal
The Hon. Mr. Justice Satrohan Singh - Justice of Appeal

Appearances: The Appellant in person
Mr. Keith Friday for the Respondent

1992: November 10;
1993: February 9.

JUDGMENT

BYRON J. A.

On the 10th day of November we allowed this appeal, set aside the conviction and sentence and ordered a retrial. We now give our reasons in writing, as promised.

The appellant's appeal was based on his assertion before us that he did not make the incriminating statement which was produced at the trial by the police, but that he had signed the document which the police had prepared because of a beating he received at the police station.

On the 9th July 1992, the appellant was convicted of rape before St. Paul J. and a jury. The virtual complainant's evidence briefly put was that on 11th September 1991, at about 8.30 a.m. she was walking through the Golf Course with a 2-year old boy. The appellant who had a cutlass, after some verbal exchanges got hold of the boy and told her he would kill the boy if she did not come to him. As a result of his threats, she submitted to sexual intercourse without consenting. Immediately after the accident she reported it to the police. The police produced in evidence a statement which was signed by the appellant supporting the complainant's version of the incident. The appellant did not object to the admission of his statement in evidence, but in cross-examining the police officer who produced it he asked questions about being beaten to make the statement.

The trial judge did not make any findings on the voluntariness of the statement. He admitted it during the examination-in-chief of the police officer in the absence of any objection by the appellant who was not represented by counsel.

In his defence the appellant made an unsworn statement in which he denied the allegations of the virtual complainant and insisted that he had told the police he knew nothing about her complaint. He gave details of the beating which he alleged he received at the police station.

Even after the question of the beating arose the judge did not specifically consider the admissibility of the statement. He did not hold a voir dire or take any other step to determine whether the statement was voluntarily made or not. The statement was an important limb in the proof of this case because without it there was only the complainant's word against that of the appellant. In the absence of corroboration the judge would have been obliged to warn the jury that it was dangerous to convict the appellant. But the statement so incriminated the appellant that it enabled the judge to tell the jury that it corroborated the evidence of the complainant.

It is possible to discern where the trial judge went wrong from the following passage in his summing up.

"He told you all this but he never denied that he made the statement. However, if you believe him, if you believe that he was beaten in any way before he gave the statement or that he was beaten to give the statement, then you are at liberty to disregard the statement because it would not have been made voluntarily."

This passage demonstrates that the judge had confused his role with that of the jury in applying the rule stated by Lord Sumner in **IBRAHIM v THE KING** [1914] A.C. 599 at 609 where the learned Law Lord stated as follows: -

"It has long been established as a positive rule of English Criminal Law, that 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."

The voluntariness of an incriminatory statement made to the

police by an accused person is the test which the trial judge must apply to determine its admissibility. It is his duty to make his own findings of fact, usually but not necessarily, in the absence of the jury on a voir dire, and to decide the issue himself. It is only if he finds that the incriminating statement was freely made that it could be evidence which the jury could be called upon to consider. In his directions to the jury the judge must also invite them to assess the evidence as to the manner in which the incriminating statement was made and to make their own findings on that issue to assist them in determining what weight they should attach to it.

In the leading case of **AJODHA v THE STATE** [1982] A.C. 204 an appeal from Trinidad & Tobago, the Privy Council discussed in detail the principles and practice which the Commonwealth Courts should apply in dealing with the question of the voluntary nature of statements made by the accused. Lord Bridge of Harwich delivering the decision of the Court explained at p. 220: -

"It has to be remembered that the rule requiring the judge to be satisfied that an incriminating statement by the accused was given voluntarily before deciding that it is admissible in evidence is anomalous in that it puts the judge in a position where he must make his own findings of fact and thus creates an inevitable overlap between the fact-finding functions of judge and jury. In a simple case, where the sole issue is whether the statement, admittedly made by the accused, was voluntary or not, it is common place that the judge first decides that issue himself, having heard evidence on the voir dire, normally in the absence of the jury. If he rules in favour of admissibility, the jury will then normally hear exactly the same evidence and decide essentially the same issue albeit not as a test of admissibility but as a criteria of the weight and value, if any, of the statement as evidence of the guilt of the accused."

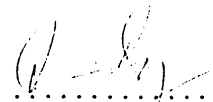
In the instant case the trial judge failed to decide whether the statement was voluntary or not in order to determine whether it was admissible in evidence. There is no special significance in the failure of the accused person to raise an objection to the admissibility of a statement he made to the police. Ignorance of the rules of procedure should not deprive an accused of the important safeguard of the judge's ruling as to the admissibility of an incriminating statement. In the case of an unrepresented accused the judge must be especially vigilant to ensure a fair trial, and the improper admission of an incriminating statement, particularly one which forms an important part in proving the case

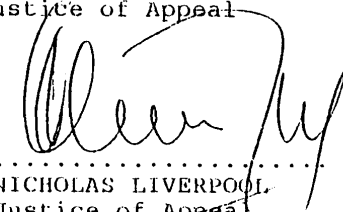
against an accused person is a factor which could undermine the fairness of a trial.

In this instant case we are of the view that the judge's failure to determine the question of the voluntariness of the statement constituted a serious error, and that the conviction and sentence should be set aside.

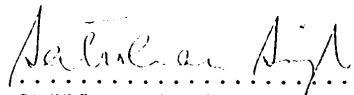
We are of the view however, that the interests of justice require us in accordance with section 41(2) of the Eastern Caribbean Supreme Court (Grenada) Act 1971 to order a retrial, and we so order.

I concur.


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DENNIS BYRON
Justice of Appeal


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NICHOLAS LIVERPOOL
Justice of Appeal

I concur.


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SATROHAN SINGH
Justice of Appeal