

Criminal Case No. 1 of 1980

The Republic v. Kennedy Olsson

22nd February, 1980.

Evidence - failure to comply with the Judges' Rules - initial confession improperly obtained - second confession after caution vitiated.

The accused, a boy aged about 15 years, was arrested on suspicion that he had raped a young female child. A police officer took him from the police station cell to an office for interview. On the way he asked him questions without giving any caution. In response to those questions the accused confessed to the offence. The police officer then cautioned him (although there was some doubt whether he did so properly) and the accused made a more detailed statement confessing his guilt. The police officer made no written record of the statement and the accused's parents were not present.

Held (on the voir dire): The Judges' Rules had been flouted. The second confession could not be regarded as having been obtained fairly, even if the caution was given properly, because nothing was done to inform the accused that he was free to make, as it were, a fresh start without regard to the confession already made.

Evidence of the confessions not admitted.

P.A. Thorpe for the Republic
Mrs. M.L. Billeam for the accused.

Thompson C.J.:

The whole interview in the course of which the accused allegedly confessed to the principal offence with which he is now charged was conducted in a most unsatisfactory manner. P.W. 11, a Senior Sergeant, was, in his words, 99% sure that the accused was guilty of the offence when he took him out of his cell and

into the C.I.B. office for interview. He should not have asked him any questions without first cautioning him, but he did so as he took him out of the cell. In response to a question asked then, the accused allegedly admitted raping the girl. Thereafter he was cautioned; but one of the two prosecution witnesses who gave evidence of the caution has cast doubt on whether it was a proper caution. After the caution the accused allegedly made an oral statement, in which he admitted several of the offences with which he is now charged. Mr. Thorpe has submitted that, as he did so, any impropriety in the manner in which the first admission was obtained from him was cured. I am unable to accede to that agreement, even if the caution was properly administered; one event followed quickly after the other and no attempt was made by the Sergeant to impress upon the accused that, in spite of the admission he had made, he was being given, as it were, a fresh start, with freedom to say nothing or to deny the offence.

Neither the Sergeant nor the other police officer present made any written record of the statement made orally by the accused or of the questions they asked him and the answers he gave. They have stated that they were in a hurry to find his clothes. But it was the Sergeant who invited the accused to make a general statement, instead of restricting his questions to what the accused had done with his clothes. If he was in such a hurry to recover the clothes, he should have asked about them and left the invitation to make a general statement until a later time.

There may well be good reasons why no parent or guardian of the accused, who is not an adult, was present. But their very absence, and the fact that the accused had been drinking and assaulted, required the Sergeant to act with particular circumspection and with punctilious regard for the letter and the spirit of the Judges' Rules, when he spoke to and interviewed the accused. Instead he acted in the very unsatisfactory manner to which I have already referred.

That being so, it would be quite unfair to the accused - and it would encourage the police to continue in their unsatisfactory ways - if I were to admit the evidence of the accused's alleged statements. Accordingly I rule that the evidence of them is not to be admitted.