JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 170/99

BEFORE: THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE PANTON, J.A.

PAUL SUKHRAM v. REGINA

Jack Hines for the appellant

Herbert McKenzie for the Crown

June 18, 19 and October 25, 2001.

PANTON, J.A.

The appellant was convicted of the offence of manslaughter on September 28, 1999, and sentenced to sixteen (16) years imprisonment at hard labour. The trial took place before Mrs. Justice McCalla and a jury in the Home Circuit Court. In the original grounds of appeal, there was only one ground relating to the conviction. It states: "... the verdict is unreasonable having regard to the evidence". Supplemental grounds which may best be described as prolix, the appellant having been granted leave to appeal by a single Judge of this Court, enlarged the challenge in relation to the conviction so as to specifically include the question of the adequacy and reliability of the confession which formed the sole basis of the prosecution's case.

Learned counsel for the Crown conceded that the summing-up was deficient so far as it related to the voluntariness and reliability of the confession. We agreed with the concession. As a result, on June 19, 2001, the second day of the hearing of the appeal, we allowed it, quashed the conviction, set aside the sentence and entered a verdict of acquittal. The confession being the only evidence on which the prosecution relied, there would have been no useful purpose served in ordering a retrial. We herein set out our reasons.

THE FACTS

According to the prosecution, in the early morning of October 12, 1994, the fully clad body of one Carl Dixon was found on Bumper Hall Road, St. Andrew, by Detective Sergeant Byron Yates. There was a plastic bag tied around the face of the deceased, and there appeared to have been gunshot holes through the bag into the head of the deceased. Although the statement allegedly given by the appellant asserts that the deceased was shot twice in his head, the medical evidence accounts for only one gunshot wound. That wound was half an inch in diameter, and was to the left occipito parietal region. The skin surrounding the injury showed no burning, tatooing or blackening which would be an indication that the firearm was held at a distance of more than eighteen inches from the point of entry on the body. This contrasts sharply with the statement allegedly given by the appellant to the effect that the deceased was shot twice in the head at close range. The bullet, according to the doctor, passed through the left parietal bone and cerebral hemisphere and lodged in the right side of the brain. The next development of note in the case was that on November 1, 1994, two men, one of whom was the appellant, were brought to the Denham Town Police Station by members of the Special Anti-Crime Task

Force who also handed over two statements to Det. Sgt. Yates. These statements had allegedly been made - one by the appellant, and the other by one Carlos Clarke. After serving copies of each statement on these men, Det. Sgt. Yates arrested and charged the appellant for the offences of murder and illegal possession of firearm.

So far as the statement allegedly made by the appellant is concerned, the prosecution relied on the evidence of Det. Inspector Winston Grant and Constable Theresa Parkes both of whom were attached to the Flying Squad. The Inspector, having been instructed so to do, went to the offices of the Special Anti-Crime Task Force where the appellant (whom he did not know before) was pointed out to him by another police officer. The appellant was handed over to the Inspector who was accompanied by Cons. Parkes. Inspector Grant told the appellant that he had been instructed to come there to have a talk with him. After the Inspector had secured the use of a private room, he along with Cons. Parkes and the appellant went into that room where the appellant, according to the prosecution, voluntarily dictated and signed a statement which was recorded by Inspector Grant, and witnessed by the constable.

The appellant who made the all too familiar unsworn statement stated that on October 27, 1994, he was in the Pearnel Charles Arcade when he was attacked by four men and, when he sought the assistance of a policeman instead of getting relief he was arrested and dragged to the Central Police Station. There, he was manacled to a bench. Later, members of the Special Anti-Crime Task Force took him to their headquarters where he was manacled to a grille. While so manacled, he was questioned by a policeman in respect of the murder of the deceased. The officer used a book to hit him in the head when he informed him that he did not know about the murder. Thereafter, he was "beaten

up through the night by different police officers". Next day, he was questioned by policemen in respect of the murder. More beatings followed when he told them that he was unable to say how the deceased had died. According to him, he was left handcuffed to the grille in a small area until Inspector Grant came. The Inspector, whom he did not know before, produced some papers for him to sign. He was denied the presence of an attorney-at-law as well as his mother and a Justice of the Peace. A police officer forced a gun into his (the appellant's) mouth and threatened to blow out his brains if he did not sign the document that had been placed before him. He signed but maintained that he had given no statement to the police and had not read the contents of the document that he had signed.

THE JUDGES' RULES

The prosecution purported to have acted in accordance with the Judges' Rules in recording the statement alleged to have been dictated by the appellant. Rule IV is the operative Rule. It provides that if a person wishes to make a statement, he is to be told that it is intended to make a written record of what he says. He shall **always** be asked whether he wishes to write the statement himself. If he says he would like someone to write it for him, a police officer may offer to write the statement for the person. If that offer is accepted, the officer **shall, before starting**, ask the person making the statement to sign, or make his mark to, the following:

> "I,....., wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

According to Det. Insp. Winston Grant the statement that he took from the appellant on October 28, 1994, lasted two and a quarter hours. He never knew the

appellant before the date of the taking of the statement, and when he travelled from the CIB Headquarters in Kingston to the offices of the Special Anti-Crime Task Force, his mission was to record the statement from the appellant. During cross-examination, this exchange, which is recorded at page 66 of the notes of evidence, took place:

> "Q. And you will agree with me that when you went to Ruthven Road, Mr. Sukran didn't tell you that he wanted to give you a statement?
>
> A. I told him of my instructions.
>
> Q. He didn't tell you that he wanted to give you a statement?
>
> A. Eventually, yes, sir.
>
> Q. When?
>
> A. After I told him...I identified myself to him and told him why I was there he said "yes".

And further, at page 68, the evidence reveals the following:

> "Q. Now, you said that Mr. Sukran asked you to write what he had to say?
>
> A. He did request me to write, sir.
>
> Q. Did you write a certificate to that effect?
>
> A. As to the request?
>
> Q. Yes.
>
> A. No, sir.
>
> Q. You didn't?
>
> A. No, sir.
>
> Q. You will appreciate that under the Judges' Rules you are required to write that certificate when you

are going to take a statement from a suspect who has requested you to write it?

A. I appreciate that, sir.

Q. So why didn't you record that certificate?

A. There is no special reason, sir.

Q. No special reason?

A. No special reason. An oversight ".

In view of the prosecution's reliance on this statement, which was the only evidence against the appellant, and the latter's contention that he was forced to sign that which had not been made by him, it was necessary for the jury to have been given as much assistance as possible so far as determining what weight was to be attached to the statement. Although the Judges' Rules are not rules of law, they are for the guidance of the police and where there has been a failure by the police to follow them, it is a matter for the jury to take into consideration when deciding the issue of voluntariness. This is particularly so where the failure has been unexplained, as in this case.

In **R. v. Lincoln** (1981) 18 J.L.R.83, this Court referred to the history of the Judges' Rules in these words:

> "It will be remembered that the revised Judges' Rules adopted by Her Majesty's Judges of the Queen's Bench Division in January 1964 were also adopted by the Judges of the Supreme Court of Jamaica and came into effect in Jamaica on May 1,1964. The notice of the adoption of these Rules under the hand of Allan Louisy, then Registrar of the Supreme Court is dated March 25, 1964 and in this notice the English Judges Rules as appear in Home Office Circular No. 31/1964, issued January 1964 are fully set out". (page 86 I)

Rowe, J.A., in delivering the judgment of the Court stated:

> "Provision is made under Rule 1V of the Judges' Rules for what (are) commonly termed "Caution Statements" which may be tendered in evidence if all the requirements of that Rule have been complied with". (page 87 I)

In so stating, the learned Judge of Appeal, who later became President of the Court, was clearly indicating that it was expected that if a statement were to be admitted in evidence then the Rule ought to have been complied with. Police officers who record statements from persons, who have indicated a wish to confess in writing, cannot be cavalier in their approach to the task at hand. They ought not to ignore the Judges' Rules without good reason. Police officers cannot be capricious in their treatment of the Judges' Rules in their investigations.

The appellant was entitled to have had this aspect of the case fully considered by the jury. He had maintained in his defence that he had not volunteered a statement, and that he had not requested anyone to record a statement to be dictated by him. The certificate, therefore, was of great importance to the defence. This is how the learned trial judge dealt with the matter at page 32 of the record of the summing-up:

> "He further said that Mr. Sukhram did request him to write what he had to say but that he didn't write a certificate to that effect. He was asked by Mr. Palmer whether or not he appreciated what he referred to as the Judges' Rules as to whether he would be required to write that and he said yes, he appreciated that and he did not have a special reason. In other words, what defence is **suggesting** to the witness is that the witness did not write a certificate on the statement to the effect that he, Mr. Sukhram, wished to give a statement and wished to give it in writing and wished him to write what he had to say. It is for you to say what importance you attach to that, Mr. Foreman and members of the jury".

The effect of this direction was to give the jury the impression that –

(1) it was only a suggestion by the defence that the witness had not written the relevant certificate on the statement; and

(2) it was merely a matter for the jury to say what importance was to be attached to the failure to write the certificate.

In relation to (1) above, the hard fact was that the officer had not written the certificate. This was no mere suggestion by the defence. It was an undisputed fact. The circumstances of the case revealed certain other relevant undisputed facts. These may be conveniently listed as follows:

(1) the appellant had been at first detained at the Central Police Station where there are facilities for holding persons in detention;

(2) the appellant was transferred, without any reason having been disclosed, to the offices of the Special Anti-Crime Task Force on Ruthven Road, where there are no facilities for the holding of prisoners;

(3) the appellant was kept overnight in a cage at the Ruthven Road offices;

(4) the officer who recorded the statement was not known to or by the appellant before the taking of the statement;

(5) the officer had received instructions from an unknown or unstated source to go to the appellant for the sole purpose of recording a statement from him;

(6) there was no Justice of the Peace present;

(7) there was no one present to even ostensibly protect the interests of the appellant; and

(8) the constable who signed as having witnessed the giving of the statement by the appellant did not prepare a statement as to her role in the matter until approximately three years after the event.

In a situation in which the appellant was maintaining that he had neither agreed to make a statement nor asked anyone to record a statement from him, it was obligatory for

the learned trial judge to have informed the jury of the existence of rules to guide the police in the recording of statements from persons in their custody, and further that in the instant case there had been a breach of at least one of those rules. In our view, this was necessary in order for the jury to be in a proper position to assess whether the statement was indeed voluntary and so capable of being relied on to arrive at a verdict of guilty. The officer having stated that he had no reason for failing to write the certificate, it is not sufficient for the judge to merely say that it is for the jury to say what importance is to be attached to the failure. It should have been put to the jury for consideration the fact that the failure may well have been due to the truth of the appellant's statement that he had not volunteered a statement and had not authorized the officer to record one. The jury not having been put in a position to understand the possible implications of the officer's failure, and there being no other evidence to support the prosecution's case, we agreed with the submission of Mr. Hines, and the concession by the learned Crown Counsel, that the appeal should be allowed and a verdict of acquittal entered.