

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Criminal Action No. S 67 of 2001

THE STATE
V
MUKESH CHANDRADATH
AND
ZANNA ANDREWS

Before the Honourable Mr. Justice Volney

Mrs. Joan Honore-Paul, Ag. Assistant Director of Public Prosecutions
for the State

Mr. Chateram Sinanan instructed by Mr. Brian Debideen
for Chandradath

Mr. Ian Gray for Andrews

REASONS FOR RULING

In the instant matter it emerges in evidence that neither of two senior police officers conducting an interview with a man brought in for questioning administered a caution until after an incriminating oral admission was obtained. At the start of the subject interview the investigators had no evidence against the prisoner and no basis for

reasonable suspicion that he had been involved in the commission of murder for which he was questioned. No caution pursuant to Rule II of the Judges' Rules was administered even after there was evidence to reasonably suspect involvement in the commission of the crime. The prisoner went on to compound his initial incriminating admission before he was duly cautioned. He then took the police to the scene of the crime, pointed out damning spots, and later gave a written statement. This is a classic case of non-compliance with the mandatory terms of Rule II of the Judges' Rules and while it is adjudged at the close of the voir dire that the impugned statements were obtained voluntarily, there remains the issue of whether the failure of the interrogator to caution the prisoner, when mandated, is fatal to the admissibility of the evidence of admission so obtained.

In **The State v. Ishmael (Glendon)** (1997) 52 W.I.R. 444, I opined that the requirement of cautioning an individual in the circumstances given in rule II of the Judges' Rules had become a settled practice much in terms and effect as the right to be informed of the right to confer with an Attorney at Law, and for this reason, I excluded statements obtained without a timely caution so mandated. In so doing, this court expressed the view that the exercise of the discretion to exclude a statement, despite its voluntariness, must be more the exception than the rule since in most cases where scant or no regard is shown to the Judges' Rules, there may be other relevant circumstances to allow for admissibility.

In **The State v. Samuel Boney** (Unreported) Crim. Action No.201 of 1999, I decided on the evidence that there had been a deprivation of a right to be cautioned against self-incrimination and ruled that the court in giving force to this genus of breaches of the Judges' Rules should logically extend the reach of the decided authorities to treat with the exclusion of the evidence of subsequent incriminating conduct on the same footing as it would in relation to an incriminating admission so obtained. I also expressed the view that any incriminating evidence obtained in breach of the Judges' Rules from a prisoner once he is under reasonable suspicion is liable to be excluded unless and until the breach is purged by a timely advice of the right against self-incrimination.

In **The State v Jason Joseph Bernard Banfield** (Unreported) Crim. Action No. S34 of 2001 there was evidence of the police denying the prisoner a caution that he would be charged with the crime and of his right to remain silent in the circumstances, and I ruled that there could be no knowing, if, had he been cautioned under Rule III of the Judges' Rules, he would have further incriminated himself in the most damning way he did when he was said to have carried the investigators to the same spot in a forested area where the body of the deceased had earlier been found. In disallowing this evidence, this court restated the qualification that it does not follow that in every case of a breach of the Judges' Rules would exclusion of the evidence necessarily follow since the court would have to determine the extent of the infraction and the degree to which the suspect is denied the protection of

In **Allie Mohammed v. The State** [1999] 2 A.C. 111 PC, their Lordships of the Judicial Committee found no fault with the approach of both McMillan J. (as he then was) and the Court of Appeal of Trinidad and Tobago in allowing evidence obtained in breach of fundamental human rights. The trial judge had found that the police had acted in good faith and had correctly taken into account the competing considerations by adequately balancing and weighing the interest of the community in securing relevant evidence bearing on the commission of serious crime so that justice can be done with the interest of the individual who has been exposed to an illegal invasion of his rights. The Judicial Committee broadened this approach with the stricture that it would generally not be right to admit a confession where the police have deliberately frustrated a suspect's constitutional rights.

In the instant matter, it is uncontroverted that sometime shortly after 6.30 p.m. on September 27, 1999, police corporal Monsegue visited the accused at his home in Buenos Ayres and after formalities told the prisoner of the report being investigated following which a caution against self-incrimination was administered. The prisoner responded –

“Boss, me eh know nothing about that.”

In cross-examination it further emerged that Monsegue told the prisoner that he was a suspect. It is to be noted that there was no evidence in the voir dire to suggest that at this stage of the investigation there was any evidence at hand to justify this witness'

statement to the prisoner that he was a suspect. In the event, the prisoner met this confrontation with a terse denial and accompanied the party of police officers to station.

At the Siparia Police Station, the prisoner was interviewed by experienced police officers. Officer Harry conducted the interview and the prisoner, without the advantage of a caution against self-incrimination, proceeded to admit an engagement by the co-accused to tie up a man, and of conduct which, if true, would give rise to a reasonable ground to suspect his involvement in the commission of the crime. By the time of this interview, the police had evidence of the finding of the bodies and their respective causes of death. In the case of the male deceased (Selwyn Grant) the cause of death is given as asphyxia and decapitation in that of the deceased Ursula Innis.

During the course of the impugned interview, the prisoner admits to tying up Grant with copper wire at his hand and foot ...and “ ‘Ah’ push a piece of cloth in his mouth and ‘Ah’ tie the piece of cloth on his mouth and behind his mouth and behind his head. Me and Mukeesh leave the man tie up in Mukeesh kitchen.” It is to be noted that this deceased was found in a galvanized water tank in the yard of adjoining premises in a state of decomposition. Clearly, the prisoner had begun with this account to implicate himself and by so doing gave a reasonable ground to be suspected in the commission of the crime. Rule II of the Judges’ Rules mandates that the person being interviewed be immediately warned against self-incrimination. I would construe this rule to be directed more against further self-incrimination in cases where the subject incriminating admission would serve, for the first time, to found a reasonable basis for suspicion.

It would follow that any failure to caution the prisoner when it became his right to be warned against self-incrimination would be a deprivation of the protection of the law and a basis for exclusion of evidence arising thereafter unless and until purged by a timely compliance with the Judges’ Rules. The failure to caution a person being interviewed attracts censure only when there are reasonable grounds for suspecting that the interviewee is implicated in the commission of the crime. This would be a matter for the judgment of the court after taking into account all the evidence and its own assessment of whether the evidentiary threshold for such a reasonable belief has been met.

I accept the evidence of Corporal Cyril Harry that he first deemed the prisoner to be a suspect nearing the end of the interview. While the exact point in the interview was not identified in this regard, there can be no doubt that the basis for this suspicion arose before the interview was over and indeed the need for caution triggered. A caution was administered but not until after the prisoner proceeded to implicate himself in the tying up of the female deceased in the very place where her maggot-infested body was discovered.

Mr. Gray's submission is that the facts in this case are in principle indistinguishable from those exhibited in the Ishmael ruling of this court. He argues that the *ratio decidendi* in that case is equally applicable so as to exclude all incriminating evidence intrinsically induced by the failure of the police to warn his client against self-incrimination. State Counsel argues that the facts in Ishmael are different in that there was never a caution administered by the police and as such the ruling of this court in that case is distinguishable. She further submits with great fortitude that the close proximity of the warning against self-incrimination earlier offered by corporal Monsegue would have been alive in the mind of the prisoner at the time of his subsequent incriminating admissions. For this reason, the prosecutor argues that the prisoner should not benefit from the shortcomings of the interrogating officers, and in any event, the court in exercising its discretion must take into account the caution administered immediately after the interview in balancing the countervailing factors determinative of the objection.

In **Martin Priestly** [1966] Crim.App.Rep. 183, it was argued in the alternative that if there was not an inducement in the strict sense held out by the chief inspector, the manner in which he questioned the appellant amounted to what is referred to as "oppression" in the preamble to the new Judges' Rules, and the judge, in the exercise of his discretion, should have excluded the statement on that ground. The Court of Appeal did not fault the decision of Sachs J. to admit the statement in evidence despite cogent evidence suggestive of breaches of the preamble to the new Judges' Rules. In **R.v.Prager** [1972] 1 All E. R. 1114, it was argued on appeal that at the material time there was already evidence to afford a reasonable ground for suspicion and in the circumstances of no caution being administered before the interview, the trial court ought in the proper exercise of its discretion to have excluded all the evidence relating to what transpired

thereafter for the omission was fatal to admissibility and could not be cured by the cautions later given. Counsel for the applicant Prager insisted that the admissibility of an alleged confession must in the first and even last place depend on whether the Judges' Rules have been complied with. The Court of Appeal described as 'manifestly unsound' the argument proffered that Lord Widgery CJ ought first to have decided whether rule 2 had been breached and that had it been, the confession should not have been admitted unless there emerged 'some compelling reason why the breach should have been overlooked'. The Court of Appeal opined there that its acceptance of the argument would exalt the Judges' Rules into rules of law, that they do not purport to be, and while their non-observance may, and at times does, lead to the exclusion of an alleged confession, ultimately all turns on the judge's decision whether, breach or no breach, it has been shown to have been made voluntarily.

The exaltation of the rule against self-incrimination into one of point of law in **Ishmael** (supra) bears its genesis in a series of local cases beginning with **Terence Thornhill v The Attorney General for Trinidad and Tobago**, PC, [1981] A.C. 61, and **Attorney-General v Whiteman** (1991) 39 WIR 397 in which authorities emerged the way of thinking that significant settled practices of the common law are to be acknowledged as protective procedural mechanisms of due process envisioned and entrenched in the Constitution of Trinidad and Tobago. One such practice is the caution against self-incrimination of which Lord Griffiths in **Lam Chi-ming v R** [1991] 2 AC 212 had the following to say (at page 222):

“ But it is surely just as reprehensible to use improper means to force a man to give information that will reveal he has knowledge that will ensure his conviction as it is to force him to make a full confession. In either case a man is being forced into a course of action that will result in his conviction: he is being forced to incriminate himself. The privilege against self-incrimination is deep rooted in English law and it would make a grave inroad upon it if the police were to believe that if they improperly extracted admissions from an accused which were subsequently shown to be true they could use those admissions against the accused for the purpose of obtaining a conviction.”

Both before and after the arrival of national independence, the Judges' Rules have been part of the psyche of investigative paradigms and with the emergence of the concept of fairness and civility to persons undergoing a deprivation of liberty while at police stations in on-going enquiries, an acceptable balance between the respect for the rule of law and its preservation on the one hand and civil liberties on the other can only be struck by the observance of measured courses of behaviour set out as guidelines in the Judges' Rules. It is in the background of a Constitution that recognizes the paramountcy of the rule of law and the protection of the citizenry from arbitrary and oppressive behaviour by those in authority that has come heralded the exaltation of the Judges' Rules by judgment of the Court.

Confronted with resolving the issue in view of a clear disregard of the need to caution the prisoner in the course of the investigation, a court is required to exercise discretion and in so doing must balance the competing interests in order to do justice between the prisoner and the State.

The prisoner not having taken the witness stand, the evidence of voluntariness is not only uncontroverted but cogent and compelling. The conduct of the police in obtaining the evidence through the words and actions of the prisoner himself is, but for the breach of the Judges' Rules, worthy of commendation. This evidence was proffered voluntarily. The breach of rule II of the Judges' Rules, however, is in the circumstances of this case an affront to the careful guidelines set out with the force of law and must attract the censure of the court. In deciding upon the sanctions to be applied, the court must always be mindful of the nature and extent of the breach, and, the steps taken to distill the investigation of this transgression. Its approach must be pragmatic but just and can only be done by exorcism of the wrongfully extracted benefit and no more. This approach of the court is in its judgment cognizant of, and in deference to the advice of their Lordships of the Judicial Committee of the Privy Council in **Allie Mohammed v The State** (supra) and of Lord Hodson's advice in **King v the**

Queen [1969] 1 A.C. 304 wherein is the guidance proffered of the judge's balancing exercise:

“ On the one hand, the judge has to weigh the interest of the community in securing relevant evidence bearing on the commission of serious crime so that justice can be done; and, on the other hand, the judge has to weigh the interest of the individual who has been exposed to an illegal invasion of his rights”.

In all the circumstances, the oral statements made in the interview and arising after the prisoner had begun to incriminate himself are to be excluded from evidence. The evidence arising upon visit to the scene of the crimes in so far as it concerns the excluded oral statement is also to be excluded from evidence. However, in view of the opportunity accorded the prisoner against further self-incrimination when he was cautioned in accordance with rule II of the Judges' Rules moments after the end of the chastised interview, I find that the prisoner volunteered to speak up for reasons best known to himself and that the prosecution should not be deprived of the benefit of the evidence sanitized, as it was, by the timely caution administered by the investigator.

Dated this 7th day of October, 2003.

Herbert P.Volney
Judge