

Rex v Pailate and Others

Supreme Court
Criminal Case No.120/1988

22 August 1988

Criminal Procedure - confession of guilt - discretion of Court - Judges' Rules not applicable - principles of section 76 Police and Criminal Evidence Act 1984 UK to be applied
Evidence - confession of guilt - discretion of court to admit by virtue of section 22 Evidence Act - principles upon which discretion should be exercised
Judges' rules - application to Tonga

During the trial of criminal charges against the defendants the Supreme Court was required to rule on the admissibility of certain confessions made by the defendants.

HELD:

- (i) The Court had a discretion to admit the confessions by virtue of section 22 Evidence Act which did not however state how the discretion should be exercised;
- (ii) The Judges' Rules used in England were inappropriate because they were contrary in part to section 22 Evidence Act;
- (iii) The general test stated in section 76 Police and Criminal Evidence Act 1984 UK provides appropriate principles for the exercise of the discretion contained in section 22 Evidence Act.

Statutes considered

Evidence Act s.22
Police and Criminal Evidence Act 1984 UK

Counsel for Crown : Mr Martin
Counsel for defendants : Mr Edwards

Martin CJ

Judgment

During the trial the Court was required to rule on the application of the Judges' Rules. The judge dealt with this issue in the absence of the jury in the following terms:

Mr Edwards for the Defence submitted that certain confession statements should be excluded as having been allegedly obtained in breach of the Judges' Rules. I therefore have to consider to what extent these Rules should be applied in Tonga, as they are in other Commonwealth countries.

They provide a detailed guide as to the steps which must be taken and the cautions which must be given if a confession is to be admitted in evidence. They cannot be applied in Tonga as they stand because they are contradicted in part by section 22 of the Evidence Act (Cap.13). This states that it shall be no objection to the admissibility of a confession if it was made, for example,

- "(d) in answer to question which the person making the confession need not have answered; or
- (e) without any warning having been given to the person making it that he was not bound to make such a confession and that evidence of it might be given against him."

As a safeguard, that section gives the court a discretion to refuse to admit evidence of a confession made to a Police Officer while in custody, but no guidance is given as to how that discretion should be exercised.

In England the Judges' Rules first appeared in 1912. New Rules were approved in 1964. They have been widely followed elsewhere. But they are now in effect superseded by the Police and Criminal Evidence Act 1984. Section 76 of that Act states:

"(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained -

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid."

The Judges' Rules cannot be applied as they are. It would lead to confusion if this court were to apply some but not all of them, or attempt to apply them in a modified form. I propose therefore to exercise the discretion under section 22 by applying the general test set out in section 76(2) of the English Police and Criminal Evidence Act 1984.

(The judge then went on to consider the evidence and to rule on the admissibility of confession statements by the various defendants).