

- theft
 - Voluntary
 & Amnesia

SUPREME COURT OF THE NEW HEBRIDES

PROCURATOR GENERAL

V

JACQUES PALA

REVISION

of Judgement N° 654/79 of the District Court, Vila. Given on 13th November, 1979.

Before : Louis Georges Souyave, British Co President, presiding.
Louis Cazendres, French Co President
Kalman Kiri, Assessor

JUDGEMENT

The abovenamed accused was charged before the District Court, Vila, with the two following offences:-

- Count 1. with the offence of cruelty to animals, contrary to section 35 of JOINT REGULATION N° 12 of 1962, in that it was alleged that during the month of September 1979 he wilfully and unnecessarily caused suffering to a dog belonging to a Mr Bourgeois, and
- Count 2. with the offence of theft, contrary to section 21(a) (1) of Joint Regulation N° 12 of 1962, in that it was alleged that during the year 1978 he fraudulently took some food belonging to a M. Bourgeois without a claim of right and with the intent permanently to deprive the said owner thereof.

According to the notes of the proceedings, the accused pleaded not guilty to the charge of cruelty to animals laid in Count 1, but pleaded guilty to that of theft laid in Count 2.

As to Count 2, the article or property stolen, as admitted by the accused, was half a bowl of cooked rice.

The District Court enquired into the offence charged under Count 1. The only incriminating evidence against the accused was an alleged confession contained in a verbal statement made by him in Bislama to the Police, i.e. Sergeant Atuary, which was translated and taken down in the French language by the latter, in which the accused admitted, as per translation, having shot the dog of Mr Bourgeois with a "fusil à plomb", in the direction of its head. At the trial, the accused attacked the admissibility of the statement on the ground that it was not voluntary, he having been forced by the police to make the same and further stated that the contents were not true. After a "trial within a trial", the District Court held that the statement had been voluntarily made by the accused, and admitted the same in evidence. Acting upon that statement, the District Court convicted the accused of the charge of cruelty to animals on Count 1.

The District Court sentenced the accused to three months' imprisonment on either Count, the said sentences to run concurrently, and to pay the judgement fee of FNH 500.

The present proceedings in revision were ordered by this Court on its own initiative. The accused, though advised of these proceedings, were not required to attend. The Procurator General was in attendance and duly heard.

Regarding Count 1, this Court has come to the conclusion that the conviction thereunder cannot stand for the following reasons:-

(1) The statement adduced in evidence by the prosecution was not taken down or recorded in accordance with the formalities prescribed in Article 15-1 of the Criminal Procedure Rules 1979 which reads:-

"1. Any statement made under caution in accordance with Article 14 above shall be written down in the language in which it is made either by the person making the statement, or a police officer or by an interpreter when necessary".

In the instant case, the statement ^{was} made by the accused in Bislama and simultaneously translated into, and recorded in French by Adjutant Fred (incidentally not by Sgt Atuary as stated in the notes of proceedings). Notwithstanding that the accused understands French, the statement should nevertheless have been recorded in Bislama, the language he used. The statement so recorded would have been the proper document admissible in evidence, subject to the other formalities having been complied with, but for the use of the Court there would have been attached thereto a translation thereof either in English or French duly certified and signed by a sworn interpreter. Failure on the part of the police in this case to comply with Article 15-1 of the aforesaid Rules rendered the statement under reference inadmissible as evidence under Article 16 thereof which provides that "A statement made by a suspected person in violation of the above Rules shall be inadmissible as evidence".

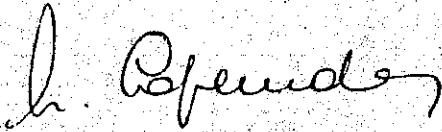
(2) In dealing with a confession contained in an accused's statement, a Court must be satisfied not only of the admissibility as evidence of the statement but also of the truth of the confession contained therein before convicting. In the instant case assuming that the statement was admissible as evidence, the same having been retracted by the accused at the trial, some corroborative evidence was necessary to satisfy the Court of the truth of the confession contained therein. It is true that a Court may act solely upon an accused's confession of an offence to convict him thereof, if satisfied of its truth, but where an accused retracts or repudiates a confession the rule of prudence requires that a Court should not act thereon to convict unless there is evidence of a corroborative nature from other evidence in, or the circumstances of, the case to satisfy itself of the truth thereof. In this case, quite apart from the fact that the District Court did not address its mind to the rule of prudence, there was, according to the record, no such corroborative evidence. On the contrary if accepting the accused's statement in the confession that he shot the dog once only in the direction of its head with a "fusil à plomb" which in common parlance means in English "an air-gun", it would have been impossible for him to have injured or blinded, as it was alleged by the owner of the dog, its two eyes simultaneously by that sole act. Accordingly, for that reason, the accused's confession could not have been true.

As to Count 2, this Court is of the opinion that, although the accused has two previous convictions for theft, the theft with which he is convicted in that Court took place in 1978 and related to something of small value, namely, half a bowl of cooked rice. Accordingly, this Court finds that the sentence of 3 months' imprisonment for the said offence was manifestly excessive and that one of 2 months' imprisonment would have been the proper one in all the circumstances.

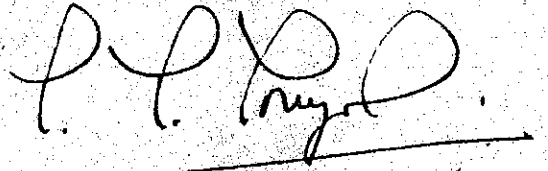
In the result, the accused's conviction and sentence on Count 1 are set aside. His conviction for theft on Count 2 is maintained but his sentence of three months' imprisonment thereon is reduced to 2 months. The order as to the judgement fee of FNH 500 payable by him stands.

This Court orders accordingly.

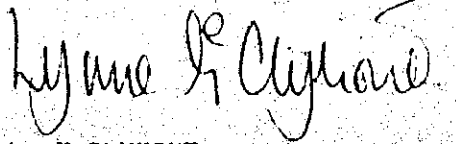
Given at Vila, New Hebrides, this 28th day of December, 1979.



L. CAZENORES
French Co President



L.G. SOUYAVE
British Co President



L. McCLYMONT
Registrar