

BRIJMOHAN *v.* THE POLICE

[Appellate Jurisdiction (Carew, P.J.) March 16th, 1951]

Statement made by accused after co-accused's statement read over to him—Rule 8 of the Judges' Rules explained—statement not necessarily inadmissible though in breach of the Rules.

The appellant was charged with two other Indians, Chandar Pal and Hari Prasad, with cattle stealing and all three were convicted by the Magistrate's Court of the 1st Class sitting at Ba on 21st December, 1950.

It was proved at the trial that on 27th October, 1950, statements were taken from Chandar Pal and the appellant, who were not at that time under arrest. Chandar Pal's statement was then read over without comment to the appellant: the appellant then said he wished to make another statement, and he did so. In the second statement he admitted being implicated in the theft.

The main ground of the appeal was that the second statement was inadmissible since it had been obtained in a manner contrary to that laid down in Rule 8 of the Judges' Rules.

HELD.—If a statement from an accused person is obtained in breach of Rule 8 of the Judges' Rules the statement is admissible provided that the statement is intelligible without the question which gave rise to it (*R. v. Mills and Lemon* [1947] K.B. 297 followed).

Cases referred to:—

R. v. Mills and Lemon [1947] K.B. 297.

T. R. Sharma for the appellant.

W. G. Bryce, Acting Solicitor-General, for the respondent.

CAREW, P.J.—It would seem that the second statement was taken contrary to the prescribed practice, but this does not necessarily render it inadmissible. In the case of *Rex v. Mills and Lemon* [1947] 2 K.B. page 297, the *Chief Justice, Lord Goddard*, explained what lay behind Rule 8 of the Judges' Rules. The headnote reads:—

'Where two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read those statements to the other persons charged, but each of such persons should be furnished by the police with a copy of such statements and nothing should be done or said by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered.'

Contrary to the above rule, a police officer gave to two persons who were suspected of being implicated in an offence a verbal *précis* of what a confederate, who was in custody, had said. Both persons then made statements each of which amounted to a complete confession of guilt.

Held, that despite the contravention of the above rule, as each confession was intelligible in itself without the introduction of the statement by the police officer which had preceded the making of it, the confessions were admissible in evidence."

Lord Goddard said, in the course of his judgment:—

“ It is contended that the confessions were obtained in a manner contrary to Rule 8 of what are commonly called the Judges' Rules'. It is to be observed that the Bristol police did not observe this rule which has been laid down for their guidance, and the sooner they study and learn these rules and abide by them the better. . . . If, therefore, the police had handed both the appellants the statement which West had made and left them to decide whether they would make statements or not, the rule would have been complied with and no objection could have been taken. However, they gave the appellants a *précis* of West's statement and then asked them if they wished to make a reply. That they should not have done.

“ The question then arises whether the statements which the appellants did make were inadmissible in evidence. What lies at the root of Rule 8 of the Judges' Rules is this: there used to be a practice by which the police would give evidence before the jury to the following effect: 'I saw the prisoner. I told him that John Smith had been arrested and had said "Yes, I was there and he (the prisoner) was with me"'. Then the prisoner made a statement and said, perhaps, that he was not there at all, but that was a means of getting before the jury the statement of John Smith. John Smith was not called as a witness and therefore his statement could not have been given in evidence, and it was wrong that it should be indirectly given in evidence in Court by the device of saying: 'I told the prisoner that John Smith had said such-and-such a thing. I asked him whether he wanted to say anything in answer, and this was his answer.' The position remains that, if the answer which the prisoner gave is not intelligible without the question being given in evidence before the jury and the question is properly ruled out, the answer must be ruled out too. On the other hand, if the prisoner chooses to write out or dictate a full confession, there is no authority which says that, if the answer is intelligible without the question which gave rise to it, when the question is excluded, the confession, too, must be excluded. Indeed, so to hold would be contrary to the decision of this Court in *Gardner and Hancox* (1915), 85 L.J.K.B. 206. Rule 8 of the Judges' Rules was framed after that case, and it will be observed that that rule nowhere states that the answer which is given is not to be admissible, though, if it can only be intelligible by introducing the question, both question and answer must be ruled out. In the present case the police should have supplied a copy of West's statement to the appellants, so that they should have the necessary information and no objection could have been taken. There is, however, the clearest possible authority in *Gardner and Hancox* (*supra*) that, although the way in which the police have acted may be objectionable, those confessions cannot be excluded as inadmissible. In our opinion, they were clearly admissible.”

The circumstances under which the second statement was taken from the appellant are substantially the same as those discussed in *R. v. Mills and Lemon* (*supra*), except that in the present case the police sergeant made no comment to the appellant after he had read over to him the statement made by Chandar Pal. The principle laid down by Lord Goddard has not been infringed. The statement is therefore admissible.

This ground of appeal accordingly fails. While no doubt this method of obtaining a statement is objectionable and should not be encouraged, it should be recollected that the appellant, it would appear from the record, is illiterate. If he had been handed Chandar Pal's statement he would have been unable to read it.

The judge then went on to consider other grounds and dismissed the appeal.