GOPAL REDDY *v.* THE POLICE

[Appellate Jurisdiction (Hyne, C.J.) July 16th, 1953]

Perjury—whether record properly produced—Magistrate at trial giving evidence as to words spoken although originally spoken in Hindustani—swearing of interpreter.

The acused was convicted of the offence of perjury at the Magistrate's Court, Lautoka, on the 18th March, 1953. The offence was alleged to have been committed during a former trial of the accused and others in November, 1952. At the trial for perjury the record was not produced but the charge sheet was. Evidence as to the relevant words being spoken was given by Mr. J. L. MacDuff who was the presiding Magistrate at the original trial in November, the words being spoken to him in Hindustani and interpreted to him by the Court Interpreter who was not sworn as such at the original trial but had taken the interpreter's oath some years previously. On being convicted the accused appealed.

HELD.—(1) A charge sheet is not sufficient evidence to prove judicial proceedings were held.

(2) The evidence of the presiding Magistrate as to the words spoken in Hindustani and interpreted to him was inadmissible as being hearsay evidence.

(3) It is not necessary for a person who has taken the interpreter's oath to be sworn as such at each individual trial.

Cases referred to:—
Police v. Aryewumi (1948) West African Court of Appeal Cases.
R. v. Kelly and Maloney (1848) 3 C.C.R. 75.

P. Rice for the appellant.

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

HYNE, C.J.—The Solicitor-General stated that there were two errors on the record which were very grave, and against which he could not argue. With this statement I entirely agree.

In the first place, as the learned Solicitor-General pointed out, the record of the proceedings in respect of which perjury was alleged was not produced at the trial. The charge sheet was produced, but this in itself is not sufficient evidence that judicial proceedings were held.

In order to prove that judicial proceedings did, in fact, take place, it is necessary to produce either the record of the procedings itself, or to produce a copy thereof and prove it to be an examined copy, or to produce a copy purporting to be signed and certified as a true copy by the officer to whose custody the original record is entrusted.

The second matter for consideration is the evidence of the principal witness for the prosecution, namely Mr. J. L. MacDuff, who heard the charge against the accused out of which the perjury charge arose. It is clear that the accused gave his evidence on the original charge in Hindi, and that such evidence was interpreted to the Magistrate by the Clerk of the Court, Mr. Z. K. Dean.

The evidence of Mr. MacDuff, therefore, is not evidence of what he himself heard the accused say, but what he heard the interpreter say the accused said. In other words, his evidence was hearsay, and as such was inadmissible.

The evidence of Mr. Macduff was, as the Solicitor-General said, the basis of the prosecution case. For the reasons, therefore, that the record of the previous proceedings was not before the Court, and that inadmissible evidence was admitted, I ordered that the conviction and consequently the sentence, be quashed, at the same time intimating that I would give reasons later.

While the grounds of appeal were not argued for the purposes of the appeal, I informed Counsel I would hear argument of the question of the swearing of interpreters as this was a matter of importance on which a decision of the Court seemed desirable.

Counsel for the Appellant first submitted that the interpreter had not been properly sworn, and that, therefore, the Court was not properly constituted. To support his contention that a Court is not properly constituted unless an interpreter is properly sworn—by which he presumably means that an interpreter, if needed, becomes an essential constituent of the Court—learned Counsel relied on p. 297 *Russell on Crime* —10th *Edition*. The paragraph indicated makes no mention of an interpreter. The paragraph refers to procedings before a competent jurisdiction, that is, before some person or persons authorized by English law to take cognizance of the proceedings, and the paragraph later goes on to say that " the evidence must be taken before the person or persons constituting the Court." How can an interpreter be said to come within the categories here mentioned? He does not take " cognizance of the proceedings ", the evidence is not taken before him. He is simply there to assist the persons before whom the evidence is given, to enable them to understand that evidence.

If it be correct that an interpreter is one of the persons constituting the Court, then, in many cases, the constitution of the Court will change from time to time during the course of a trial, for some witnesses may give evidence which does not require the assistance of an interpreter, while others give evidence which does. Furthermore, if more than one language requires interpretation, there will be several interpreters. Again, the constitution of the Court will change from time to time.

In my view, therefore, an interpreter, whether sworn or unsworn, cannot be said to affect the constitution of the Court in any way, and I accordingly agree with the learned Solicitor-General's submission that, even if the interpreter were not sworn, it does not follow that the Court is improperly constituted.

On the question of swearing an interpreter Counsel gave a brief historical survey of Fiji legislation, commencing with the District Commissioners Ordinance, 1876. He pointed out that this Ordinance made provision in section 6 for the appointment of a Clerk of the Peace, and that under section 31 the Clerk of the Peace is to act as interpreter, if competent. If he is not, the District Commmissioner shall appoint and swear interpreters when required.

There is nothing in the Ordinance to indicate that the Clerk of the Peace shall be sworn before interpreting, but, if I understand him correctly, Counsel submitted that this was not necessary because the appointment of the Clerk of the Peace is a statutory appointment.

It is difficult to follow this argument. Does a statutory interpreter not need to be sworn? If this be so, then would not a statutory interpreter be exempt from the penalities which attach to a sworn interpreter, if he, knowingly, falsely interprets evidence?

Counsel then proceeded to point out that the Ordinance of 1876 was repealed by section 68 of Ordinance No. 20 of 1944, which, in turn, was replaced by Chapter 3 of the Laws of Fiji. In neither of these Ordinances, he submitted, was there any office corresponding to that of Clerk of the Peace. He next referred to sections 45 and 50 of Chapter 3. Section 50 provides that the language of the Magistrate's Court shall be in English, while section 45 provides that:—

> " The jurisdiction vested in Magistrates shall be exercised (so far as regards practice and procedure) in the manner provided by this Ordinance and the Criminal Procedure Code, or by such rules and orders of Court as may be made pursuant to this Ordinance and the Criminal Procedure Code, and in default thereof, in substantial conformity with the law and practice for the time being observed in England in the County Courts and Courts of summary jurisdiction."

He stressed that the practice of the Court is governed by Rules and then cited section 67 (*a*) of the Ordinance which reads:—

> " The Chief Justice may make rules of Court for all or any of the following purposes—
>
> (a) for regulating the practice and procedure of Magistrates' Courts in matters not specifically provided for in this or any other Ordinance ; "

The Magistrates' Courts Rules were made under this section and came into force on the 1st May, 1945.

Order III, r. 4 of these Rules reads as follows:—

> " If, in any cause or matter, any accused person, party, witness or other person is unable to speak or understand the English language, the Court may direct a fit and proper person to attend and interpret the proceedings so far as may be necessary. Before so interpreting, such person shall swear on oath in the following form:
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> ' I swear that I will well and truly interpret and explanation make of all such matters and things as shall be requested of me to the best of my skill and understanding. So help me God.' "

Rule 7 of the same Ordinance reads as follows:—

> " Except where it is otherwise specifically provided these rules shall apply to civil procedure only."

Counsel submitted that, inasmuch as Rule 4 refers to " any accused person ", the necessity for swearing an interpreter applies to a criminal cause or matter as well as to a civil cause or matter. With this I agree, but jurisdiction in a Magistrate's Court is to be " exercised (so far as regards practice and procedure) in the manner provided " by the Magistrates' Courts Ordinance and the Criminal Procedure Code, *or* by such rules. . . .

The Criminal Procedure Code provides in section 3 (1) that all offences under the Penal Code shall be inquired into, tried, and otherwise dealt with, in accordance with the provisions thereinafter (i.e. in the Criminal Procedure Code) contained.

Now, the Criminal Procedure Code provides for interpreters, but does not anywhere say that interpreters must be sworn. It merely provides that interpreters shall be employed (s. 190) and that the interpretation must be in open Court.

Counsel for the appellant has referred me to the case of *Reg. v. Kelly and Maloney* (1848) 3 *Cox's Criminal Cases* p. 75, where *Patterson, J.* held that an interpreter must be sworn, thus establishing that practice and procedure in England requires an interpreter to be sworn.

Under section 3 (3) of the Criminal Procedure Code, English practice and procedure may be resorted to if the procedure prescribed by the Code is inapplicable, and, therefore, if in any case the Court is exercising jurisdiction according to the course of English practice and procedure, the interpreter must be sworn. I find it difficult to see that the provisions of the Code relating to interpretation could be regarded as inapplicable—inapplicability alone would justify recourse to English practice and procedure—and accordingly it would seem that the swearing of an interpreter need not be insisted upon when dealing with offences under the Penal Code. Section 102 of the Penal Code, however, would seem to contemplate that interpreters are sworn.

The swearing of an interpreter in all cases is, however, a salutary practice, and it is a practice that should not be discontinued as there is no control over an interpreter unless he is sworn. If he be not sworn he cannot be indicted for perjury if he wilfully, and knowingly, falsely interprets evidence.

Counsel further contended that an interpreter must take the oath in open Court, and he referred to the paragraph headed "Oath" on *page* 487 *of Archbold,* 32nd *Edition,* where it is stated that a witness must be sworn in open Court, and he seemed to infer that this must apply also to an interpreter. Nowhere in this paragraph is it stated specifically that *an interpreter* must be sworn in open Court.

There remains, however, the further question, and the really important question, whether a person permanently and officially attached to the Court should be sworn on each and every occasion that he interprets the evidence of a witness. To require him to be sworn would be both cumbersome and inconvenient and would result in a considerable waste of time. It could never have been contemplated or intended that an interpreter should be sworn immediately before each and every witness whose evidence has to be interpreted, nor does the Rule so prescribe.

Counsel for appellant has submitted that an interpreter must be sworn and in support of his submission he referred to *Stone's Justices' Manual* 81st *Edition p.* 300 (82nd *Edition p.* 310)—Oath of Interpreter, arguing that, since the oath is administered to the witness through the interpreter it must be assumed that the interpreter should be sworn before each witness gives evidence.

I can find no authority for such submission nor did Counsel produce any.

The Magistrates' Courts Rules provided that the interpreter shall be sworn *before* interpreting, and the prescribed oath is general in its nature. There is no reference to interpreting in any particular case, nor is there anything to indicate that an interpreter need be sworn in open Court as Counsel submitted.

It is well known that there are numerous officials attached to the Courts who act as interpreters—and here it may be observed that section 11 of the Supreme Court Ordinance does provide for an interpreter—and who, before embarking on their duties as interpreters, have taken the interpreter's oath. As long as the Court is satisfied that such an official has been sworn, however long ago, to interpret in judicial proceedings, and that he is still exercising his official duties, there is no necessity for him to be specially sworn for any particular case or matter.

If an interpreter, not an official, is brought in as an interpreter for a particular case, he should be sworn for that particular case. He need not be sworn for every witness in that case, if he has to interpret the evidence of more than one witness speaking the same language.

What I have said in the last two paragraphs is not confined to Magistrates' Courts. It should be regarded therefore as applying to all Courts.

Learned Counsel for the defence has contended that the failure to swear an interpreter is a ground for quashing a conviction, while the Solicitor-General has suggested that it may render the proceedings a nullity. Neither result necessarily follows.

In a Nigerian case—*Police v. Aryewumi*—heard in 1948, the West African Court of Appeal dealt with the question of the swearing of interpreters. The Court held that failure to swear an interpreter is not of itself an illegality involving the quashing of a conviction unless the Court of Trial was not satisfied that the interpretation was accurate.

A decision of the West African Court of Appeal is not binding on this Court, but, with respect, I think it should be accepted as properly setting out that only in certain circumstances will the non-swearing of an interpreter result in the quashing of a conviction.

This appeal is allowed and the conviction must be quashed.