

(1959) Cr. App. R. 175B.
CENTRAL CRIMINAL COURT CASE

BEFORE

Mr. JUSTICE GORMAN

R. v. ATTARD

1958
Dec. 8

Evidence - Hearsay - Interpreter - Statement by Prisoner to Police Officer through Interpreter - Admissibility of Evidence of Police Officer.

The prosecution proposed to call evidence by a police officer of an interview which he had conducted with the prisoner through an interpreter. The defence submitted that, since neither the police officer nor the prisoner could understand what the interpreter said to the other, the evidence of the police officer was inadmissible as being hearsay, and that only the interpreter could give evidence of the questions which he put to the prisoner on behalf of the police officer and of the answers given to him by the prisoner in the prisoner's own language.

Held, that the submission was correct and that the evidence of the police officer in relation to the interview was inadmissible.

Trial at the Central Criminal Court before Gorman J. and a jury.

The prisoner, Anthony Attard, a Maltese, who did not speak and did not understand English, was charged with murder. During the course of the case for the prosecution the Crown proposed to call evidence by a police officer, Det.-Superintendent William MacDonald, of an interview which he had conducted with the prisoner through an interpreter.

Edward Clarke (Brendan Shaw and Audrey Jennings with him) for the defence. The evidence of the superintendent is inadmissible as being hearsay. He spoke English only and the prisoner Maltese only, and the only person who spoke and understood both languages was the interpreter. The prisoner understood neither the questions put to the interpreter in English nor the subsequent translation into English of his own answers. Consequently, these questions and answers were not statements made in the presence and hearing of the prisoner. The only valid witness with regard to the interview is the interpreter.

Christmas Humphreys (J. Mervyn Griffith-Jones with him) for the Crown. The evidence of the superintendent is admissible for four reasons: (i) this point has never been taken before; (ii) if the point were good, it would mean a profound change in the administration of the law; (iii) interpreters are in a different position from that of police officers; they are impartial, mere cyphers, and are not expected to take an intelligent interest in the proceedings; (iv) the rule with regard to the exclusion of hearsay evidence is not absolute. A number of exceptions have come to be recognised in practice, e.g., a man's evidence with regard to his own age, and this comes under the head of the recognised exceptions.

Edward Clarke, in reply. The first two points urged by the Crown do not make the argument for the defence any better or worse. On the third point, an interpreter is obviously a person who must use his intelligence and be ready to give evidence concerning inflections and matters of that kind in both languages, if necessary, and is a fully competent witness. The last point concedes that the evidence of the superintendent offends against the rule excluding hearsay evidence and it would be wrong at this stage to introduce a further exception to that rule.

GORMAN J.: This is a submission in law which I have never known to be taken before, though maybe it has been taken and has not been reported, but that in itself is not a reason for refusing to allow a submission, if the submission is right.

The short point of the submission, as I understand it, is this. It is conceded for the purposes of the argument that the prisoner does not know, understand or speak English at all. There were present at an interview, at the first stage, the prisoner and the detective-superintendent. At a further stage the detective-superintendent thought it right to get the services of an interpreter in order that there might be no mistake with regard to what was said. Thereafter the interview went on in this way: a question was put by the superintendent in English, that was then translated into Maltese, and, that having been done, the prisoner answered the question in Maltese. The answer was then translated into English by the interpreter, and then the superintendent, having put the question in English and having got through the interpreter the answer in English, made a note of what was said to him by the interpreter. There may also have been in the course of the interview statements made by the prisoner in Maltese which were not the direct result of questions put to him through the interpreter by the superintendent, and those statements, too, were translated into English by the interpreter, and the superintendent, having heard them, made a note of them.

It is sought here by the prosecution to ask the detective-superintendent to tell us that which he in fact wrote down at the time. It is said by Mr. Edward Clarke that, when there is an interview of that kind, the best person, or the nearest person to the prisoner, is the interpreter, and the interpreter, he does not dispute, can be called to say: "I heard the detective-superintendent put the question. I then translated that question. I said this to the prisoner and the prisoner said this to me"; the interpreter being asked as a sort of intermediary between the non-English-speaking prisoner and the English-speaking detective-superintendent. Mr. Humphreys said that the point has not been taken before, that the general method of the taking of statements when an interpreter is necessary has been followed in this case, and that it is a mistake for Mr. Edward Clarke to say that this practice offends against the rules of evidence. The interpreter, says Mr. Humphreys, is not in the nature of a police officer, but a mere cypher who hears translations and then gives them back in the English language.

This point is a novel one, but I do not think that it is a point which can be lightly dismissed here. The fact that I have not heard it taken before is not evidence that the point has never before been taken. In my opinion, there is some force in the submission made here by the defence and

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I am going to say no more about it. In my opinion, in all the circumstances here the submission made by the defence is a correct one and the evidence ought not to be given through the mouth of the detective-superintendent in the witness-box.

Solicitors: Good, Good & Co. for the prisoner.

NOTE

As a result of this decision, the Home Office, at the suggestion of the Director of Public Prosecutions, has sent out a circular letter to Chief Officers of Police stating that "it will be necessary in similar cases in the future to ensure that the interpreter is available to give evidence as to oral statements made by the accused, as is already done in the case of written statements. It will be desirable that, whenever practicable, the interpreter should make his own notes of the interview for use in the event of his being called to give evidence. Failing this, the interpreter should be asked to initial the record of the interview made in the notebook of the police officer conducting the interview, so that it can be used by the interpreter to refresh his memory when giving evidence."