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IN THE SUPREME COURT OF THE)
TERRITORY OF PAPUA AND NEW GUINEA.)

REGINA -v- ROGER HINORO.

DECISION ON QUESTION OF EVIDENCE.

MANH C.J.
POPONDETTA.
9/8/61.

The Magistrate read over the depositions of the witness HENDU and then asked the accused whether he wanted to ask any questions of the witness. Instead of answering the question addressed to him, the accused told the Magistrate that there was an error or errors in the record of evidence. The Magistrate thought some part of what the accused said was highly prejudicial to the accused, and in fairness to him, recorded the substance of what he had said about the evidence, but omitted that part which he thought prejudicial. The accused was not represented and apparently was not in a position to realise the prejudicial nature of what he had said.

It is clear I think that this was not a statement by the accused within Sections 92 and 93 of the Justices Ordinance. The provisions of Sections 92 and 95 have not been satisfied and therefore section 93 does not apply.

Section 94 however preserves the right of the Crown to prove other admissions against the accused.

Generally and apart from an express verbal statement the whole conduct of the accused is relevant if it supports an inference of guilt, that is, if there is evidence to support an admission by conduct. Any

interjections, remarks, quotations, in fact the whole conduct of the accused may be natural.

I think therefore that any statement made by the accused on the hearing, if relevant, is admissible.

The most difficult point arises from the fact that what the Magistrate recorded is not a complete statement of what was said. If what is left might constitute an admission, should it be taken on its own and without the remainder.

I think a Magistrate has to exercise his judgment in taking depositions. For example, long speeches outside the purpose of the inquiry need not be recorded. In re Morry (1946) 1 K.B. p. 155.

If there is doubt about meanings or intentions the Magistrate ought to clear the matter up to avoid ambiguities and leave out surplusage. He should correct slips with the assent of the author of the words recorded and try to record what the witnesses and parties are really saying. I think that he has no discretion to omit damaging words provided the speaker means to say them. The Crown is entitled in the public interest to use any such statement for what it is worth.

The Magistrate used his judgment to limit his record in this way out of fairness to the accused, and it is a fair assumption that the record is more favourable to the accused than what he said. Normally the Magistrate's record is conclusive of what was said (re Morry supra) subject to Section 105 in cases when that Section applies.

The notes to Section 104 of the Evidence Act (New Zealand) in Kennedy Allen at p. 262 include references to several cases where an imperfectly recorded passage

has been held defective and resulted in a new trial or change of plea.

The evidence shows that the depositions are defective in this respect, and therefore I think they should not be admitted for this purpose, but I think that the Crown can, under Section 94, call oral evidence of what was really said.

The point remains whether I should reject evidence of the admission as a matter of discretion in relation to a voluntary statement. The defects revealed in the depositions have no relation to the circumstances under which the words were uttered. It is simply a question of warning, which in the circumstances should be given promptly. The accused was not invited to say anything, and a statement unwisely made or made in ignorance of the right to withhold it is nonetheless admissible. I think that in circumstances like the present the accused should be warned as soon as possible when it becomes apparent that he is making a prejudicial statement, but here, as in the case with Police Officers, the part volunteered before a warning can be given is admissible. The Magistrate should then, I think, record both the statement and the warning and leave it to the trial Court to determine what weight can fairly be given to these events.

I will admit evidence of what was actually said up to the point at which I think a warning ought to have been given. If no warning was then given, the subsequent part, if any, will be rejected as a matter of discretion.

Rule - depositions for this purpose should not be admitted.