

ALI MEHMED EMIN. *Appellant.*

ALI MEHMED
EMIN

v.

THE QUEEN, *Respondent.*

v.
THE QUEEN

(*Criminal Appeal No. 2255*).

Evidence in criminal trials—Oral statement to the Police by persons in custody—Whether admissible—Judges' Rules—Criminal Procedure Law, Cap. 14 section 8, (as amended by Law No. 37 of 1958) and section 5.

Inspector J. arrested the appellant and cautioned him, whereupon the latter said: "Alright". Fifteen minutes later the appellant said to the Inspector: "You must help me. I have been gambling at a Greek coffee-shop. The party ordered me to shoot him but I shot in the air. They took the gun from me at the coffee-shop". The Inspector then cautioned the appellant again; he did so, as he stated in his evidence, in compliance with the Judges' Rules and made it clear that he did so as soon as possible in the circumstances. Upon this evidence the Court of trial admitted in evidence the oral statement. It was argued on behalf of the appellant that to render his statement admissible in evidence it should have been taken down in writing, read over to him and signed as provided by section 5 (2) of the Criminal Procedure Law Cap. 14. Reference was made in this context to *R. v. Sampson Georgiades*, No. 1, 22 C.L.R. 102.

Held: (1) The oral statement was admissible in evidence. It complies with the requirements of the Judges' Rules in accordance with section 8 of the Criminal Procedure Law, Cap. 14 as amended by The Criminal Procedure (Amendment) Law, No. 37/58. (*Note:* The section as amended is set out in the judgment, *post*). *R. v. Sampson Georgiades* No. 1, 22 C.L.R. 102, has no application any longer as it was based on section 8 before its amendment by Law No. 37/58. The original section 8 provided for certain rigid requirements as to the taking of statements made by persons in custody by reference to section 5 (2), whereas the new section contains no such provisions.

R. v. Sampson Georgiades No. 1, 22 C.L.R. 102, *not applied.*

(2) The type of statements covered by section 5 and given in the course of investigations into an offence is, so to speak, in a separate compartment and no provision of that section is incorporated by reference into the present section 8.

Appeal dismissed.

Cases referred to:

R. v. Sampson Georgiades, No. 1, 22 C.L.R. 102.

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Appeal against conviction.

The appellant was convicted on the 11th November 1959 at the Assize Court of Nicosia (Zannetides, J., Derwish, P.D.C. and Pierides, D.J., in Criminal Case No. 10799/59) on two counts of the offences of using a firearm contrary to section 3 A (2) (a) of the Firearms Law, Cap. 86, as set out in S. 2 of Law No. 32 of 1955 and as amended by s. 3 of Law No. 11 of 1959, and was sentenced to two years imprisonment on each count, sentences to run concurrently.

E. Munir for the appellant.

K. Talarides for the Crown.

The Court dismissed the appeal on December 8, 1959, and intimated that the reasons therefor would be given later. Those reasons were given on December 21, 1959, by:

BOURKE, C.J. : This appeal was dismissed and we intimated that we would give our reasons later which we now proceed to do.

The ground of appeal is concerned with the conviction entered on the third count and goes to the question of the admissibility in evidence of an oral statement made by the appellant to the witness Police Inspector Jackson. It may be said at once that even if the statement was inadmissible there was ample evidence to support the conviction and it would not be possible to say that any miscarriage of justice had occurred ; indeed no submission was made in the course of the argument for the appellant as to a miscarriage of justice and no such allegation is contained in the grounds as set forth in the notice of appeal.

But in the opinion of this Court the evidence as to the statement was correctly admitted as a matter of law. The evidence of Inspector Jackson was that he arrested the appellant and cautioned him whereupon the appellant said "Alright." About fifteen minutes later the appellant said to Inspector Jackson — "You must help me, I have been gambling at a Greek coffee shop. The party ordered me to shoot him but I shot in the air. They took the gun from me at the coffee shop." The witness then cautioned the appellant again ; he stated in evidence that he did so in compliance with the Judges' Rules, and made it clear that he did so as soon as possible in the circumstances. This evidence was accepted by the trial Court and it is plain that in overruling the objection taken and admitting the evidence of the oral statement the learned Judges considered, rightly in the view of this Court, that there was no infringement of the Judges' Rules. It is then submitted, as it was below, that to render evidence of the statement admissible it should have been taken down in writing, read over to the appellant and signed as provided by section 5 (2) of the Criminal Procedure Law (Cap.14).

Reference in this context has been made to *R. v. Sampson Georgiades No. 1*, 22 C.L.R. 102 ; but that case was decided prior to the amendment of section 8 of the Criminal Procedure Law by Law No. 37 of 1958. The section now reads:—

“ Without prejudice to the generality of section 3 of this Law and without prejudice to the operation of section 5 of this Law the rules for the time being approved by Her Majesty’s Judges of the Queen’s Bench Division in England relating to the taking of statements by police officers (known as “The Judges’ Rules”) shall apply to the taking of statements in the Colony as they apply to the taking of statements in England ”.

The original section 8 provided for certain rigid requirements as to the taking of a statement made by a person in custody by means of reference therein to section 5 (2) ; and non-compliance, as in *Sampson Georgiades*, would render the statement inadmissible in evidence by reason of subsection (7) of section 8. The new section does not contain such provisions. The procedure to be followed is now governed (and was regarded by the Courts as being so governed prior to the enactment of the original section 8) by the Judges’ Rules in the same way as it is in England. The effect as regards the admission of a statement in evidence to which the Rules apply is also the same as in England. The type of statements covered by section 5 and given in the course of investigations into an offence is, so to speak, in a separate compartment and no provision of that section is incorporated by reference into the present section 8 : it is simply provided that the Judges’ Rules shall apply here as in England without prejudice to the operation of section 5.

For these reasons the appeal is dismissed.

Appeal dismissed.

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