

ASSIZE  
COURT  
OF  
LIMASSOL  
1908

Sept. 16

(ASSIZE COURT OF LIMASSOL.)

[BERTRAM, ACTING C.J., HOLMES, ACTING J., STUART, P.D.C.,  
ATTA BEY AND OIKONOMIDES, JJ.]

REX

v.

HASSAN MOLLA MEHMED AND OTHERS.

CRIMINAL PROCEDURE—EVIDENCE—STATEMENT IMMEDIATELY AFTER COMMISSION OF OFFENCE—SERIES OF STATEMENTS—CRIMINAL LAW AND PROCEDURE AMENDMENT LAW, 1886, SEC. 29.

A series of statements made to a series of persons after the commission of an offence may be given in evidence under Sec. 29 of the Criminal Law and Procedure Amendment Law, 1886, if the Court considers that they were made to persons to whom in all the circumstances of the case it was natural that the complainant should make them, and that they followed so closely upon the offence that they might be considered as having been made immediately.

A man, who was shot when entering his house, entered and made a statement to his wife about his assailants. Immediately afterwards a relation entered, and he made a second statement to the relation. The relation was closely followed by a zaptieh, and the complainant made a third statement to the zaptieh.

HELD: That all the statements were admissible.

The prisoners were charged with shooting at one Avni Molla Mehmed with intent to kill him, Hassan as principal and the other two as accomplices.

Avni Molla Mehmed swore that as he was entering his house on the night in question he saw three men hiding behind a wall, and that one of them fired a gun at him. He recognised the three men as the three prisoners. On entering the house he saw his wife and made a statement as to the circumstances to her.

Hearing the shot, two men Ali Bey, a relation of the complainant, and Hassan Molla Mehmed, a zaptieh, ran to the house. Ali Bey being a relation, the zaptieh sent him in first. Avni then made a further statement as to the circumstances to Ali Bey. Immediately afterwards the zaptieh entered, and Avni made a third statement to the zaptieh.

*Lanites* for the defence objected to the admission of these statements. The effect of Sec. 29 of the Criminal Law and Procedure Amendment Law, 1886, is that evidence may be given either of a complaint made to the first person, or of a complaint made to the "natural person." Here the wife was both the first and the "natural" person. The complaint to her being given in evidence, the section was exhausted. It is true that the section says "person or persons" but it does not contemplate a series of "first persons" or a series of "natural persons." The plural merely refers to cases where two or more persons are seen and spoken to simultaneously.

The Court referred to *R. v. Ismail and others*, 5 C.L.R., 47, per Hutchinson, C.J. "In my opinion if the complainant meets and speaks to a stranger first and immediately afterwards makes

his complaint to a person to whom the Court considers it natural he would complain, the latter complaint is admissible; and if he makes his complaint to one person to whom the Court considers it natural he would complain (his father, for example) and immediately afterwards makes it to another person to whom the Court considers it natural he would complain (his mother, for example) the latter complaint is admissible."

*Lanites*: These observations were *obiter* and not authoritative. In that case the person to whom the complaint was made was the first person to whom the complainant had an effective opportunity of speaking.

*Bucknill, K.A.*, for the Crown was not called upon.

*Judgment*: We are all of opinion that the evidence is admissible and that the case is governed by *R. v. Ismail*. The interpretation there given to the section by Hutchinson, C.J., is in entire accordance not only with the words of the section, but also with the principle it is intended to embody.

That principle is derived from English law (where however its application is confined to cases of offences against women and girls. See *R. v. Lillyman* (1896) 2 Q.B., 167; *R. v. Osborne* (1905) 1 K.B. 551). The principle is that a statement volunteered by a complainant immediately after the commission of an offence is not likely to be a fabrication. It is quite common in England for a series of such statements to be given in evidence and the only points of what the Court has to assure itself are that the statement was made at the first opportunity which reasonably offered itself after the commission of the offence, and that it was not elicited by questions of a leading, or inducing or intimidating character.

In the Cyprus statute the word "natural" is not confined to natural relationships but means 'natural in all the circumstances of the case.' There is no reason why there should not be a series of persons to whom a statement or complaint might naturally be made, and there is no reason why they should not all be given in evidence provided that they followed so closely upon an offence that they might reasonably be considered as being made immediately.

The statement admitted in each case was, "Hassan, Hussein and Ali shot me, but the person who fired was Hassan."

*Verdict*: Guilty.

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