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IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 47/87

THE QUEEN

v.

670

SELWYN WINIATA INNES

Coram: Cooke P.  
Richardson J.  
Barker J.

Hearing: 23 November 1988

Counsel: J.R. Billington for Appellant  
J.H.C. Larsen for Crown

Judgment: 23 November 1988

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JUDGMENT OF THE COURT DELIVERED BY COOKE P.

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In this case, the nature of which needs no underlining, the accused was convicted of twice raping and also sodomising a woman of 57 in her home at Lower Hutt. He was also convicted of aggravated robbery. In the light of his record he was sentenced, virtually inevitably, to preventive detention. He appeals against his conviction. Mr Billington, who has conducted his case today after reporting to and appointment by the Court, is the third counsel experienced in criminal law who has represented the accused. We express appreciation of the trouble he has taken over the case.

The sole point of appeal found arguable has been one about the admission of evidence of certain statements made

by the accused to police officers four days after the crimes. He had been arrested and taken into custody earlier that day after an interview, lasting about an hour and ending about 11.07 a.m., in which he had made no admission but only exculpatory statements. About 4.10 p.m, according to the unchallenged police evidence, he asked to see a Maori constable, Detective-Constable Taare. The constable said that he received a message that the accused wished to speak to him. The accused was then brought to his office. The constable's evidence continues:

...I immediately cautioned him by telling him that he was not obliged to say anything but anything he did say may be given as evidence. I also recorded a conversation I had with the accused in my notebook at the time I spoke to him. I asked him, you wanted to see me Selwyn and he replied yeah, I just want to know what is going to happen tomorrow. I told him you will be going to court at about 9.45. He asked, what will happen. I told him that is up to you. When you have seen your solicitor you can decide. He said I can't contact Paul Painor. I have tried both his numbers but there is no answer. I said, well I will arrange so you can make phone calls every half hour.

A. Yeah thanks.

Q. Anything else you want to know?

At this stage the accused hesitated in answering.

Q. What is wrong Selwyn?

The accused started shaking his head from side to side, he then started crying and wiping his eyes. I said, what is wrong can I help you in any way. He said, I have got something to tell you that I never told anyone else before. I said, is it about the matters you have been charged with? He said no. But I think that is the reason for why it has happened. I said what do you mean. He replied, it is because of those pakehas, I hate them. That is why I am pissed off about the other day, the other guy coming to the marae. That is not his place. He could have waited and come to my place. I said yeah, I know that you told me that morning we did that search warrant, remember? He replied, that's right. I asked the accused another question, and he replied,

when I was young my parents could not handle me so I got fostered out. My foster parents were both pakehas, my foster father had sodomised me, he continued to do this over about a 2 year period. My foster father threatened that if I told anyone he would put me back into the boys home. The accused was continually crying at this stage. I said Selwyn why did you not go to the police or tell someone from the boys home, surely you could have told someone. I was too scared, I did not want to go back to the boys home. I said, well how do you feel about it now and he replied, well it has made me hate pakehas. I said, have you bothered to seek help since then. He replied, what sort of help. I said what sort of help do you think you need. He replied, I don't know. I have got a lot of trouble trying to comm. with pakehas. Correction - I have a lot of trouble trying to communicate with pakehas. I said, do you think you need psychiatric help, Selwyn? He replied, no I don't like that word that sounds as if I am mad. I said, if you were prepared to help yourself, if you think you have a problem then there are all sorts of counselling groups for the type of thing you have been through, it does not matter how long ago that was. The accused made no reply. He continued crying. I said the big thing is, Selwyn, that if you can be honest with yourself and realise you need help then you are half-way there already. The accused still made no reply. At approximately 5.15 p.m. we were joined by Honan. The accused Innes told Inspector Honan what he had told me previously. At the completion Honan asked the accused if he had anything to say about the matters he had been charged with. The accused said he did not. At 6.10 p.m. I returned the accused Innes to the police cells.

The relevant part of Detective-Inspector Honan's evidence is recorded as follows:

At about 5.15 p.m. on 7 January 1986 I entered the office in which the accused Innes and Detective-Constable Taare were in the presence of the accused. Mr Taare told me the accused wished to speak with me. I again cautioned the accused warning him that he was not obliged to say anything but anything he did say may be given in evidence. The accused was crying at the time. I put a series of questions to the accused and his answers by me were later recorded at 7.30 p.m. I seek leave of the court to refer to my notes to refresh my memory.

Bench: The same procedure - ask questions, got answers, and then recall them later and write them down? Correct.

To Counsel: The accused told me that he had a problem and needed treatment. He stated he wanted to tell me the reason for his moods. The accused said, when I was younger my stepfather sodomised me over a 2 year period. He is a Pakeha. I took it out on the Pakeha. It is vengeance. I said to the accused, are you genuine in your need for help? The accused replied, something has got to be done. I said to the accused, the first step is admitting that you do need help. That is a major hurdle. If you can't tell me the true facts as to how the offence was committed then the police are left to place a reconstruction on it. The accused made no reply. The accused was later returned to his cell at 6.10 p.m. approximately that evening.

Mr Billington's argument is that the accused's statements were equivocal and not reasonably capable of being treated as an admission of the crimes charged, so that they ought not to have been admitted in evidence. Alternatively, he contends that the Judge should have excluded them on the ground that their prejudicial effect exceeded their probative value.

We can dispose of these points shortly, as we are satisfied that there is no substance in either. The statements volunteered by the accused after specifically asking to see the constable and after being warned by the constable were, in our view, undoubtedly well capable of being regarded as an admission. Evidently he did not wish to speak of the details of the crimes themselves, hence his reply 'No' to the question whether it was about the matters he had been charged with. But evidently he did wish to

explain the motive or what had impelled him to commit them, namely the repeated sodomy that he said had been inflicted on him as a boy by a pakeha foster father. Counsel on his behalf has suggested other possible explanations, but we do not regard these as plausible. The trial Judge and the jury were well entitled to take the view that we ourselves take. On that view the statements really amounted to a tacit confession and were admissible in evidence.

On the question of prejudicial effect, the statements could well be regarded as having the probative effect of clinching the Crown's case. It would have been wrong in the interests of justice to withhold them from the jury. The Crown's case was based otherwise on circumstantial and forensic scientific evidence. On its face it was cumulatively a strong case indeed: but the Crown had to overcome what might appear as the extraordinary unlikelihood that a young Maori man of, we are told, attractive appearance, employed in a Government Department and living in a stable relationship with a young woman, had, in intervals snatched from an evening spent otherwise in her company, committed these terrible crimes. In our opinion it was the duty of the trial Judge to admit this evidence. For those reasons the appeal must be dismissed.

It is not entirely clear whether the accused is seeking leave to appeal against sentence, but if so we consider the sentence entirely appropriate and indeed, as

already mentioned, virtually inevitable and any application for leave to appeal against it is dismissed.

*R.B. L. 507e P.*

Solicitors:  
Crown Solicitor, Wellington, for Crown