

WELLINGTON REGISTRY

27/2

**No Special  
Consideration**

THE QUEEN

v

SZUCS

A.K.A. SZUCS

(Abduction; rape; sodomy; indecent assault)

Ruling: 21 February 1984

Counsel: C H Toogood for Crown  
G L Turkington for Accused

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RULING OF JEFFRIES J

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The admissibility of the written statement of the accused given to Detective Constable Naik four days after the alleged offences has been objected to by counsel for the accused. Reference to the statement was carefully avoided in Crown counsel's opening and the circumstances of the taking of the statement have been explored in the usual way in the course of a trial within a trial in the absence of the jury. Counsel for accused helpfully before evidence began in the voir dire informed the court of the substance of the factual objections. Basically they were grounded in allegations that the confession was obtained by compulsion of varying kinds. For example:-

1. That accused had been kept at the police station for an unreasonably long time, some of it confined alone in a room.

2. That he was refused assistance of a lawyer when he had repeatedly requested it.
3. That he was not allowed to see his girlfriend, or de facto wife, also at the police station. I noted at the beginning of accused's evidence given in this voir dire there was some alteration to that suggestion as at first put by counsel but then he seemed to return to it later in his evidence.
4. That he was emotionally upset at the time of taking of the statement.
5. With no disrespect to counsel for the accused there were some vaguely formulated allegations of breach of the Judges' Rules in that accused had not been cautioned early enough in the interview, and that full written notes had not been taken reflecting an earlier case of Rowlands.

Counsel drew to the court's attention the recent Court of Appeal decisions in R v Wilson [1981] 1 NZLR 316 and R v Horsfall [1981] 1 NZLR 116 which, of course, must be strictly followed and applied by this court. The law on my understanding of the admissibility of statements which are questioned in circumstances such as these is as follows. The basic control over admissibility of statements is found in the evidentiary rule that an admission must be made voluntarily, that is not obtained through fear of prejudice, oppression, threats, promises or other improper inducements. That is the law as stated in Ibrahim v R [1914-15] All E.R. 874. A failure alone to comply with

the Judges' Rules does not automatically bring about exclusion, but it is a substantial factor in determining whether a statement meets common law evidentiary requirements. Also, to an extent, the common law has been modified by s 20 of the Evidence Act whereby at the Judge's discretion, applying the direction contained in the section, a confession need not necessarily be excluded even if there exists some promises, threats or other inducements.

The police are entitled to interview those who may have information about an offence, whether or not in custody, as long as formal charges have not been preferred or information given that the individual questioned may be prosecuted. When one becomes a suspect then officers must give certain cautions before questioning further. Generally it is along the lines "You are not obliged to say anything but what you say may be put into writing and may be given in evidence". Those are largely the words contained in the Judges' Rules. From this point forward no adverse inference may be drawn from silence.

A third stage is reached when the charge is read to the accused and the latter is asked whether he wishes to say anything on the understanding there is no obligation to respond but that anything stated will be taken down in writing and may be given in evidence. At this stage also there is a right to communicate with a solicitor and interview the latter privately as long as investigation, or administration of justice, is not unreasonably delayed or hindered in the process. The defence challenged the admissibility of the statement at the appropriate point in the trial as I have already said. It is for the prosecution to establish beyond reasonable doubt the confession was voluntary. The authority for that is D.P.P. v Ping Lin [1975] 3 All E.R. 175 and a recent Privy Council decision

Wong Kam-ming v The Queen [1980] A.C. 247.

I turn to the facts of this case. To begin with the accused who has given evidence before me is a fully mature man, then of 25 years, obviously with experience of the world. He went voluntarily to the police station where he was questioned. There was an early allegation against the police witnesses that they had used threats to get him to the station but the evidence from accused himself could not raise the statements made, even if they were, on his evidence to the level of threats. He made full oral confessions within possibly 2½ hours, but no later than 3 hours of first entering into the police company. The whole exercise was completed in 5 hours at the very outside, which cannot be regarded as an excessive length of time. The period of 5 hours was in the middle of a day; he was supplied with refreshments during the time he was with the police. The inducements, and no stronger word could be used, were minimal even if they were held out as alleged by him. On the evidence I find they were not. Undoubtedly the police questioning was sustained and somewhat persistent. Two police officers were used. To his first denials the policemen overtly displayed disbelief based on the information they had. They were entitled to say that to the accused. The police were involved in the investigation of serious crimes and would have been in dereliction of their duty if they had ceased questioning at the first denial. Request for legal assistance must be given proper attention in due course but also must not be permitted to hinder or delay unreasonably the process of administration of justice. In this case the accused was not unreasonably denied legal assistance.

The admission by Detective Sergeant Hall, given at the beginning of his evidence, that he had not been accurate in replying to a question in the lower court whether

he had read the complainant's statement before interviewing the accused gave this court some pause. However it was Constable Naik who took the statement and the question was not asked whether he had read complainant's statement before he interviewed accused. There is confirmatory evidence contained in the statement itself which could only have come from someone who had deep and personal knowledge of the events. Applying the law as I have outlined it in the course of this ruling, and that the onus of proof rests upon the prosecution to the high standard of proof beyond reasonable doubt, I am satisfied that standard has been reached by the Crown and I rule the confession admissible.



Solicitors for Crown:

Crown Solicitor, Wellington

Solicitor for Accused:

G L Turkington, Esq.