SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO 2 OF 1997

BETWEEN:

FRANCIS WILLIE **APPELLANT**

and

THE QUEEN **RESPONDENT**

Before: The Honourable Mr. Satrohan Singh Justice of Appeal
The Honourable Mr Albert Redhead Justice of Appeal
The Honourable Mr Odel Adams Justice of Appeal [Ag.]

Appearances: Mr. Marcus Peter Foster for the Appellant
Mr. Errol Walker, Director of Public Prosecutions
for the Respondent

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1997: October 30.
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Criminal Law - Rules governing admissibility of a confession statement - Prosecution's evidence against accused consisting only of a confession statement - Circumstances prior to the confession statement being given, accepted as being highly suspicious - **The Queen v. Thompson** (1893) 2 QB 18 per Cave, J. adopted. Appeal allowed. Conviction set aside.

JUDGMENT

SATROHAN SINGH, JA

There were two issues raised in this appeal.

1. Whether or not the Police and Criminal Evidence Act [PACE] 1984 of England applied to St. Lucia.
2. The admissibility of the appellant's confession statement.

We do not propose to deal with the first issue at this time as it involves a serious change to the laws relating to the admissibility of confessions in St. Lucia and it has not been thoroughly ventilated before us. Mr. Marcus Foster for the appellant was not prepared to properly advance arguments before us and asked us to rely on the arguments he advanced before the Judge in the Court below. The learned Director of Public Prosecutions studiously avoided the issue.

THE CONFESSION

Regarding the second issue of the admissibility of the alleged confession of the appellant, we have been experiencing some very agonising moments.

The case for the prosecution was that the appellant, a co-accused who was armed with a knife and another, invaded the home of the deceased woman for the purpose of executing a robbery therein. She surprised them. The robber with the knife cut her on her finger and in his presence, the appellant used the flat side of a hammer twice on her head and left her bleeding on the floor. They robbed the house of a paltry sum of cash and a gun.

The appellant and the co-accused allegedly made confession statements. The case for the prosecution was that of a joint enterprise. At their trial they both objected to the admissibility of their statements on the ground that they were not voluntarily given. They alleged brutality on the part of the police. In the case of the appellant, partial drowning of his head in a pail of water on several occasions, starvation, violence and long detention.

Matthew J heard a Voir Dire as to the admissibility of the statements, found them to be freely and voluntarily given and admitted them in evidence. Then, for no apparent acceptable reason, withdrew the case of the co-accused from the jury and had him discharged. With respect to the appellant, the judge sent the matter to the jury who eventually convicted him of manslaughter. **Matthew J** then jailed him for 17 years. He was tried on an indictment for murder. The only evidence presented by the Crown against the appellant was his statement. This statement disclosed the offence of murder. Nothing else. Why the judge allowed the jury to consider manslaughter boggles the mind. However, in the appeal before us, Mr. Marcus Foster invited the Court to ask itself whether, given the circumstances of the confession, we do not feel a lurking doubt in our minds as to its voluntariness.

The law on the admissibility of a confession where it is the only evidence of the prosecution against the accused, is that its admission into evidence where there is

objection as to its admissibility, should be approached with extreme caution especially in cases where the confession might have been extracted from the accused under highly suspicious circumstances. Highly suspicious circumstances would include breaches of the judges rules, violence, inducements and acts of oppression. In certain cases it may even be necessary to look for evidence corroborative of the confession. This is not one of those cases. [See **David Stewart Mc Kenzie [1993] 96 Criminal Appeal R. 98]** referred to by this Court in **Devon Calliste v. The Queen, Criminal Appeal 12 of 1993 Grenada**.

In the instant matter there were highly suspicious circumstances disclosed in the evidence prior to the confession being obtained. These circumstances show inordinate length of detention, allegations of no nutriments, violence on the appellant and partial drowning of the appellant on more than one occasion. The most telling of these circumstances was the fact that the appellant gave three exculpatory statements prior to the confession the last one just a few hours before the confession. The evidence showed that he called the police at 3:00 a.m. to make the last exculpatory statement and then by 8:00 a.m. on the said day he was confessing.

The anxiety that grips us regarding the voluntariness of the alleged confession is the fact that during his detention, the appellant made these three exculpatory statements, then for some unknown reason according to the prosecution he chose to bare his soul to the police. As against that, we have the appellant's reasons why he confessed already referred to and the fact that at his trial shortly after, he maintained his innocence and denounced his confession. These circumstances remind us of this dictum of **Cave J** in **The Queen vs Thompson (1893) 2 QB p.18:**

> "I would add that for my part I always suspect these confessions, which are supposed to be the offspring of penitence and remorse, and which nevertheless are repudiated by the prisoner at the trial. It is remarkable that it is of very rare occurrence for evidence of a confession to be given when the proof of the prisoner's guilt is otherwise clear and satisfactory; but, when it is not clear and satisfactory, the prisoner is not unfrequently alleged to have seized with the desire born of penitence and remorse to

> supplement it with a confession; - a desire which vanishes as soon as he appears in a court of justice."

We recognize how difficult it is for a Court of Appeal to disturb a finding of fact from an inferior tribunal especially as in this case where the facts of oppression were placed before the judge and he rejected them and they were then placed before the jury and they also rejected them. However, sitting in this Court, viewing the matter from a reviewing point of view, we have found ourselves with this lurking doubt in our minds as to the voluntariness of the statement. Because this was the only evidence against the appellant, this lurking doubt therefore attaches itself onto the correctness of the conviction. The legal position is that if this Court discovers this lurking doubt as to the propriety of the conviction then as a matter of law it should set it aside.

During the arguments, we pondered painfully over the issue. We recognised that this was a brutal crime and that an innocent woman was mercilessly bludgeoned to death. We recognize the outrage of the community. However, as a Court of law we cannot shrink from our duty. We have to bow to the law rather than to what the circumstances shriek out for.

The police botched the successful presentation of this matter when in their anxiety at solving such a heinous crime, they abdicated their role as officers of the law and allowed their emotions to lead them astray. In the end, the probability is that, as a result of an abuse of power, they extracted an involuntary statement from the appellant. It could be, that the judge himself, despite his ruling as to the voluntariness of the statement was not quite sure of the issue and that is why he misdirected the jury by again leaving the issue of voluntariness with them. The summing up shows that instead of leaving the assessment of the weight only of the statement for the jury's consideration, **Matthew J** asked them to again consider voluntariness.

This matter has bothered us terribly. We are seriously troubled as to the voluntariness of the confession and that has created the lurking doubt in our minds as

to the wisdom of the conviction. As a matter of law therefore we are bound to allow the appeal and set aside the conviction and sentence. We are of the view, that it is eminently more desirable that the public should have full confidence in the integrity of the police force and that a possibly guilty man walk free, than that one prisoner, who might be innocent, is convicted, because of a probable lapse of such integrity. To harbour a different desire might result in encouraging the police in the abuse of their powers.

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SATROHAN SINGH
Justice of Appeal

I concur

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ALBERT REDHEAD
Justice of Appeal

I concur

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ODEL ADAMS
Justice of Appeal [Ag.]