[HIGH COURT OF AUSTRALIA.]

THE KING . . . . . APPLICANT;

AND

MARLEY . . . . . RESPONDENT.

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL OF TASMANIA.

H. C. OF A. 1932.

SYDNEY, *Aug.* 15.

Rich, Dixon, Evatt and McTiernan JJ.

*Criminal Law—Evidence—Admissibility—Voluntary conversation with police officer by person charged—Implied reference to previous wrongful acts by accused—Prejudicial effect upon jury.*

In a criminal trial evidence of admissions by the prisoner relevant to the crime charged is not rendered inadmissible merely by the circumstance that such admissions include inseparable references to another or other offences, and the mere fact that they are made to a police officer after the prisoner is in custody is not enough to exclude them; but the trial Judge, after admitting such evidence, should by his direction do what is possible to prevent prejudice to the prisoner.

Special leave to appeal from the decision of the Court of Criminal Appeal of Tasmania refused.

APPLICATION for special leave to appeal from the Court of Criminal Appeal of Tasmania.

Roy Marley was arrested on a charge of breaking and entering a building other than a dwelling-house, contrary to sec. 247 of the *Criminal Code* (Tas.). Pending the hearing of the charge, Marley was allowed out on bail subject to the condition that he was to report daily at the Detective Office, Hobart. One day when he went to report he asked a detective-sergeant, whom he knew: "What evidence have you got against me?" The detective-sergeant

replied: "A lot; you ought to give this up." Marley said: "What can I do? I am out of work and can't get a job. Can you get me a job?" The detective-sergeant in response said: "You ought to be able to get a job in the country amongst the apples." The detective-sergeant did not at any time ask any questions of Marley. At the trial, which was held in the Supreme Court of Tasmania, before *Nicholls* C.J. and a jury, the Attorney-General, who appeared on behalf of the Crown, tendered evidence of the conversation between Marley and the detective-sergeant. Despite a suggestion by his Honor to the contrary, the Attorney-General pressed for the admission of the evidence, and it was admitted by his Honor on the ground that there was no decision in Australia, or in England, which lays down that when an accused person, absolutely voluntarily, opens a conversation with a police officer or anyone else and makes statements, such statements are not evidence against him. At the conclusion of his summing-up the Chief Justice directed the jury to decide the case excluding from their consideration the evidence of the detective-sergeant, whose only evidence was as to Marley's statement, and to say whether on other evidence they found Marley guilty. The jury returned a verdict of guilty, and Marley was sentenced to imprisonment for a term of three years, to be cumulative upon a sentence of imprisonment for two years imposed upon him for a similar offence of which he had been convicted a few days previously at the same sittings of the Court. Marley appealed to the Court of Criminal Appeal on the ground that evidence as to the conversation between himself and the detective-sergeant should not have been admitted as it tended to prejudice him before the jury, inasmuch as it conveyed to them the knowledge or the suggestion that he had been convicted previously of similar and other offences. By a majority his appeal was allowed and the conviction quashed. In the course of his judgment *Crisp* J., with whom *Clark* J. concurred, said:—"I can only interpret this evidence as calculated to give to the jury the impression that Marley was accustomed to do wrongful acts of a nature similar to the one under review. I can see no other possible purpose in the detective's evidence. Now, in order to make sure that a man charged with a crime shall have a

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fair trial, the law says, in no uncertain terms, that such evidence as this shall not be given . . . The Chief Justice, who presided at Marley's trial, told the jury to ignore this evidence of the detective, but it seems to me that the mischief may have been done, and that, despite this direction, the jury could hardly fail to be impressed by what they had heard, and could hardly forget it if they tried." In a dissenting judgment *Nicholls* C.J. said:—"Since *R.* v. *Hall* (1) in Tasmania we gradually have built up a series of pronouncements which I think go far beyond the law as laid down by the Privy Council in *Ibrahim's Case* (2), the King's Bench Division in *R.* v. *Best* (3), and the High Court in *Ross* v. *The King* (4). . . . In this case no question was asked by the policeman and no answer to what he said was required. The prisoner merely chose to go on with a conversation which he had chosen to begin. If this is inadmissible no policeman can give evidence, no matter how free from suspicion or bias or other wrong features, of anything said to him by an accused. We shall have advanced to the stage when the fact that any statement of an accused person comes to a Court through a policeman renders it not merely suspect, but actually not evidence at all. . . . In any event, the evidence of the detective having been withdrawn from the jury, even if it were objectionable, it would not invalidate the trial. There was a strong case independently of the detective's evidence. . . . The direction to the jury is not challenged. I think that the verdict of the jury was based on a fair and just consideration of good evidence and should stand."

From this decision the Crown now applied for special leave to appeal to the High Court.

There was no appearance by or on behalf of Marley.

*Owen*, for the applicant.

THE COURT delivered the following judgment:—

The purpose of this application is to obtain a decision that evidence of admissions by the prisoner relevant to the crime charged is not rendered inadmissible merely by the circumstance that they include

(1) (1905) 1 Tas. L.R. 21.
(2) (1914) A.C. 599.
(3) (1909) 1 K.B. 692.
(4) (1922) 30 C.L.R. 246.