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[HIGH COURT OF AUSTRALIA.]

SMITH . . . . . APPELLANT;

AGAINST

THE QUEEN . . . . . RESPONDENT.

H. C. OF A. 1956-1957. 1956, SYDNEY, *Dec.* 10, 11; 1957, *Jan.* 21. McTiernan, Williams, Webb and Taylor JJ.

Criminal Law—Evidence—"Person in custody"—Interrogation by police—Confession—Statements and answers by person—Voluntariness—Warning—Promise or threat—Admissibility—Voir dire—Duties of police—Sufficiency of confessions—Evidence Ordinance 1934-1951 (*Pap. & N.G.*), *s.* 15—*Laws Repeal and Adopting Ordinance* 1921-1939 (*Pap. & N.G.*), *s.* 16—*Judiciary Ordinance* (*Pap. & N.G.*), *s.* 24—*Judges' Rules* 1912-1930 (*Imp.*).

S., a three-quarter caste male aged nineteen years, of limited experience and education, was charged in the Supreme Court of the Territory of Papua and New Guinea at Rabaul, before the Chief Justice, as judge and jury, with wilfully murdering A., a female, and L., a male, both of whom were friends of S. A.'s body, partly buried and with severe injuries, especially to the head, was found early on a Sunday morning on a golf-course, and L. was found unconscious about twenty yards away with many injuries including, as in the case of A., a depressed compound fracture of the skull, the surrounding ground being blood-stained. L. died three days later without recovering consciousness. On the following Monday morning at the request of two sub-inspectors of police S. accompanied them to the investigating room at the police station to see C., an inspector of police, who was away. S. was invited to sit down and wait. It was alleged that one of the sub-inspectors told S. that S. would not go home till he told the truth. Upon his arrival about an hour later C. mentioned to S. that inquiries were being made concerning the death of A. and, at the request of C., S. informed C. as to his movements on the preceding Saturday night. C. left the police station and about two hours later, having made some further inquiries, he returned thereto and found S. still sitting in the investigating room. After further questions to and answers by S., C. again left the police station, made further inquiries and returned to the police station about one and one-half hours later having taken possession of all S.'s belongings. C. again plied S. with questions and S. broke down and sobbed bitterly. When S. had composed himself a sub-inspector of police asked S. if he would like to tell about the trouble, and S.

having said " Yes ", the sub-inspector warned S. that he " need not tell me unless you want to because anything you tell me about this trouble will be given in evidence in court. Do you understand ? " S. said " Yes ". Having been provided with the necessary materials S. made a written statement in which he stated that he followed A. and L. to the golf-course and, being " out of my mind ", hit each of them with an iron peg which he subsequently threw away. In conclusion he stated that he had made the statement of his own free will, and without any pressure, and repeated this to C. At no time was S. informed that he was at liberty to leave or to communicate with his father or a solicitor. About two hours later, further inquiries, visits to the golf-course, and questions by C. and answers by S. having been made, a sub-inspector informed S. that he would be charged with the wilful murder of A., to which S. replied that he understood. Thereafter further questions by C. and sub-inspectors were put to and answered by S. including questions regarding an identification of a metal scraper which S. was alleged to have used. At the trial the judge decided on the *voir dire* to admit the confessions. S. was convicted and sentence of death was recorded. From those convictions and sentences S. appealed to the High Court by leave granted under s. 24 of the *Judiciary Ordinance* of the Territory.

Held, by *Williams*, *Webb* and *Taylor* JJ. (*McTiernan* J. dissenting) (1) that in the circumstances the confessional statements made by S. were not made voluntarily and should be excluded ; (2) that even if those confessional statements were admissible in the absence of any independent evidence of confirmatory facts their weight was insufficient to prove beyond reasonable doubt that the murders were committed by S. ; and (3) that the appeal should be allowed and the convictions and sentences quashed.

The *Judges' Rules* 1912-1930 (Imp.) ; (*Halsbury's Laws of England*, 3rd ed., vol. 10, pp. 470-472), referred to and discussed.

APPEAL from the Supreme Court of the Territory of Papua and New Guinea.

Frederick Phillip Smith, a three-quarter caste male nineteen years of age and somewhat illiterate, was charged before *Phillips* C.J., Chief Justice of Papua and New Guinea, sitting as judge and jury, on two counts of wilful murder, the first charging the wilful murder of Adela Woo on 20th May 1956, and the second, charging the wilful murder of Leo Wattemena on 23rd May 1956.

It was alleged by the prosecution that the two deceased were fatally attacked at the same place and on the same occasion, but that whereas Adela Woo died on the day she was attacked, Leo Wattemena lingered on, unconscious, until he died three days later.

The case for the prosecution rested very largely on oral admissions and a written confession allegedly made by the accused to the police.

Early in the trial counsel for the accused objected to the admission of any evidence about these alleged admissions and that confession

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on the ground that they were not voluntary. The trial judge heard evidence by an inspector and two sub-inspectors of police on the *voir dire* and ruled that such evidence was admissible.

The accused was convicted, and sentence of death was recorded, on each count.

From those convictions and sentences the accused, by leave granted under s. 24 of the *Judiciary Ordinance* 1921-1938 of the Territory, appealed to the High Court.

Further facts appear in the judgments hereunder.

A. H. S. Conlon, for the appellant. In the Territory only persons of European descent are entitled to trial by jury. The convictions rest on the evidence of certain confessional statements made by the appellant to police officers. Those confessional statements ought to be excluded from evidence either because they were not shown to be undoubtedly free and voluntary and are therefore inadmissible as a matter of law, or because in the circumstances in which they were obtained it would be unfair to the accused to admit them in evidence, and they ought, therefore, to be excluded in the exercise of the Court's discretionary power. Another broad ground of appeal is that there was insufficient evidence to identify the accused as the person who attacked the two deceased persons. If the confessional statements go there would not be any evidence at all so to identify. But even with them there is insufficient evidence and therefore the accused was entitled to an acquittal. Even if the confessions are admitted the circumstances in which they were made, apart from the question of admissibility, show that they are unreliable. The basic point is that without the confessions, taking the whole of the evidence, it has not been shown beyond reasonable doubt that the accused did attack the two deceased persons. The confessional statements show no special knowledge of what happened. On the police version there is not any suggestion of any warning until the accused " broke down " at the police station more than five hours after his arrival there. The accused, a person predominantly primitive, was overawed by the three high-ranking police officers : see *Wills* on *Principles of Circumstantial Evidence*, 7th ed. (1937), p. 127, and Indian *Evidence Act* 1872, ss. 25, 26. The person really responsible for bringing pressure to bear upon the accused was one of the sub-inspectors. Facts are present which affect that sub-inspector's credibility. The Court will much more readily review a decision of a single judge than it will the decision of a jury (*Mersey Docks and Harbour Board* v. *Procter* (1)). The

(1) (1923) A.C. 253, at pp. 258, 259.

Court is not bound inevitably by the trial judge's ruling. The trial judge overlooked relevant matters, e.g. absence of blood marks on the accused's clothes, therefore the court will give the judgment which ought to have been given in the first instance (*Dearman* v. *Dearman* (1)). It is common knowledge that a primitive person is ready to admit to offences he has not in fact committed.

[WILLIAMS J. You are really relying on what this Court said in *McDermott* v. *The King* (2), are you not on the discretionary attitude of the Court ?]

Yes, and also upon what the Court said in *R.* v. *Lee* (3) in particular. This is an occasion for the vigilance which the Court referred to in *R.* v. *Jeffries* (4). The trial judge regarded the *Judges' Rules* as administrative directions in New Guinea. Rules 1 to 4 inclusive are noted in *R.* v. *Voisin* (5). The question of whether a confession alone is sufficient to support a conviction was dealt with in *McKay* v. *The King* (6). The fact that a piece of confirmatory evidence, as to the murder weapon, is not true is a circumstance which makes it unsafe to convict in this case. A classic statement is to be seen in *Reg.* v. *Thompson* (7). The whole of the alleged confessions are suspect : *Starkie* on *Evidence*, 3rd ed. (1842), vol. 2, p. 36. The degree of influence is immaterial. The " influence " here falls under different heads : (1) detention ; the accused was taken in a police truck to a police station and there detained for over five hours before the breaking down ; (2) the implied threat to continue that detention till he said what was expected of him ; and (3) his fear of the police. The alleged confession was the outcome of persistent interrogation spread over a period of five hours. Some relevant considerations are stated in *Chalmers* v. *Her Majesty's Advocate* (8). In England the *Judges' Rules* are treated as rather strict standards of propriety. This Court should so treat them.

[WILLIAMS J. referred to *McDermott* v. *The King* (2).]

In that case the Court was dealing with the question of New South Wales law. If the early verbal statements when the accused broke down are rejected as a matter of law then the whole of the statements, written and verbal, must follow in the same way as they were all rejected in the *Chalmers' Case* (8). By virtue of Ordinance No. 1 of 1921, the *Laws Repeal and Adopting Ordinance* 1921, the appropriate rules of practice to be applied in New Guinea are the English Rules and not the Australian Rules : see cll. 11, 16. A

(1) (1908) 7 C.L.R. 549, at p. 559.
(2) (1948) 76 C.L.R. 501.
(3) (1950) 82 C.L.R. 133, at p. 159.
(4) (1946) 47 S.R. (N.S.W.) 284 ; 64 W.N. 71.
(5) (1918) 1 K.B. 531, at p. 539.
(6) (1935) 54 C.L.R. 1, at p. 8.
(7) (1893) 2 Q.B. 12, at p. 18.
(8) (1954) S.L.T. 177.

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provision similar to cl. 16 was considered in *Ibrahim* v. *The King* (1). The trial judge, in his judgment on the *voir dire* found that the accused did feel that he was in custody, which is the relevant finding. There were grounds for the judge to go further and find that the accused was, in fact, being detained. Reference should be had to s. 552 of the Queensland *Criminal Code* in *Laws of the Territory of Papua*, vol. 2, p. 1411. The trial judge rigidly followed the rules laid down in *Cornelius* v. *The King* (2). Neither in his evidence in chief nor in his cross-examination was anything revealed by way of admission of an incriminatory character: see *Reg.* v. *O'Keefe* (3). It is suggested that the police officers knew that their practices were unfair: *Cornelius* v. *The King* (4); *R.* v. *Knight and Thayre* (5). The last two sentences in the accused's written statement were not composed by the person who composed the remainder, but were dictated by another person. The difference in the grammar is remarkable. This is a case in which it would be unsafe to convict without reliable independent evidence implicating the accused; *McKay* v. *The King* (6), that is, evidence other than his own self-blaming statements, or his own actings, or his demeanour when giving evidence. There is not any fact proved by the evidence that implicates the accused. The case for the prosecution rests entirely upon the confessional evidence. The Crown case loses force because of certain other facts, particularly the evidence as to the scraper. It is quite out of character and inherently improbable that the accused did make those murderous attacks. The whole set-up suggests that some other person sought to have intercourse with the girl. Self-incriminating statements of confessions should be tested for consistency with the known facts and with the probabilities. There was not any evidence of motive, direct or indirect, on the part of the accused. The confessional evidence should have been rejected.

C. Shannon, for the respondent. It is conceded (i) that there was not any specific evidence of motive; and (ii) that essentially the convictions stand or fall upon the admissions, statements and conduct of the accused from the time that he was first spoken to by the police officers. It is not proposed to ask the Court to place very much reliance upon the evidence of Maria and Matthias, because the trial judge did not purport to convict on that basis. When he broke down and made the confessional statements the

(1) (1914) A.C. 599.
(2) (1936) 55 C.L.R. 235.
(3) (1893) 14 L.R. (N.S.W.) 345; 10 W.N. (N.S.W.) 71.
(4) (1936) 55 C.L.R., at pp. 245, 251.
(5) (1905) 20 Cox C.C. 711.
(6) (1935) 54 C.L.R. 1.

accused was overcome with remorse. He admitted that he followed the deceased persons and attacked them and killed Adela. Upon confessing it he was immediately overcome and became emotional. The trial judge applied not only the common law test of whether or not the confessions were voluntary statements, but also then put the question to himself as to whether in his discretion he should exclude them. In addition to the *voir dire* his Honour treated the matter again in his summing-up. At the stage of the *voir dire,* not having any evidence from the accused, and only having the police evidence as to what they said about the confessions, the trial judge came to the correct decision at that stage, although it was a matter that was open for reconsideration at any stage of the case as it proceeded. At that stage his Honour was determining the two issues, whether (i) these were voluntary statements, and (ii) in the exercise of any discretion he had, he should not exclude them because they were obtained by any unfair or improper means. It is not doubted that the accused felt that he had to stay at the police station. According to him he was told by a sub-inspector of police that he, the accused, would not be allowed to leave the police station until he had made a statement or until he told the truth. What happened on that occasion is not sufficient to establish that the confessions were not voluntary. There is no evidence that the confessions were obtained in breach of the common law, or, in other words, there was no evidence of any threat or promise or inducement. Put at its highest it may be alleged that there was a breach of the *Judges' Rules*, and if there was a serious breach then that would entitle the Court in its discretion to exclude the confessions. The trial judge found that there was no implied threat. The only suggested threat was an implication that the accused had to stay at the police station. That is not a threat within the meaning of the common law rule which would allow the Court to say that the Crown has not established that the confessions were voluntary, because it must be a threat, surely, inducing him to make a confession of guilt. The *Judges' Rules* lay down a code of conduct that the police officers should follow. If there is a serious breach of those Rules the judge had a wide discretion to exclude the confessions, but no more: see *R.* v. *Lee* (1) and *McDermott* v. *The King* (2). Those Rules have not the force of rules of law (*Reg.* v. *Straffen* (3)). The proper test is: What in fact and in law was the accused's position at that time? It is not

(1) (1950) 82 C.L.R. 133.
(2) (1948) 76 C.L.R. 501.
(3) (1952) 2 Q.B. 911.

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what the accused felt about his position, but was he, in fact, in custody, and was he, in fact, under arrest. It cannot be right that if a police officer has a very strong suspicion that a certain person is the guilty person, he, the police officer, asks any question at his peril thereafter: *R.* v. *Jeffries* (1). The trial judge found that the confessions were voluntary confessions, and that his discretion should not be exercised because they had not been unfairly obtained, and then examining the evidence given by the police officers and the explanation given by the accused and finding no other explanation for the giving of the confessions he came to the conclusion that they were true. There is no evidence or suggestion of a person overborne or in fear because he has a quickness to explain. He realised that fresh discoveries had been made and he adapted his admissions accordingly.

[McTIERNAN J. referred to *Craig* v. *The King* (2).

WILLIAMS J. There was a tremendous amount of corroborative evidence in that case.]

A trial judge sees the witnesses, and where he has exercised his discretion this Court will hold that there should be special circumstances before the Court will act contrary to the exercise of the discretion of the trial judge. The confessional statement is a very detailed statement in the accused's own handwriting, made by a person who is alleged to be in fear and doing it to please the police officers. The trial judge had the opportunity of observing the witnesses and of summing them up. He also had the advantage of his own great knowledge of the Territory and of the people who live there. In the circumstances, he properly exercised his discretion. *McDermott* v. *The King* (3) was, at that stage, an application for leave to appeal, whereas this is an appeal. The trial judge's discretion was not wrongly exercised (*R.* v. *Lee* (4)).

A. H. S. Conlon, in reply. It is anomalous that the trial judge criticised the accused's credibility, but found that he was able to accept the truth of the critical part of the confessional statement. He did so on insufficient grounds which do not appear to be supported by the probabilities. There has been a miscarriage in that there was insufficient evidence to warrant the convictions which ought, therefore, to be quashed.

Cur. adv. vult.

(1) (1946) 47 S.R. (N.S.W.) 284; 64 W.N. 71.
(2) (1933) 49 C.L.R. 429, at p. 445.
(3) (1948) 76 C.L.R., at p. 518.
(4) (1950) 82 C.L.R., at p. 157.

The following written judgments were delivered :—

McTIERNAN J. On 27th July 1956, at Rabaul, the prisoner, Frederick Phillip Smith, was found guilty by the Chief Justice of the Territory of Papua and New Guinea of wilfully murdering Adela Woo and Leo Wattemena. The mode of trial was by the court without a jury. The prisoner was sentenced on 30th July 1956, by judgment that sentence of death be recorded. He has appealed from these convictions and sentences by leave granted under s. 24 of the *Judiciary Ordinance* 1921-1938 of the Territory. The grounds of appeal are misreception of self-incriminating statements made by the prisoner to the police and insufficiency of proof of guilt.

There was strong circumstantial evidence that Adela Woo and Leo Wattemena were murdered on a golf links at Rabaul in the early hours of Sunday, 20th May 1956. The girl was dead when her body was found at about 6 o'clock that morning. The man was unconscious when he was found. He did not regain consciousness and he died on 23rd May 1956. The proof that the prisoner murdered Adela Woo and Leo Wattemena rested entirely upon admissions and confessions which the prisoner made before the police. On 21st May 1956 he was questioned by the police as to his movements after both deceased left him on the previous Saturday night. He orally confessed this : " I followed Leo and the girl out to the green and when I saw them lying on the ground I went mad and hit them ". Then he wrote a narrative of the events prior to their leaving him on that Saturday night. This accords with the evidence of those events. The written statement concludes with this confession : " . . . so Tom and Jack went to the club and Leo and his girl frind so I folled him they went to the green and I went up and flag Leo because I was out my mind. I hit him with an iron pag I found in the grass. was the girl a start to cry out so I hait her to and they bought her on the ground so I took the girl and bery half of her I cared Leo into the busses and I trod the pag away I went home to bed ". According to the evidence of the police he made another oral confession on the same day at the golf links. That confession was : " I saw him lying on top of her and I hit him. The girl cried out and I hit her." These are clear confessions of guilt. They fit exactly the circumstantial evidence of the manner in which the murders were committed and the bodies disposed of. This evidence is summed up by the Chief Justice and I do not repeat it. The murdered man had a deep wound on the back of the head and the girl a fracture of the skull cap. These injuries were proved to be fatal by the evidence of the doctor who made the post-mortem

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examinations. There were other injuries on each body: the man was more extensively injured than the girl.

The police gave evidence that the prisoner admitted that he hit both deceased with an iron ash-scraper that they produced. The doctor who did the post-mortem examinations was of opinion that the fracture of the girl's skull could have been caused by the ring-shaped end of this implement and he demonstrated this possibility by putting that end on the girl's skull cap, which was an exhibit in the case. The doctor was also of opinion that a circular wound on a cheek bone of the murdered man could have been caused by that end of the implement, and the penetrating wound at the back of his head by the other end, which had a shape like the capital letter " U ". However, it appears in the medical and pathological evidence, called by the prosecution, that this implement had been carefully examined for signs of blood and human tissue but none was found. It also appears that such signs are extremely difficult to remove entirely, but the possibility of removing them with soil was not entirely eliminated by the evidence. The Chief Justice was satisfied that the deceased were hit with some weapon but he was not satisfied that it was the ash-scraper. It is clear from the evidence that both of them were hit on the head by some weapon.

The Chief Justice found that the prisoner freely and voluntarily made confessions before the police that he was guilty of the crimes charged against him and that these confessions were not unfairly or improperly obtained from him.

The prisoner's defence was an alibi; also, that the confessions proved by the police were untrue. The decisive issue raised by his alibi was whether he went out of doors, after both deceased left him on the Saturday night, before seven o'clock on Sunday morning. There is no affirmative evidence of the alibi other than the prisoner's. His evidence on that issue is plainly contradicted by his confessions of guilt.

The prosecution adduced evidence from two witnesses that the prisoner was out of doors during that time. But for reasons touching the credibility of these witnesses, the Chief Justice decided that it would not be safe to infer from the evidence of either of them on that issue that the prisoner was out of doors at the material time. This view was not questioned by the prosecution on this appeal. However, the Chief Justice accepted the evidence of one of these witnesses, a native woman, that on the same night—" in the big night ", as she said—the deceased man and girl were seen making their way to the golf links.

The Chief Justice, of course, applied the criminal standard of proof in arriving at his findings. It is clear that his Honour found the prisoner committed the crimes for which he was indicted solely upon his incriminating statements. Some observations made by the Chief Justice should be quoted in order to show how carefully his Honour used that evidence. He said: "It is not an uncommon occurrence for an accused to deny or repudiate at the trial, confessional statements allegedly made by him before the trial. When that happens it is the duty of the jury to examine the repudiation and the alleged confessional statements with the greatest care and to decide whether or not, in view of the repudiation, it is satisfied that those confessional statements were voluntarily made and were true. The jury must use its experience and common sense about this. If it has any reasonable doubt about the voluntariness and the genuineness of those alleged confessional statements, it should disregard them entirely." The Chief Justice himself was performing the functions of a jury.

Section 15 of the *Evidence Ordinance* 1934-1951 deals with confessions induced by threats or promises. The Chief Justice decided that s. 16 of the *Laws Repeal and Adopting Ordinance* also introduced into the Territory the rules of the common law on the admissibility of statements by accused persons. If s. 16 of that Ordinance did this, it was because the common law of England, as at 9th May 1921, on that subject, was applicable to the circumstances of the Territory and was not repugnant to or inconsistent with the statutory provisions to which s. 16 refers. For the purpose of considering s. 16 it is of interest to notice some observations which Lord *Sumner* made in *Ibrahim* v. *The King* (1). Whether the latter section introduced the rules of the common law on statements by accused persons, and whether those rules and s. 15 of the *Evidence Ordinance* would co-exist, are questions now not necessary to resolve, because in my opinion nothing warrants disturbing the carefully considered finding of the Chief Justice that the prosecution discharged the onus of proving affirmatively that all the admissions and confessions of the prisoner were freely and voluntarily made by him. It was manifestly to the advantage of the prisoner that the admissibility of all of those statements was tested at the trial not only under s. 15 of the *Evidence Ordinance* but also under the rules of common law.

The Chief Justice decided that the English "*Judges' Rules*" on police interrogation are not part of the law of the Territory. I agree with that decision. He also decided that in the Territory a criminal

(1) (1914) A.C. 599, at p. 609.

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court has a discretionary power to exclude statements which even though admissible by law, are not fairly and properly obtained from the accused. His Honour found that all the statements of the prisoner which were put in evidence against him had been fairly and properly obtained from him by the police. I agree with that finding.

The source of such a discretionary power in a New Guinea court may need examination. See the statement in *Cornelius* v. *The King* (1), referring to " The Dominions ", and in *McDermott* v. *The King* (2), referring to the Australian States. Does this discretion exist in New Guinea ? Does it exist by virtue of s. 16 of the *Laws Repeal and Adopting Ordinance* ? I do not now venture upon these inquiries because I am not able to find any reason for disturbing the careful finding of the Chief Justice that the confessional statements on which the prisoner was found guilty were fairly and properly obtained by the police.

The three police officers concerned in the interrogation of the prisoner gave evidence. They were Inspector Carroll, Sub-Inspector Young and Sub-Inspector Vonhoff. The prisoner gave evidence regarding his interrogation. The Chief Justice carefully summed up all this evidence. The evidence of the prisoner differs considerably from that of the police. He made no charges of violence against any of the police. His only specific charge was against Vonhoff who, he said, used words which, if used, would have been calculated to compel him to admit his guilt. Vonhoff denied that he said any such things to the prisoner. The Chief Justice accepted his denial. If the prisoner's version of his interrogation were accepted it would have been necessary to consider whether the police exceeded their rights of interrogation. But the Chief Justice did not accept his version. His Honour said : " I think that the police witnesses Carroll, Young and Vonhoff gave their evidence straightforwardly and fairly, and it must be admitted that none of their evidence was shaken in the slightest in cross-examination. The evidence of each police witness was fully corroborated by other evidence. The police evidence was consistent, plausible, and gave a rational account of events : it ' made sense ' whereas accused's account so often did not. Carroll frankly stated that, after he had asked the accused whether he had been threatened and the accused had replied ' No ' and after he had asked accused whether he had made a statement of his own free will and accused had said ' Yes ', he asked the accused to add words to that effect to his written statement. That incident showed a naivete and lack of acumen

(1) (1936) 55 C.L.R. 235, at p. 247. (2) (1948) 76 C.L.R. 501, at p. 514.

on Carroll's part but not, I find, anything sinister in this particular instance. The accused in the witness box struck me as being confident, self-possessed and not unintelligent; but, making every allowance for his being of mixed blood and of limited education, I found his evidence at times impossible to accept as truthful. Some of his denials of evidence given by the police witnesses were so extravagant as to surpass belief: e.g., I do not believe his statement that at no time did any police officer caution him." I cannot find any ground upon which to disagree with these conclusions of the Chief Justice. As these conclusions cannot be disturbed the question whether the self-incriminating statements of the prisoner were free and voluntary and whether those statements were fairly and properly obtained must now depend upon the police evidence which the Chief Justice accepted.

The evidence of the police leading up to the first oral confession and the written confession is, in substance, as follows. The prisoner consented to come to the police station with Young and Vonhoff, upon being asked by one of them to do so. They arrived there after 10 o'clock on Monday morning, 21st May 1956 and the prisoner was given a seat in the investigation room to wait for Inspector Carroll. He arrived at 11 o'clock and asked the prisoner about his movements on the previous Saturday night after both deceased left the house where the prisoner was lodging. He said that he went to bed and did not see them afterwards. Carroll went out to make inquiries and returned at 1 p.m. The prisoner stayed in the investigation room in the meantime. He declined Carroll's invitation to have some food. Carroll then asked him about eight more questions. In the course of that part of the interrogation the prisoner said he got up about 2 o'clock on the Sunday morning of the tragedy and woke up a man named Yamashita and asked him to come for a walk. Then, Carroll again left the police station, leaving the prisoner seated in the investigation room. Carroll went to the house where the prisoner lived and took possession of his clothes. He returned to the police station at about 3.30 p.m. on the Monday, 21st May. Upon resuming the questioning, Carroll handed the prisoner a letter from Adela Woo to him. Speaking of this letter, the Chief Justice said: "It is not a love letter but a friendly newsy teenager's letter in which Leo was mentioned just as much as the accused". That is a justifiable observation. When shown this letter the prisoner said that Adela Woo and he were "good friends". Carroll then informed the prisoner that he had ascertained from inquiries that the prisoner did not visit Yamashita as he had said. Carroll then asked him "What did you

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do after you left Aldens ? " (This was the house in which the prisoner lived.) The prisoner then made the first confession which is quoted above, and immediately broke down and sobbed bitterly. According to the evidence of Sub-Inspector Young, when the prisoner composed himself this is what took place : Young said to him " ' I want you to know that you will be charged with the murder of Adela Woo. Is that clear ? ' Accused replied :—' Yes.' Young said :—' Would you like to tell me about this trouble ? ' Accused said :—' Yes.' Young said :—' I want you to know that you need not tell me unless you want to, because whatever you say will be given in evidence in Court. Do you understand ? ' Accused said :—' Yes.' Young asked the accused :—' Would you like to write down what happened ? ' Accused replied :—' Yes.' Young then gave the accused pen and paper and said to him—' Before you start writing, I want you to know that whatever you write down about this trouble will be kept by me and will be produced in evidence in Court. It is a matter for yourself and it makes no difference to me whether you make a statement or not. Do you still wish to make a written statement ? ' Accused said :— ' Yes '." Then, according to the evidence of the police he wrote a statement " which took him about an hour and ten minutes to write as, after writing a few words, he would start sobbing again and was upset " ; and when the accused finished writing the statement, Carroll read it to him " slowly and clearly ". The evidence further proves that Carroll says he asked the accused if the statement was correct and the accused said it was ; that Carroll said to the accused :—" ' This you make of your own free will ? '—to which the accused replied :—' Yes ; ' and Carroll then asked him :—' Has any police officer threatened you or assaulted you in any way ? ' to which the accused said :—' No.' Carroll then said to the accused :—' Will you put that on the statement ? ' whereupon the accused wrote at the end of his statement these words :—' I have made this statement of my own free will. It is true no-one has forced me to make this statement.' "

I am of the opinion that the police did not exceed their rights in questioning the prisoner : *Hough* v. *Ah Sam* (1) ; *R.* v. *Lee* (2) adopting a statement in *R.* v. *Jeffries* (3). I am also of the opinion that the manner of interrogation was not in itself calculated to deprive the statements made by the prisoner of " voluntariness " : *Cornelius* v. *The King* (4).

(1) (1912) 15 C.L.R. 452.
(2) (1950) 82 C.L.R. 133, at pp. 154, 155.
(3) (1946) 47 S.R. (N.S.W.) 284, at pp. 311-314.
(4) (1936) 55 C.L.R., at pp. 251, 252.

The prisoner was not brought under arrest to the police station but it is safe to assume that he would not have been allowed to leave, certainly not after Carroll returned at 3.30 p.m. But if his position was that he was in custody, that fact in itself was not sufficient to render the statements which he made inadmissible in evidence: *R.* v. *Best* (1).

Upon the evidence of the police, the prisoner was not cautioned until 3.30 p.m. He was cautioned immediately after he made the first oral confession of guilt and before he made the written one. In *R.* v. *Voisin* (2) the Court said: "The question as to whether a person has been duly cautioned before the statement was made is one of the circumstances that must be taken into consideration, but this is a circumstance upon which the judge should exercise his discretion. It cannot be said as a matter of law that the absence of a caution makes the statement inadmissible; it may tend to show that the person was not upon his guard as to the importance of what he was saying or as to its bearing upon some charge of which he has not been informed" (3): See also *R.* v. *Lee* (4). Reading the questions and answers up to the time the prisoner made the first oral admission, it seems from the evidence of the interrogation that the prisoner was on his guard and appreciated the importance of the question in reply to which he made the first oral confession of guilt. The question was "What did you do when you got up?" I think that a passage in the judgment of the present Chief Justice of this Court in *McDermott* v. *The King* (5) is fairly apt to describe the position in the present case. His Honour said this: "But the facts of the present case do not bring it within any rule established in Australia which requires the rejection of the confessional statements complained of. The fact that the police intended to arrest the prisoner, that they virtually held him in custody and delayed for an hour making the charge, and that they asked him questions are not in themselves enough to require that the statements the prisoner made to them should be excluded. The character of the questions, the absence of any insistence or pressure in putting them, the fact that no questions were put directed to breaking down or destroying the prisoner's answers or statements and the fact that there was no attempt to entrap, mislead or persuade him into answering the questions, still less into answering them in any particular way, these are all matters which negative such a degree of impropriety as to require the exclusion of the testimony as to the

(1) (1909) 1 K.B. 692.
(2) (1918) 1 K.B. 531.
(3) (1918) 1 K.B., at p. 538.
(4) (1950) 82 C.L.R., at p. 158.
(5) (1948) 76 C.L.R. 501.

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prisoner's admissions" (1). These observations are applicable to the interrogation of the prisoner in the present case.

The prisoner said that he made the self-incriminating statements at the interrogation on the Monday at the police station because he thought the police wanted him to say those things and because he was frightened. It had been urged, after the police evidence was given upon the *voir dire*, that the prisoner was "impliedly" threatened that he would not be freed from detention until he had confessed. The police evidence proved affirmatively that no threat or promise of any kind was made to the prisoner. It was said in argument that it would be enough to overbear the will of the prisoner that he was detained for questioning and anything he admitted could not be relied upon as having been said freely and voluntarily. This submission was based upon inferences to be drawn from the fact that the prisoner is a young man of mixed blood and of poor education. In my opinion, this submission contains nothing to commend it to the Court in this case. The learned Chief Justice who saw the prisoner examined and cross-examined was in the best position to assess whether the prisoner was as weak and timorous as the submission implies. The assessment of the intelligence and personality of the prisoner which the Chief Justice made tends strongly to an opposite conclusion. It appears from the report of the argument in *Hough* v. *Ah Sam* (2) that a somewhat similar contention was made there. *Barton* J. said in that case ". . . but any apprehension of that kind is a fear common to all classes of society, and is not such a fear as is contemplated in the rule of law which renders incriminating statements by prisoners inadmissible where they are made under the influence of fear" (3). I think that it is also necessary in view of the argument to cite a statement by Lord *Reading* in the case of *Colpus* (4): "A further argument in this case is based on the proposition laid down in *Thompson*, because it is said that these soldiers were brought before a tribunal consisting of men in authority, and may be said to have been induced by fear to make the statements. If that in itself is an inducement it is difficult to see how any statement made to a person in authority could be admissible" (5).

In *Cornelius* v. *The King* (6) there was quoted with approval a statement by *Darling* J. in *R.* v. *Cook* (7): "It would be a lamentable thing if the police were not allowed to make inquiries, and if statements made by prisoners were excluded because of a shadowy

(1) (1948) 76 C.L.R., at p. 515.
(2) (1912) 15 C.L.R. 452.
(3) (1912) 15 C.L.R., at p. 457.
(4) (1917) 12 Cr. App. R. 193.
(5) (1917) 12 Cr. App. R., at p. 201.
(6) (1936) 55 C.L.R., at pp. 251, 252.
(7) (1918) 34 T.L.R. 515.

notion that if the prisoners were left to themselves they would not have made them" (1). We added this: "A statement need not be spontaneous or volunteered in order to be voluntary" (2).

The learned trial judge in the present case threw upon the prosecution the onus of proving that the prisoner freely and voluntarily made the incriminating admissions and the confessions of guilt, and that they were not induced by any threat or promise, express or implied, made by any of the police. His Honour was satisfied that the prosecution discharged that onus. I can see no reason for doubting that this conclusion was right.

The next question is whether, even though the statements in question were admissible in law, the Chief Justice ought to have excluded them in exercise of a discretionary power. For this purpose, as stated above, I assumed there is such a discretion under the law of the Territory. The Chief Justice made an explicit finding that there was nothing unfair or improper in the methods employed by the police. As I have said above, I agree with that finding. It is necessary to attend to what was said by this Court in *R.* v. *Lee* (3). The observations are on the application of the Victorian rules on police interrogation. They correspond to the English *Judges' Rules* on the same matter. I do not think that the Chief Justice erred by not excluding the statements in question from evidence. As has been stated he did not apply the English Rules as part of the law of the Territory.

I have read many times the examination and cross-examination of the prisoner upon the admissions and written confession he made in the police station, and on the replies he gave to questions on those statements which the police put to him at the sixth green of the golf links. The Chief Justice has summed up the evidence given by the prisoner upon such examination and cross-examination. It is too long to quote. The prisoner denied upon oath that he did the criminal acts which he confessed having done. He gave in evidence reasons which have been found to be groundless for confessing those acts. The evidence proves that he was at liberty to give whatever answers he pleased to the police. Since the murders were committed he had no opportunity of visiting the sixth green, yet he wrote out a confession remarkably consistent with the most likely hypothesis which could be put upon the circumstantial evidence of what was the sequence of events on the green from the time the murdered man and girl were attacked by their assailant until he disposed of their bodies. The prisoner was taken by the

(1) (1918) 34 T.L.R., at p. 516.
(2) (1936) 55 C.L.R., at pp. 251, 252.
(3) (1950) 82 C.L.R., at pp. 154-159.

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police to the sixth green immediately after he wrote out the confession. There, in answer to questions by the police, he showed them where everything he confessed was done, except where he threw the weapon. His written confession is a reconstruction either of what he did or of what he was told. If the latter, he thereby accused himself of playing the part of the intruder who came upon the dead boy and girl and murdered them. It was not suggested that he got the story from that source. Gossip was suggested as the probable source of the prisoner's knowledge of the things to which he confessed. There was evidence that on the Sunday news was brought to the house where the prisoner lived to the effect that the bodies of the murdered man and girl had been found in the bushes on the golf course and that the girl was dead and the man was brought to the hospital. But there is no further proof regarding the details of the gossip, or of what the prisoner was told. The prisoner swore that Inspector Carroll, in the police station on Monday morning, showed him a photograph of the girl's body lying in the bushes. If he saw this he would have learned that it was half-buried. Inspector Carroll denies that he showed such a photograph to the prisoner. This issue was contested before the learned Chief Justice. His Honour believed Carroll and disbelieved the prisoner. I do not think there is any ground for doubting the correctness of his Honour's finding that the prisoner did not see a photograph of the murdered girl before he wrote the confession. If he had seen the photograph he could not have ascertained from it all the things he confessed in the police station and subsequently admitted at the sixth green. The result is that there is no alternative but to find that the reason why the prisoner's confession corresponds so remarkably with the circumstantial evidence is that he confessed things that he himself did. The learned Chief Justice made these observations: "I have listened carefully to the explanations given by the accused as to why his statements of Monday, 21st May, happened to fit in with that circumstantial evidence so closely and I particularly observed accused's demeanour when giving those explanations in his evidence. They did not, in my opinion, ring true. The tempo of his evidence slowed appreciably, with frequent pauses, whenever he was on controversial ground and giving an account that contradicted that which had been given by the police witnesses. He could find no answer, for quite some minutes, to Mr. *Mallon's* question as to why he should have thought, on the Monday afternoon and before he had been near or been taken that day to the sixth green, that Leo and Adela had both been attacked at one and the same spot; when, at length, the accused did reply, his answers (already quoted by me)

were unconvincing to a degree. He was not, in my opinion, a reliable or trustworthy witness." I think that these observations of the Chief Justice are warranted by the evidence.

In my opinion all the matters which have been mentioned in considering the issue whether the confessions are true are strong grounds for holding that they are true.

Two matters are stressed for the appellant as raising doubts as to the truth of the confessions. First, that the scientific tests on the ash-scraper raise a substantial doubt whether the prisoner's statement, made on 22nd May, that he used that implement to attack both deceased was correct. This matter does not support any reason given by the prisoner for making false confessions of guilt. I do not see how it reduces the force of the reasons which have been given for holding that these confessions are in fact true. The second matter is the absence of bloodstains connecting the prisoner with the crimes. If there was evidence of bloodstains this would be no doubt confirmatory of the prisoner's guilt. But such evidence is not a necessary ingredient in the proof of the crimes. The rejection of the reasons given by the prisoner for making these confessions must increase very much their probative force. It is not reasonable to assume that it was inevitable that evidence of bloodstains connecting the prisoner with the murders would have been available or forthcoming, if he had committed them. The fact that the police could find no such evidence supplies no hypothesis by which the making of the confessions may be reasonably explained consistently with innocence.

Upon the whole of the evidence, I do not entertain any real doubt that the confessions of guilt which the prisoner made before the police are true. In my opinion they should in this case be considered to be clear and satisfactory proofs of the prisoner's guilt. *McKay* v. *The King* (1); *Best* on *Evidence*, 12th ed. (1922), p. 494, par. 577.

The learned Chief Justice tried the case with meticulous care and scrupulous fairness. In my opinion the verdict of guilty which he found on each count of the indictment is correct and the appeal should be dismissed.

WILLIAMS J. This is an appeal by one Frederick Phillip Smith who was convicted by the Supreme Court of the Territory of Papua and New Guinea of the wilful murders of Adela Woo on 20th May 1956 and of Leo Wattemena on 23rd May 1956. It is not disputed that both these persons were unlawfully killed by injuries they received when they were assaulted on or near to the sixth green of

(1) (1935) 54 C.L.R. 1.

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the golf course at Rabaul at about 2 a.m. on Sunday 20th May 1956. Adela Woo died immediately but Leo Wattemena lingered on unconscious until the following Wednesday. It is not disputed that the evidence proves that both these persons were murdered. The question is whether there is evidence which proves beyond reasonable doubt that these persons were there attacked by the accused. The cases were tried together by the learned Chief Justice of the Supreme Court without a jury. The Crown depended almost entirely on the confessions of the accused, partly oral and partly in writing. The grounds of appeal may be said broadly to be that these confessions should not have been admitted in evidence against the accused either because they were not voluntary or alternatively because they were obtained by the police by unfair or improper means, and that even if they were admissible the court should not have been satisfied beyond reasonable doubt from these confessions alone in the absence of any corroborative evidence that the accused had committed the crimes. It is not necessary to set out the evidence which is very voluminous in great detail. This has been done in the reasons of the learned Chief Justice for admitting the confessions and subsequently in the summing-up of his reasons for convicting the accused. His Honour was placed in a somewhat difficult position in having to sustain the dual functions of judge and jury in a criminal cause but he was quite right, in my opinion, if I may say so with respect, in deciding in the first instance on a *voir dire* as a judge the question whether the confessions were admissible in evidence and subsequently deciding as a jury the weight that should be given to them in the light of the whole of the evidence, because it was only after the question of admissibility had been held against the accused on the *voir dire* that the accused could be called upon to decide whether to give evidence or not and if he did thereby to subject himself to the risk of cross-examination.

At the time of the murders the accused, who was then nineteen years and was a half-caste of very limited experience and education, was living at the home of a Mrs. Alden sometimes called " Mumma Alden ", sometimes " Palili " and sometimes " Rodi " in the evidence. She was apparently a widow with three sons, the eldest, Tommy, about the same age as the accused, the second slightly younger and the third quite young and she was also the mother of three young daughters. There were only two bedrooms one at each end of the house. One of these was occupied by her and her eldest and youngest sons and her three daughters. The second son usually slept just outside the door of this bedroom in the

living room which was situated between the two bedrooms, although on the night in question he may also have slept in the bedroom. The other bedroom was occupied by the accused and a brother and his wife but the brother and his wife were away on the night in question. The murdered pair were friends of the accused. Leo Wattemena was an old friend. They went to school together. Adela whilst friendly with him was more friendly with Leo. The accused had never openly shown any jealousy of Adela's leaning to Leo. They were all three at the home of Mumma Alden on the Saturday night together with Mumma Alden herself, her eldest son Tommy and one or two friends. There were some comings and goings between there and the Kombui Club and on one occasion the accused at the request of Mumma Alden went to the home of one Georgina to obtain some betel nut from Maria who worked for her and lived there. But Maria did not answer when he knocked and he did not obtain any betel nut. The accused also went to the house of one Yamashita where a friend of his, Igasaki, lived and suggested that they should go for a walk but Igasaki refused. About midnight Leo Wattemena and Adela Woo left Mumma Alden's together and from there must have eventually proceeded to the sixth green of the golf course. The party had been a cheerful one, there had been music, some beer had been drunk but not to excess, and everyone appears to have parted the best of friends. The accused said that he then went to bed and slept until he was awakened by Igasaki before 6 o'clock on the following morning. Igasaki confirms that the accused was in bed at this time and was awakened by him. He had breakfast at the Alden house and appeared to be quite normal to Igasaki, to the members of the Alden household and to other people he met on the Sunday. In the meantime Leo Wattemena and the body of Adela Woo had been discovered close to the sixth green at about 7.15 a.m. on the Sunday by a Mr. C. H. Smith who tried to telephone the police from the club house but the telephone was out of order so he drove into Rabaul and saw Sub-Inspector Vonhoff. This sub-inspector and Superintendent Rackemann went to the scene. They found the body of Adela Woo buried half up to the knees in sand in a ditch at the foot of a paw-paw tree one hundred and forty-seven feet from the sixth green and Leo Wattemena alive but unconscious in the bushes sixty-two feet from the green. He was taken to hospital in an ambulance by Vonhoff but died three days later without recovering consciousness.

The accused went to the home of Yamashita early on the morning of Monday 21st May. About 10.15 a.m., whilst he was still there, Vonhoff and another sub-inspector, Young, arrived in a police

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utility. Young told the accused that Inspector Carroll would like to see him at the police station and asked the accused if he would go with them in the utility. The accused went with them to the police station. He was taken into the investigation room, an inner room in the police station with what is called the muster room between that room and the street. According to the police, Carroll was not there when he arrived and he was asked to sit down and wait. Carroll said that he spoke to the accused at about 11.10 a.m. Young was in the room with him. Carroll told the accused that he was inquiring into the death of Adela Woo and asked him what time Leo and Adela had left the Aldens' place on the Saturday night. The accused said about 10.30. Carroll asked him what he had done after that and he said that he went to bed and did not see them again that night. Carroll said that he then left the police station to make some further investigations and returned at 1 p.m. When he left the accused was sitting in a chair in the investigation room, and when he returned the accused was still sitting there. When Carroll returned at 1 p.m. he and Vonhoff went into the investigation room and, according to their evidence, the accused then admitted that he did not stay in bed on the Saturday night but feeling worried about Leo got up and decided to follow Leo and Adela. He said he went to Yamashita's house about 2 a.m., woke him up and asked him to come for a walk. Carroll again left the police station and made further inquiries. He then went to the Alden home and took possession of all the accused's belongings including a suitcase and clothes. He returned to the police station at about 3.30 p.m. and in the presence of Young again questioned the accused in the investigation room. He had found a letter from Adela Woo amongst the accused's belongings written from Kavieng to the accused C/o Mr. Leo Wattemena dated 28th December 1955. This letter is in evidence. It appears to be just a friendly letter that a girl of Adela's type would write to a boy friend but Carroll made a lot of it and suggested to the accused that the letter showed that they were very friendly. No doubt he had in mind jealousy as a motive for the crimes. The accused admitted that they were friends and that, on the evidence, is all they were. Carroll asked the accused what clothes he was wearing on the Saturday night and the accused said those he had on. They consisted of a khaki shirt, khaki trousers and sandshoes. He had worn the shirt and trousers in bed that night, he did not wear pyjamas. The sandshoes were the only shoes he had. Carroll said to the accused that from inquiries he had made it was shown that he did not go to Yamashita's house or wake him on the Saturday night. This was true as to 2 a.m. but

the accused had been to the house earlier and had asked Igasaki to go for a walk. But this was when Leo and Adela were still at the Aldens'. At that stage the accused, according to Carroll and Young, in answer to the question, where did you go when you got up that night, said that he followed Leo and Adela to the green and when he saw them lying on the ground he went mad and hit them. The accused then broke down and sobbed bitterly. After fifteen minutes, when the accused had composed himself, Young said " I want you to know that you will be charged with the murder of Adela Woo. Is that clear ? " The accused said " Yes ". Young then said " Would you like to tell me about this trouble ? " Accused said " Yes ". Young said " I want you to know that you need not tell me unless you want to, because everything you tell me about this trouble will be given in evidence in court. Do you understand ?" Accused said " Yes ". Young said " If you like I'll give you pen and paper and you can write down what happened. Would you like to make a written statement ? " Accused said " Yes ". Young then gave him pen and paper and said to him " Before you start writing I want you to know that whatever you write down will be kept by me and produced in evidence in court. It is a matter for yourself and it makes no difference to me whether you make a written statement or not. Do you still wish to make a written statement ? " Accused said " Yes ". The accused then, according to the police, wrote a statement which took him about one hour and ten minutes to compose because he was very upset and was crying. This statement is in the following terms : " They was a part in the club on satday night and tom told me to go up in the part but I diden like to go so he want in the Club and baught two bottle of beer and we were drinking together so Leo told Tom if he could get a ukleale and they will go and play in the Club so they did go when they went to the Club so I had my bauth and I folled them and I mate then and they ask me if I like to join them I sad no so I went to Mr. Joe Talagus and went to the leverate and I went back to home and was the bought sitll sitting down, so Mrs. Alden me to buy some bealnut for her so I went over and ask to mary at Miss Gerogena house the mary diden answer me so I went back and Tom Leo and Jack come back with two bottle of beer so we were drinking again so Tom and Jack went to the club and Leo and his girl frind so I folled him they went to the green and I went up and flag Leo because I was out my mind. I hit him with an iron pag I found in the grass. was the girl a start to cry out so I hait her to and they bought her on the ground so I took the girl and bery half of her I cared Leo into the busses and I trod the pag away I went home to

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bed. I have made this statement of my own free will. it is true no one has forced to make this statement." Young said that when the accused had finished the statement he heard Inspector Carroll read the statement to him slowly and clearly. Carroll then said " Have you made this statement of your own free will ? " Accused said " Yes ". Carroll said " Has any police officer threatened you or assaulted you in any way ? " Accused said " No ". Carroll said " Will you write that down at the foot of the statement ? " Accused then wrote something at the bottom of the statement and signed his name. Inspector Carroll then signed his name at the foot of the statement. He then gave the accused a change of clothes and took possession of those he was wearing. Carroll's evidence is to the same effect. The accused said that Carroll was not present at the 3.30 p.m. interview but that Young and Vonhoff were and that it was Vonhoff who suggested and dictated the last two lines of the statement. They certainly have every appearance of having been dictated to him by the police. According to Carroll he was present in the investigation room all the time. If this is true it is strange that Young should have informed the accused that he would be charged with the murder of Adela Woo, almost as strange as the suggestion that the accused was the author of these last two lines. Carroll was the senior officer and I should have thought that it would have been Carroll's duty to inform the accused that he would be charged with the murder of Adela Woo.

At about 5.40 that afternoon the accused was taken by Carroll and Vonhoff in a utility to the scene of the murders, Young also proceeding there on a motor bicycle. The accused was asked to point out where he saw Leo and Adela. He pointed to the spot on the sixth green exactly where the pools of blood had been. He was also asked to point out where he had placed Adela's body and Leo and pointed out the correct places. Carroll asked the accused " Which way was Adela's head lying : that way ? " (indicating to the right) " or that way ? " (indicating to the left). The accused pointed to the right which was identical with the way her body was lying when it was found. The accused was asked " Can you show us where the iron peg is ? " He said " I threw it away in the grass ". Carroll said " Show us where ". The accused said " I don't know. I forget ". Carroll and Vonhoff then returned to the police station with the accused and at approximately 6 p.m. Carroll said to him " I am charging you with the wilful murder of Adela Woo. Do you understand ? " He said " Yes ". He was then placed in the cells at the police station and on Tuesday morning, the 22nd, was brought before the District

Court and remanded in custody. At about 3.30 p.m. that afternoon Carroll and Vonhoff took the accused to the golf course again to near the sixth green. Carroll again cautioned him and said to him " Can you show us where the iron peg is ? " He pointed towards a crater near the club house but when they walked to the crater said it was not there. Superintendent Rackemann had arrived and was also near the green. Carroll then left the accused with Rackemann and Vonhoff who had a utility and apparently soon after returned to the police station. Rackemann and Vonhoff took the accused to Yamashita's house. Vonhoff said they had intended to return to the police station but that the accused, when he was in the utility, said to Rackemann " I think I took that piece of iron back to the house ", and Vonhoff said " We will go to the house ". They then drove to Yamashita's house and searched it and its native quarters but found nothing. But while they were there the native police driver Rupen found a scraper lying outside the house in the kunai grass. According to Vonhoff the accused looked at the scraper, drew his body back, shuddered, shivered and shook, dropped his eyes and said " This is the piece of iron I used ". Rupen said the accused looked as though he was about to cry. Curiously enough in the court below Rupen said nothing about the accused looking as if he might be about to cry because, so he said, he forgot that part until he was leaving the lower court. The accused said " I took it from the house here and I brought it back again ". He got out of the utility, walked a few yards and said " I threw it in there " and he pointed out the very spot where Rupen had told Vonhoff he had found the scraper. According to Vonhoff Superintendent Rackemann was present during this conversation but he did not give evidence. Vonhoff retained the scraper and they all returned to the police station. At the police station at about 5.30 p.m. on the same day Carroll went to the cells, showed the scraper to the accused and said to him " Is that what you used ? " and he said " Yes ". Leo Wattemena died at about 10 a.m. on the following Wednesday. Carroll and Vonhoff took the accused to the morgue of the native hospital where his body was lying. Carroll cautioned the accused. He was shown Leo's body, said that he knew who it was, and told the police that the last time he saw Leo was on the golf course.

The police certainly seem to have done a thorough job in obtaining incriminating confessions from the accused. But in other respects they do not seem to have achieved much. According to Vonhoff there were shoe marks on the sixth green when he first got there with Rackemann on the Sunday morning. He accompanied the

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ambulance to the hospital but apparently Rackemann stayed behind. No attempt seems to have been made to preserve these foot marks. According to Vonhoff so many people trampled on the green that they became indistinguishable. If the confession of the accused is true he had smashed in the skulls of Leo and Adela with an iron peg. Both victims had bled profusely on the green. The accused had partly dragged and partly carried Adela's body to the paw-paw tree and half buried it there. He had dragged Leo into the bush. He had handled their clothes. The Crown case is that the weapon he used to smash their skulls was the iron scraper. No foot marks of the accused or imprints of his sandshoes were identified on the green or its surroundings. No fingerprints of the accused were identified if any attempt was ever made to take fingerprints. In spite of a careful analysis of the clothes and shoes the accused was wearing at the time of the murders no bloodstains whatever were found on them. The accused seems to have conducted himself in a perfectly normal manner on the Sunday and up till the time when he was taken to the police station. He was apparently taken there because one Matthias had told the police at about 9 a.m. on the Monday morning that he (and no doubt he added his wife) had seen the accused near the scene of the murders when they were returning home in their utility at about 2 a.m. on the Sunday morning. Maria, the maid of Georgina, also told the police, but it doesn't appear when, that she had seen the accused and also Leo and Adela about that time outside Georgina's house " in the big night " as she called it.

The police therefore had information that the accused had been seen in the vicinity of the golf course by three people. It is difficult to believe that the police did not, as the accused asserted they did, tell him either when he was first taken to the police station or at the latest at the beginning of the 1 p.m. interview that there were three witnesses who saw him pass Georgina's house that night. Georgina's house was the closest of the houses that have been mentioned to the golf course. The accused could hardly have invented this statement and it is quite apparent that the police thought they had three such witnesses, Mr. and Mrs. Matthias and Maria, although Mrs. Matthias subsequently denied that she had seen the accused. Further it is difficult to believe that Carroll did not at the 11 a.m. or the 1 p.m. interview show the accused a photograph of the body of Adela lying at the foot of the paw-paw tree or at least leave the photograph, by design or accident, on his desk where the accused could see it when he was alone in the investigation

room. Counsel for the accused was able in the lower court on instructions from his client to pick out this photograph from a number of others as the one that had been shown to the accused and to know that the one that he suggested had been shown to the accused was the photograph of which the exhibit is an enlargement. His Honour said that he was not prepared to accept the accused's statement that Carroll showed him the photograph but should he not, with respect, have asked himself whether he was satisfied beyond reasonable doubt that Carroll did not ? Admittedly Carroll told the accused at the beginning of the 3.30 p.m. interview that the police had discovered that he had not visited Yamashita as he said at 2 a.m. on the Sunday. This statement together with the statement that he had been seen by three witnesses near Georgina's house about that time may well have led the accused to think that his position was hopeless. But he was not given a warning at the 11 a.m., the 1 p.m. or the beginning of the 3.30 p.m. interview. He was only warned after he had said that he had followed Leo and his girl out on to the green, that he had found them lying on the ground, and that he then went mad and hit them. As I have said, the accused said that when he made this admission Carroll was not in the room but Vonhoff and Young were and I must repeat that I cannot understand why, if Carroll was there, it was left to Young to inform the accused that he would be charged with the murder of Adela. There is another matter that should be referred to and that is the admission of the accused that the scraper was the weapon with which he committed the murders. According to the medical evidence, as I understand it, it was just possible the fatal blow that killed Adela could have been struck with the iron ring at the end of the handle and the fatal blow that killed Leo Wattemena with the sharp edge of the scraper but it is an implement that it would be difficult to describe as an iron peg. If it was the fatal implement, it is most improbable that it would not have had bloodstains on it but on analysis none was found. The readiness of the accused to admit that the scraper was the fatal implement, when it seems so unlikely that it was, shows how dangerous it would be to accept his confessions as true.

At the trial the case for the Crown broke down on many important aspects. His Honour was not prepared to believe the evidence of Matthias or Maria that they had seen the accused near Georgina's house. No wonder he was not because their evidence is incredible. Without analysing it, it is sufficient to say that they both suggest that the accused was at pains to let himself be seen. Then the case for the Crown that the scraper was the fatal implement also broke

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down. His Honour said that he did not think that there was evidence upon which a jury could safely find that some particular instrument was used. If his Honour was not satisfied that the accused had told the truth about the scraper this should have caused his Honour to have the gravest doubts whether he could believe that the accused was telling the truth in the rest of the confessions. This would still be the position although his Honour accepted the police evidence up to the hilt. And with respect to that evidence, there is the fact that the accused said that Vonhoff told him that he must know something and to tell the truth and if he did not he would not go home till he told the truth. It is significant that Vonhoff did not directly deny this statement. His Honour said that the defence did not give him the express opportunity of saying whether or not he had made such a remark—but that, in answer to a more general question, he had replied that he had not said more to the accused than he had given evidence of. But, with respect, it was not the duty of the defence but of the Crown to obtain an express denial of such a serious charge. This particular piece of evidence is so important that it is very unfortunate that Vonhoff did not expressly deny it if he was prepared to do so.

The first question that arises is whether his Honour was right in deciding on the *voir dire* to admit the confessions. The *Evidence Ordinance* 1934-1951, s. 15, provides that " No confession which is tendered in evidence on any criminal proceeding shall be received if it has been induced by any threat or promise by some person in authority, and every confession made after any such threat or promise shall be deemed to have been induced thereby, unless the contrary is shown ". This provision is part of the statute law of the Territory of Papua and New Guinea and if Vonhoff did tell the accused that he would not go home till he told the truth its provisions would be infringed. This would be a clear threat by a person in authority and, if it was made, it would be impossible to hold that the subsequent confessions were not induced thereby. But his Honour seems to have found, despite the fact it was not expressly denied, that it was not made. He would not accept the accused as a witness of truth and we should not disturb that finding. The provisions of the Ordinance are of course not exclusive. The confession must still be voluntary at common law. Section 16 of the *Laws Repeal and Adopting Ordinance* 1921-1939 provides that " The principles and rules of common law and equity that were in force in England on the ninth day of May, One thousand nine hundred and twenty-one, shall be in force in the Territory so far as the same are applicable to the circumstances of the Territory, and

are not repugnant to or inconsistent with the provisions of any Act, Ordinance, law, regulation, rule, order or proclamation having the force of law that is expressed to extend to or applied to or made or promulgated in the Territory". In *Ibrahim* v. *The King* (1) Lord *Sumner* delivering the judgment of the Privy Council said: "It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shewn by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord *Hale*" (2). But again the only statement in the present case that could infringe this rule would be Vonhoff's threat if it was made and, as has been said, his Honour's finding that it was not should be accepted.

The crucial questions that arise are whether the confessions should not have been admitted in evidence because they were obtained by unfair or improper means and, even if they were admissible, what is really in essence the same question, whether they are in all the circumstances sufficient, in the absence of any corroborative evidence, to satisfy a tribunal of fact beyond reasonable doubt of the guilt of the accused. The rule that a court is justified in excluding a confession where it is obtained by unfair or improper means is of comparatively modern growth. It is traced up till 1914 by Lord *Sumner* in *Ibrahim* v. *The King* (3). His Lordship described this ground as follows: "This ground, in so far as it is a ground at all, is a more modern one. With the growth of a police force of the modern type, the point has frequently arisen, whether, if a policeman questions a prisoner in his custody at all, the prisoner's answers are evidence against him, apart altogether from fear of prejudice or hope of advantage inspired by a person in authority" (4). Perhaps his Lordship remembered what Lord *Brampton* had once said: "After arresting, a constable should keep his mouth shut, but his ears open". Since then this ground can be said to have become firmly established. It was accepted by this Court in *McDermott* v. *The King* (5). *Dixon* J. (as he then was), said: "Here as well as in England the law may now be taken to be, apart from the effect of such special statutory provisions as s. 141 of the *Evidence Act* 1928 (Vict.), that a judge at the trial should exclude confessional statements if in all the circumstances he thinks

(1) (1914) A.C. 599.
(2) (1914) A.C., at pp. 609, 610.
(3) (1914) A.C., at pp. 610-613.
(4) (1914) A.C., at p. 610.
(5) (1948) 76 C.L.R. 501.

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that they have been improperly procured by officers of police, even although he does not consider that the strict rules of law, common law and statutory, require the rejection of the evidence " (1). The question whether a confession has been obtained by unfair or improper means almost invariably arises from the conduct of the police in questioning a person who may know something about a crime whether they suspect that person to be the author of the crime or not. This has led to the making of rules known as the *Judges' Rules* which are intended to embody directions with which the police are expected to comply if they do not wish to run the risk of having a confession which has been obtained in breach of these rules rejected. Originally these rules appear to have been four in number. They appear in the footnote to *R.* v. *Voisin* (2). They were as follows: " 1. When a police officer is endeavouring to discover the author of a crime there is no objection to his putting questions in respect thereof to any person or persons whether suspected or not from whom he thinks that useful information can be obtained. 2. Whenever a police officer has made up his mind to charge a person with a crime he should first caution such person before asking any questions or any further questions as the case may be. 3. Persons in custody should not be questioned without the usual caution being first administered. 4. If the prisoner wishes to volunteer any statement the usual caution should be administered. It is desirable that the last two words of such caution should be omitted, and that the caution should end with the words 'be given in evidence.'" In 1918 and 1930 these rules were augmented. In their present form they are printed in *Halsbury's Laws of England*, 3rd ed., vol. 10, pp. 470-472. The rule with which we are most concerned in the present case is r. 3 which provides that " Persons in custody should not be questioned without the usual caution being first administered ". But this rule does not mean of course that after persons in custody have been cautioned they can be questioned or cross-examined on the subject of the crime for which they are in custody. An example of where a conviction was quashed simply because a person who was in custody was asked a question without being cautioned will be found in *Thomas Dwyer* (3) and an example of where a conviction was quashed because, although the person in custody was cautioned, the questions were improper will be found in *Alfred Brown, John Bruce* (4). In the latter case it was said that the police had no right to suggest, by questioning a person detained in custody, that they had evidence of his guilt.

(1) (1948) 76 C.L.R., at p. 515.
(2) (1918) 1 K.B. 531, at p. 539.
(3) (1932) 23 Cr. App. R. 156.
(4) (1931) 23 Cr. App. R. 56.

The term "in custody" in the *Judges' Rules* is not a term of art. It is not confined to a person who has been arrested after a charge has been preferred against him. Any person who is taken to a police station under such circumstances that he believes that he must stay there is in the custody of the police. He may go only in response to an invitation from the police that he should do so and the police may have no power to detain him. But if the police act so as to make him think that they can detain him he is in their custody. This was decided in England in *Reg.* v. *Bass* (1) and in Scotland in *Chalmers* v. *H.M. Advocate* (2). These cases show that in the present case the appellant was in the custody of the police within the meaning of the third rule, if not from the moment he arrived at the police station at about 10.20 a.m. on the Monday at least from the moment he was left sitting there after the 11 a.m. interview when Carroll left to make further inquiries. The inference is plain enough that the police intended him to believe that he had to remain there and that they would have taken steps to prevent him leaving if he had attempted to do so. He was a man of very limited education and experience and extremely unlikely to know that he need not have gone to the police station when he was invited by two sub-inspectors to do so or need not have remained there if he had not wished to do so unless he had been charged. He was in the control of the police from the moment he entered the police station. He was not told that he could not leave because he made no attempt to do so but it is unbelievable that he would just have sat on there if he had thought he could leave. He was in an inner room with the police in the muster room between him and the street. The police already had evidence that he had been seen at the relevant time in the vicinity of the crimes. There was no necessity whatever to take him to the police station to ask him when he had last seen Leo and Adela alive and where he had spent the night. But it was necessary to take him there to have him in custody. The custody was in all essentials the same as the custody of the accused in *Reg.* v. *Bass* (1). No suggestion was ever made to him, even after Carroll had collected his belongings, that he could if he wished ask to see his father or a solicitor. He was kept quite isolated from the beginning to the end of his interrogations on the Monday. I am certainly not satisfied that the police did not tell the accused that three people had seen him near Georgina's house and that would have been a thoroughly improper statement for the police to make. It is quite clear from their own evidence that the police did tell him that they had information that he had

(1) (1953) 1 Q.B. 680.

(2) (1954) S.L.T. 177.

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not been to see Yamashita at 2 a.m. on the Sunday morning, which was in effect a statement that they did not believe him, and that also was an improper statement for the police to make. Nor am I satisfied that Carroll did not show him a photograph of Adela's body beside the paw-paw tree or at least leave the photograph where the accused would be likely to see it. The natural inference to draw from the accused's answer to Carroll's question whether Adela's head lay to the right or left is that he had seen the photograph. If his information was derived from dragging her body to the paw-paw tree, presumably by the shoulders, he would have said that it was lying to the left as in fact it was. But looking at the photograph it appeared to be lying to the right. It was contended for the Crown that the initial oral confession that he had found Leo and Adela on the green and had gone mad and killed them and his written confession giving details of the killings contain information which the accused could only have obtained by doing what he confessed to have done, but he could have derived most of this information from the talk of the town and it would have required little prompting from the police to supply the rest. Instead of asking him late on the Monday afternoon after he had been detained for seven hours to point out where Adela and Leo lay it would have been so easy for the police to have pointed out these places and asked him if they were right. It is not necessary to find that the police did any of these things. It is sufficient not to be satisfied that they did not. His Honour said: "Generally, I find, on the evidence, that the police conducted their investigations in this case with propriety". But, with all respect, how could his Honour make this affirmative finding without deciding affirmatively that the police did not inform the accused about the three witnesses, when he was apparently not prepared to go so far as to say that Carroll did not show the photograph of Adela's body to the accused, and when it is clear that the police told the accused that they had information which showed that what he had said about going to Yamashita's house was untrue? In *Reg.* v. *Bass* (1) *Byrne* J., who delivered the judgment of the Court, after pointing out, as this Court has always considered, that the *Judges' Rules* have not the force of law but are administrative directions for the guidance of the police authorities, said that a statement obtained in contravention of the rules may still be admitted in evidence provided it is voluntary but in the present case it is impossible to my mind for a court to be satisfied in the light of the circumstances that have been mentioned that the confessions of the accused were voluntary in

(1) (1953) 1 Q.B. 680.

the sense that they were quite spontaneous. On this point his readiness to admit that the scraper was the lethal weapon, when it is not proved that it was, is very illuminating. How could a court be satisfied that the rest of the confessions were true unless it was satisfied that this was the weapon. Even if the confessions were admissible, in the absence of any independent evidence of confirmatory facts which, if the statements in the confession were true, would be practically certain to exist, such as the bloodstains already mentioned, their weight is in my opinion quite insufficient to prove beyond reasonable doubt that the murders were committed by the accused: *McKay* v. *The King* (1). The present case seems to be a typical case for applying the words of *Cave* J. in *Reg.* v. *Thompson* (2): "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 been 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. In this particular case there is no reason to suppose that Mr. Crewdson's evidence was not perfectly true and accurate; but, on the broad, plain ground that it was not proved satisfactorily that the confession was free and voluntary, I think it ought not to have been received" (3).

For these reasons the appeal should be allowed and the convictions should be quashed.

WEBB J. I agree with *Williams* J. that this appeal should be allowed.

The relevant Ordinances and authorities and the evidence are set out in his Honour's judgment.

Although this was a criminal trial we should deal with this appeal as we would deal with any other appeal from a judge sitting without a jury, that is to say we should form our own conclusions from the evidence, allowing for the advantage the trial judge possessed in seeing the witnesses give their evidence, when determining their veracity and quality. This appellate jurisdiction extends even to exercising if need be the discretion to reject confessional statements which if voluntary were nevertheless unfairly elicited,

(1) (1935) 54 C.L.R. 1, at p. 9.
(2) (1893) 2 Q.B. 12.
(3) (1893) 2 Q.B., at pp. 18, 19.

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as the discretion is not a statutory discretion restricted by Parliament to the primary judge and which can be reviewed only within the limits imposed by well-known rules. In other words we must re-try the case, subject only to allowing for the trial judge's advantage as stated. Then it is for this Court to say whether or not it is satisfied beyond reasonable doubt that the appellant committed the murders. We are not confined to inquiring whether the trial judge misdirected himself. If I may say so with respect I think his Honour revealed a full knowledge of the law and a full appreciation of the evidence, as appears from his observations on what he called the *voir dire* and his summing-up. But I must say that I fail to see why his Honour should have separated his functions to the extent of permitting each of the police witnesses to be twice cross-examined on the same subject matter. To say the least that appears to me to have been unnecessary. However, as that course was favourable to the appellant and the Crown did not object to it here or below I pay no further attention to it.

Then taking the appellate jurisdiction to be what I think it is, I am not satisfied beyond reasonable doubt that the appellant committed the murders. His version of how the confessional statements came to be made by him and his detailed and more or less consistent account of his conversations with the police officers leave me in serious doubt whether those conversations as he stated them did not actually take place. That doubt is not removed when I recall that after all his Honour accepted the police version. If the appellant detailed the conversations with substantial accuracy —and there is a ring of truth about vital parts—then it is not questioned that the confessional statements were not voluntary, or, if they were, that they were unfairly elicited and should be rejected, and further that no conviction is then possible. If, however, the conversations as related by the appellant were concocted he must be a clever young man. But cleverness was not attributed to him by the learned trial judge or by counsel for the Crown.

Added to this doubt-raising feature are those peculiarities in the Crown case on which *Williams* J. and *Taylor* J. rely, and upon which I also rely, in allowing this appeal.

TAYLOR J. On 27th July 1956 the appellant was convicted at Rabaul in the Territory of New Guinea of the wilful murder of two persons, Adela Woo and Leo Wattemena. The trial took place before the Chief Judge of the Territory without a jury and the appellant was convicted upon the evidence of a series of admissions made by him a day or two after the attack which caused the death

of the victims. There was no other evidence connecting him with the crime and the questions which arise for our consideration are, firstly, whether the confession constituted by these admissions should have been excluded, either wholly or in part, from consideration upon his trial and, secondly, whether, notwithstanding the admission of this evidence, the charges against the appellant can be said to have been established beyond reasonable doubt.

It was established by the evidence that the two deceased were attacked on the sixth green of the local golf course at some time between 1 a.m. and 2 a.m. on Sunday 20th May 1956. Clearly enough, they were attacked by some person or persons armed with a heavy instrument which was used with great force. Both of the victims suffered extensive head injuries and the female deceased died immediately thereafter. The male deceased died on the morning of 23rd May without regaining consciousness. Leo and Adela, as they were called during the trial, had been keeping company for some two years before their death and they had walked to the golf course after leaving the company of a number of people, including the appellant, shortly before midnight. During the evening of Saturday a few people had gathered at, or rather in the immediate vicinity of, a house owned by a woman named Alden but who was also known as " Palili ". Palili and her six children resided at this house as also did the appellant and his brother and sister-in-law.

It appears that those who were present on this occasion sat on the grass in front of the house for some time and talked and sang and partook of some drink. There were some comings and goings during the evening but Palili and the appellant and Adela were there, substantially, during the whole of the evening. Palili's son, Tommy, was there for part of the time and when he returned, some little time before midnight, from what was referred to as the Kombui Club, Leo came with him. When, shortly afterwards, the gathering dispersed it was said that Palili went to bed, the appellant went to his bedroom, Tommy returned to the Kombui Club and Adela and Leo went for a walk. In the interval between Leo's arrival at the gathering and its dispersal, the appellant had been sent by Palili to the house of one Georgina, some one hundred and twenty yards away, to purchase some betel nut. His mission was unsuccessful. Georgina was away and the only person at that house apart from an infant, was one called " Maria ", who refused to answer the appellant's calls. When he returned to Palili's house Leo and Adela were still present and it was said that shortly after this incident the gathering dispersed. When Leo and Adela left

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they apparently walked in the direction of the golf course and were sitting or lying down together on the sixth green when they were attacked.

It has already been said that the attack which resulted in the deaths of the victims occurred between 1 a.m. and 2 a.m. on the following day, Sunday 20th May 1956. A substantial part of Sunday appears to have been occupied by the police in investigating the crime, and it is clear that during that day it became generally known in the locality that the two deceased had been murdered, and, indeed, that they had been attacked in the vicinity of the sixth green of the golf course. There is evidence that a number of people, including the appellant, endeavoured to inspect the locality that day but they were turned away by police officers when within a very short distance of the sixth green. Thereafter, on Monday 21st May the appellant was seen by a police officer, Vonhoff, at the house of one, Yamashita, and asked to go to the police station to be interviewed there by Sub-Inspector Carroll. Vonhoff says that he saw the appellant at Yamashita's house and, after telling him that Mr. Carroll would like to see him at the police station, asked him whether he would "come with us in the truck now". Vonhoff does not remember what the appellant said but he testified that he then accompanied him and Sub-Inspector Young to the police station where they arrived shortly before 10.30 a.m. Carroll was not at the police station at that time but he came in shortly afterwards and, thereafter, the appellant was interrogated concerning his movements on the evening of the previous Saturday. According to his answers on this occasion the appellant had spent the evening at Palili's house and he had gone to bed at least an hour before the attack.

This first statement of the appellant indicated that he was not the attacker. However, it was then known to the police that at least one person in Rabaul had claimed to have seen the appellant abroad at a later hour than midnight. Maria, already referred to, testified that the appellant came back to the house where she lived in the early hours of the morning and that his actions on this occasion gave her some cause for alarm. Moreover, she says that she also saw Leo and Adela at about the same time and she asserted that she saw the appellant set out in the general direction of the golf course. Georgina's house was some six hundred or seven hundred yards along a roadway from the sixth green of the golf course and was on the way from Palili's house to the golf course. Further, one, Matthias, who had spent a few hours at a seaside beach with his wife and children was driving home in the early hours of the

morning and he gave evidence to the effect that he saw the appellant near his house at that time. This witness said that he and his wife and children left home for the beach about 12.30 a.m. but he was quite vague concerning the period of time which they spent there. This he estimated variously at about two, three, or four hours. When returning he noticed that Europeans were still dancing at the golf club house and apparently there were other people about the streets. He said that he reported to the police at about nine o'clock on the following Monday morning that he had seen the appellant in the street near his home during the early hours of Sunday morning. No doubt, it was the information imparted to them by either Maria or Matthias, or by both of them, that led to the appellant's interrogation and caused the police to doubt the story originally told to them by him. Nevertheless, according to the police evidence, nothing was said to the appellant concerning the statements made by Maria and Matthias and, after the first interrogation, Carroll left the police station to make further inquiries. At about 1 p.m. on the same day Carroll returned and again questioned the accused. On this occasion it is said that the appellant admitted that after going to bed he had got up again and followed Leo and Adela. This he did, he said, because of something which Leo had said to him some little time before. According to him Leo had had an experience which caused him to think that there was trouble in store for him and he had followed him for some little distance because of his concern. However, he said, thereafter he went to the house of his friend, Yamashita, and after spending a little time there returned home to bed.

Further interrogation of the appellant took place about 3.30 p.m. on the same day. In the period which had intervened since the second interrogation the police had made inquiries of Yamashita and they had collected, so far as they knew, all of the somewhat scanty clothing of the appellant. Then they again confronted him and informed him that inquiries had established that he had not gone to Yamashita's place in the early hours of the previous day. Further, they produced a letter written to him by the female deceased some months before when she had been staying at Kavieng. This letter, which had been found among the appellant's belongings, was not a love letter but was, as described by the learned Chief Judge, a "friendly newsy teenager's letter". According to the police the appellant broke down when shown the letter; he put his head in his hands on the table and sobbed bitterly. He said, it is alleged, that he followed Leo and Adela to the green and saw them lying on the ground. Then he went mad and hit them.

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Thereupon Sub-Inspector Young said to him : " I want you to know that you will be charged with the murder of Adela Woo, do you understand ? " The appellant is said to have replied in the affirmative and Young then asked him if he would like to tell the police " all about this trouble ". It is said that Young warned him at this stage he need not make any statement unless he wished to and that anything he did write would be kept and produced in evidence. Upon again being asked whether he still wished to make a written statement the appellant said that he did and then proceeded to write out a statement. The statement was tendered in evidence and it indicates that the appellant was practically illiterate. The substance of the statement is, however, sufficiently clear and it indicated that he followed Leo and Adela to the green and that when he saw them together he attacked Leo " because I was out of my mind ". He said that he attacked him with an iron peg and that when the girl started to cry out he hit her too. Thereafter, he said, he took the girl and buried " half of her ", carried Leo into the bushes and threw the iron peg away.

All of these statements of the appellant were made in the investigation room of the police station which is an inner room access to which can be obtained only through the muster room of the police station. The appellant was taken to this room shortly before 10.30 a.m. and the last statement was made some time after 3.30 p.m. Carroll's interrogation on the three occasions commenced respectively at about 11 a.m., 1 p.m. and 3.30 p.m. and in the intervening periods it is said that the appellant was left alone in the room. According to the police officers engaged in the case he was free to leave at any time but I have not the slightest doubt that after his arrival at the police station he had every reason to believe that he was in the custody of the police and that he was not free to leave except with their permission. Indeed, the police officers, themselves, seem to have been in no doubt on this score. When Carroll left the appellant in the interrogation room some little time after 11 a.m. in order to make further inquiries he knew that the appellant would still be there when he came back and the position was exactly the same when he left shortly after 1 p.m. to make additional inquiries.

It is unnecessary, and I have not attempted, to state fully the whole of the evidence relating to the interrogation of the appellant. The facts have already been canvassed and the references which I have made are intended merely to provide a sufficient background for the observations which I wish to make concerning the case.

There are, however, two or three other matters which should be mentioned at this stage.

The appellant was not charged immediately after making his written confession on 21st May with the murder of the female deceased. Indeed we do not know just when the written confession was completed. But we do know that about 5.40 p.m. he was taken to the golf course and, according to the police evidence, he pointed out to Carroll the place on the sixth green where he had attacked the two deceased. This was, according to Carroll, " exactly where the pools of blood had been ". Thereafter he pointed out where he had put Adela's body, where he had put Leo and where he had thrown Leo's clothes.

On the following day, 22nd May, the appellant was again taken by Carroll and Vonhoff to the golf course to assist in the search for the instrument with which the two deceased had been attacked and, on 23rd May, the appellant was taken by the same officers to view the dead body of Leo at the hospital mortuary and was asked by Carroll if he knew the deceased. The evidence of this interrogation is brief and it is convenient to set out in full: " At 12 midday, Vonhoff, accused and I were at the Mortuary at the Native Hospital and I again cautioned the accused and then went into the Mortuary where I pointed to a body and said to accused :—' Do you know who that is ? ' He said :—' Yes : Leo.' I said :—' Leo who ? ' He said :—' Leo Wattemena.' I said : ' How long have you known him ? ' He said :—' Ever since we were boys.' I said :—' When did you last see him ? ' He said :— ' On Saturday night.' I said :—'Where ? ' He said :— ' On the green.' I said :—' Was he alive then ? ' Accused made no reply. I repeated the question and again there was no reply. We returned to the Station,—accused, Vonhoff, and I,—where I charged accused with the wilful murder of Leo Wattemena."

The evidence of Matthias and of the woman called Maria could not lead to the conclusion that the appellant was the murderer but it was of importance as a factor tending to dispose of the assertion originally made by him that he retired to bed about midnight and that thereafter he stayed there. But upon the trial the learned Chief Judge formed the opinion that it would be dangerous to act upon their evidence. I should say that a perusal of the record of their evidence is sufficient to make it quite clear that it is completely worthless and should be disregarded entirely. Nevertheless, it is probable that it was the information imparted to the police by Matthias, and, possibly, also by Maria, that led to the appellant's detention. On its face it was, in the circumstances, important

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information and, no doubt, it engendered in the minds of the police a strong suspicion that the appellant was the murderer. Indeed it may certainly be assumed that it did so for very shortly after Matthias had made his statement to the police Vonhoff and another officer were instructed to bring the appellant to the police station and, in pursuance of those instructions, they sought for him, and having found him at Yamashita's house, brought him, as already related, to the police station. It is of some importance to notice in passing that from this moment Vonhoff believed that the appellant lived at Yamashita's house. Having been brought to the police station shortly before 10.30 a.m. the appellant was kept there until he finally confessed to the murder of Adela. I say "kept" at the police station because it is impossible to accept the naive suggestion of the police officers that he was free to go at any time. I have no doubt that he believed that he was being detained, that the police were well aware of this belief and that, knowing it, they did nothing to disabuse the appellant's mind on this point.

It is clear that the only evidence of any value against the appellant was that constituted by his own admissions, that these admissions were made after he had been in custody upwards of five hours and that, except for the written statement, they were made without any warning of any kind having been given. The learned Chief Judge was impressed by these considerations and investigated them at length for the purpose of determining whether the statements were admissible or, alternatively, whether in the exercise of his discretion he should reject them. In the result he admitted them and I do not wish to say that, upon the evidence as it stood at that stage of the case, he erred in taking this course. But a consideration of the whole of the evidence at the close of the trial might have induced him to take the view that he had not been sufficiently informed by the police of the circumstances in which the admissions were made and he might well have then entertained grave doubts concerning the propriety of the circumstances in which they were obtained. Moreover, the same considerations were, in the circumstances of the case, of vital importance in considering, ultimately, what weight should be given to the appellant's statements.

I approach the case by asking myself, first of all, whether a simple confession made by a half-caste and illiterate youth of nineteen years after having been detained on unreliable information and kept in custody for five hours by police officers who entertained strong suspicions that he had recently committed a crime should, by itself, satisfy me beyond reasonable doubt of the youth's guilt. The answer which I make immediately is that unless satisfied that

I had been fully apprised of all the circumstances in which the confession had been made I would not think for a moment of acting upon it. Indeed, from time to time, doubts have been expressed whether homicide may be proved by the confession of the accused alone. (See the discussion in *McKay* v. *The King* (1).) But I can see nothing in principle or authority to require the conclusion that once it is shown that murder has been committed the confession of an accused person may not constitute sufficient proof of his guilt. But the meaning of the expression confession " extends from the most solemn, spontaneous, express and detailed acknowledgments of the facts constituting a crime to casual admissions of some only of the specific facts involving guilt " (*McKay* v. *The King* (2)) and a simple confession made in the circumstances above related would carry little, if any, weight. Indeed even if admitted in the course of the trial on the principles laid down in *McDermott* v. *The King* (3) and *R.* v. *Lee* (4) no court could possibly act upon it unless it was completely satisfied that it had been made fully aware of all the circumstances in which it had been made. But the substance of a confession may indicate knowledge on the part of an accused person of matters of which he could not possibly be aware except as a participant in the crime charged and internal evidence of this character is to be found, it is said, in the series of admissions under consideration in this case. The appellant's admissions, it is contended, did not constitute merely a simple confession ; it was constituted by a series of admissions which revealed a detailed knowledge of the circumstances in which the crime had been committed. First of all there was a denial that he was abroad at the time of the murder. Then, this was retracted and an admission made that he was abroad after midnight. Then, still later, there was an oral confession that he followed the two victims to the *green* at the golf course, that he had seen them lying on the green together, and that he had attacked them. In his written confession he repeated this and added that he had taken the girl and had buried " half of her " and that he had carried Leo into the bushes. The circumstantial detail in these statements tallied percisely with what the police had discovered at the golf course and, it is contended, could not have been known to the appellant unless he was the murderer. This argument fails to carry conviction to my mind for there were other sources from which this information might have come to the knowledge of the appellant. In the first place the murder had taken place in a small community and it had been the subject of

(1) (1935) 54 C.L.R. 1, at pp. 5, 6.
(2) (1935) 54 C.L.R., at p. 9.
(3) (1948) 76 C.L.R. 501.
(4) (1950) 82 C.L.R. 133.

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conversation during the whole of Sunday. I am prepared, however, to discount this as a possible source and to have regard to what seems to me a much more likely source. The police officers deny that they mentioned any of these things to the appellant but the latter, who gave evidence on his trial, said otherwise. He says that on the first occasion when he was interrogated on 21st May he was told by Carroll that the police knew that he had not gone to bed on the Saturday evening. There were, this officer is alleged to have said, three witnesses who saw him pass Georgina's house that night and they were coming to identify him. He says also that he was shown a photograph of the dead body of Adela. Such a photograph, with others, was tendered in evidence and it shows that the body was half buried. But the print tendered in evidence was not the one shown to the appellant. He said that he was shown a smaller print on that occasion and that thereafter it was left on a table in front of him. Carroll denied this but admitted that there was on the table in the investigation room a smaller print of this photograph but he denies that it was shown to or was visible to the appellant. It may be that the appellant's evidence on this point was built on admissions obtained from Carroll during the preliminary proceedings but it sufficiently appears that, at an early stage, the appellant was asserting the existence of a photograph of which he could have no knowledge unless it had been shown to him or left under his notice on that occasion. It is, I think, probable that the photograph was shown to the appellant on 21st May and, if this is so, there is every reason for thinking that the circumstances of the crime were discussed in much greater detail than appears in the evidence of the police officers. That being so the fact that the appellant's statements incorporated circumstantial detail loses much of its force. I should add that I am somewhat influenced in thinking it probable that this photograph was shown to the appellant on 21st May by other circumstances which present themselves upon close consideration of the evidence of the police officers. Moreover the incident of 23rd May may well lend colour to the suggestion that the photograph was shown to him. As already mentioned, on that day the appellant was taken by Carroll and Vonhoff to view the dead body of Leo and he was interrogated in the manner previously appearing. On their own evidence they had, before this date, a full confession from the appellant and there was not the slightest reason to take him to the mortuary on this occasion except for the purpose of piling proof on proof. If they thought nothing of taking the accused to the mortuary on this occasion I can see not the slightest reason for thinking that on 21st

May they would have refrained from showing to the appellant a photograph, readily available, of the dead body of Adela.

The next matter of which some point was made in the evidence is that when, late on the afternoon of 21st May, the appellant was taken to the golf course he was able to point out precisely where the two deceased were lying when they were attacked. It will be remembered that Carroll said the place to which the appellant pointed was " exactly the spot where the pools of blood had been ". The plainly intended inference was that unless the appellant was the murderer he could not have done this. But it is abundantly clear from Carroll's cross-examination that at this very time the green was still quite distinctly and extensively stained with blood. The appellant in his evidence said, however, that he did not point out this spot ; his evidence is that Carroll indicated a spot and said " Is this where you hit Adela and Leo ? " and he agreed that it was. Thereafter, he said, Carroll indicated other places asking whether it was here that he put Adela's body and there where he put Leo's. In view of the findings of the learned Chief Judge it is, of course, impossible to place any real reliance upon the testimony of the appellant. Accordingly the affirmative conclusion that the interrogation took this general form is not reasonably open and it must, perhaps, be assumed that Carroll's evidence, except in so far as some inconsistency or some gloss can be detected, is substantially accurate. But what was the point of Carroll saying that the place to which the appellant pointed was " exactly the place where the pools of blood *had been* " unless it was to indicate some special knowledge on the part of the appellant ? The evidence of Young, who was present on this occasion, is somewhat different. He does not say that the appellant pointed to a spot on the green but that when asked " Will you show us where you saw Leo and the girl ? (he) pointed to the sixth green where I had previously seen the two patches of blood ". If, as Carroll testified in cross-examination, the green was quite distinctly blood-stained when the appellant was interrogated on the spot, the claim that the appellant's answer showed special knowledge on this point is entirely deprived of substance. Further one may perhaps be pardoned for thinking that the evidence to which I have referred was intended to invest with a distinct colour an admission made by a person whom, by that time, the police officers concerned believed had committed murder. It may, perhaps, be said with some force that, at that time, they were concerned not so much with investigating the crime as with incriminating the appellant. If this was so—and it is probable that it was—I would find it difficult to attach any vital importance

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to the rest of the interrogation on this occasion. So much depends upon the precise form of question and answer and upon the circumstances as they then existed that it would be dangerous to rely upon it. So far as the position of the body was concerned it is not unlikely that " drag marks " and broken undergrowth gave a clue as to where they had been placed. Carroll claims that these marks were no longer apparent but in all the circumstances I am not satisfied that the appellant on this occasion disclosed any special knowledge of the circumstances surrounding the crime.

On the following day a search was made for the instrument with which the two deceased had been attacked. Vonhoff says that at about 3.30 p.m. on 22nd May he went again with Carroll and the appellant to the golf course. After warning him he asked the appellant whether he could remember what he had done with the iron peg. According to Vonhoff's evidence the appellant shook his head then pointed to what is called the " crater " at the rear of the golf club house and, at a later stage when no weapon had been found, said to a police officer " I think I took that piece of iron back to the house ". The accused's evidence on this point was quite different. He said Carroll asked him " Where did you chuck the peg ? " His answer was that he did not know but he agrees that later he pointed to some kunai grass and said " in the grass ". When told that he did not " chuck " it there he pointed to the crater behind the club house. When later asked what he had done with it he did not answer. Thereupon one of the police officers said " Did you take it back home ? " and to this inquiry he again made no reply. According to the appellant one of the police officers present then asked Vonhoff if he knew where the appellant's house was. Upon Vonhoff replying in the affirmative the appellant was taken in a utility truck by Vonhoff and the other police officer, not to the house where he lived, but to Yamashita's house. There a search was made by the police officers for the instrument which had been used in the attack and, after some little time, the native driver found, lying on the grass near the house, a steel rod some three feet long with a ringed handle at one end and a " U " shaped portion of metal at the other end. It was identified as an instrument used for scraping ashes from a furnace.

It will be seen from the evidence to which I have referred that the police on this occasion thought they were searching the house where the appellant lived and, upon their evidence, they had gone to this house because the appellant had said that he thought he had taken the piece of iron back to the house. On the other hand the appellant's evidence was to the effect that he said nothing of the

kind. He says that it was the suggestion of one of the police officers that he might have taken it back to the house and, following the suggestion, Vonhoff was asked if he knew where the appellant lived. As already appears Vonhoff had first made contact with the appellant at Yamashita's house and, then and there, formed the belief that he lived at this house. It was for this reason that the police officers conducted their search there. I should have thought that if, as the police evidence suggests, the appellant was giving ready assistance in the search and had told the police that he had taken the piece of iron to his house, he would have informed the police, when they arrived at Yamashita's house they were at the wrong house. Nevertheless nothing of the kind occurred and, as already related an instrument was found there.

The learned Chief Judge thought it unsafe to make a finding that this instrument was the instrument with which the two deceased were killed and refrained from making any such finding. Upon reading the evidence relating to it I am satisfied that it was not the instrument with which the deceased were killed. It was an instrument some three feet long which was found nearly half a mile from the scene of the crime and was not concealed in any way. Further, although there was medical evidence to the effect that the injuries inflicted on the female deceased might have been caused by the ringed end of this instrument and some of the injuries suffered by the male deceased by the other end, the same evidence made it appear quite clearly that, if the injuries had been inflicted by this instrument, it was extremely probable that traces of blood or other organic matter would subsequently have been found upon it. However, close examination and chemical tests by experts failed to reveal any such traces. I think it is almost certain that this was not the instrument with which the two deceased had been attacked and yet when confronted with the instrument the appellant confessed to Vonhoff that it was. Why he should have done so I do not profess to understand but the fact that he did so in a considerable measure weakens the Crown's case with respect to his other admissions.

So far I have not related the evidence of Vonhoff as to what occurred when the instrument was shown to the appellant. According to Vonhoff he produced the instrument to the appellant and said " This scraper has just been found here by the police driver ". Thereupon, said Vonhoff, " the accused looked at the scraper and drew his body back and shuddered and shivered—he shook. He dropped his eyes and said ' That is the piece of iron I used. I would know that piece of iron again '." The native

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police driver said much the same thing. He said "When Mr. Vonhoff showed the iron to the accused the accused drew back with widened eyes and looked to me as if he might be going to cry". The only evidence given in the case by the native driver concerned this particular incident and, if his evidence is reliable, the appellant's reaction upon being confronted with the piece of iron must have been quite dramatic. Yet it appears from the native driver's cross-examination that this was something which he entirely forgot when he gave evidence during the preliminary proceedings. He said in the course of those proceedings he was asked what the accused did when Vonhoff showed him the iron but that he did not say that he thought that the accused was about to cry because he forgot that part . . . he forgot to say that at the lower court. It is to me a most curious thing that if the appellant told the police that he thought he had taken the piece of iron to the house, meaning the house where he lived, the search should have proceeded at the wrong house, that, nevertheless, an instrument should be found there and said to be that which was used in the fatal attack. Obviously it was not the instrument and it is even more curious that the appellant should have admitted that that was the weapon with which he had killed the deceased. Nor do I understand why when confronted with the wrong instrument the appellant should have reacted in the way described by Vonhoff and, though forgotten by the native driver at the lower court, remembered by him on the trial.

I have given anxious consideration to the whole of the evidence and although in some respects the Crown case appeared to me to be a strong case the matters to which I have referred have filled my mind with considerable doubt concerning the circumstances of the appellant's interrogation. Indeed, even if the evidence of the appellant's admissions should be taken into consideration—which I gravely doubt—I find it impossible to say that I am satisfied beyond reasonable doubt that the appellant ought to be found guilty of the crimes charged.

This conclusion is, I think, made quite inevitable by other material in the case. Far from dispelling the doubts created by the matters already referred to other features of the case tend strongly against the appellant's guilt. There was no motive on the part of the appellant for the murders; the appellant and the two deceased were good friends and there was no suggestion of jealousy. Again if the appellant had been the murderer it was highly probable that other factors would have been discovered connecting him or tending to connect him with the crime, but no such factors were discovered.

Nothing was found in the vicinity of the crimes in any way to connect him with them and, although his clothes were taken by the police and subjected to a thorough investigation, nothing was found upon them to connect him with it. It was a particularly bloody crime; there was a great deal of blood on the ground; one body had been dragged, or partly dragged and partly carried, nearly fifty yards into the bushes; the murderer, if there was only one, had returned to the green and dragged the other one some twenty yards in another direction and had again returned to the green a third time and had chopped out small pieces of the green to permit the pools of blood to be absorbed more readily. All in all it is probable that the clothing of the murderer would have borne some traces of blood after he had disposed of the bodies. But thorough examination of the appellant's clothing disclosed no such traces. There was no suggestion that the clothing had been recently washed and, indeed, if there had been blood on his sandshoes, it is highly probable that cleaning operations would not have removed it.

Other features of the case, which tend to strengthen rather than dispel the doubts which arise upon consideration of the case against the appellant, are referred to by *Williams* J. and it is unnecessary for me to refer to them again. It is sufficient to say that in all the circumstances of the case I am firmly of opinion that the appeal should be allowed.

Appeal allowed. Convictions and sentences quashed. Judgment of acquittal on the indictment.

Solicitor for the appellant, *Dudley Jones*, Rabaul, New Guinea, by his agents, *Parish, Patience & McIntyre.*

Solicitor for the respondent, *H. E. Renfree*, Crown Solicitor for the Commonwealth.

J. B.