IN THE HIGH COURT OF AUSTRALIA

PARNELL

v.

THE QUEEN

REASONS FOR JUDGMENT

Oral *Judgment delivered at* SYDNEY

on THURSDAY, 5th APRIL 1973

RM.72/20133

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ORDER

Appeal dismissed.

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JUDGMENT

ORAL

BARWICK C.J.

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The appellant was convicted in the Supreme Court of the Australian Capital Territory of manslaughter.

He relies on three grounds in support of his appeal to this Court against his conviction. The first is as to the admission of evidence of incriminating statements made by him to police officers.

I have listened carefully to all that Mr. McGregor has said on this point and I see no need to go through the evidence, the essential portions of which have been extracted for us in copies which we have been able to study.

I see no reason to disturb the learned trial judge's admission of the record of interview which was had with the police officers. I do not think that the evidence led for the accused, even if fully accepted, established that the statements made to the accused constituted an inducement of the statements which he subsequently made to the police officers and which are recorded in the record of interview.

In any case, I do not think the trial judge was in error in being satisfied that if there were a relevant inducement the means by which the statements made by the accused were obtained were in fact likely to induce an untrue admission of guilt to be made by him.

Consequently, in my opinion, the first ground of appeal fails.

The second submission is somewhat difficult of expression, but I do not think I do the submission any violence if I express it as a submission that the trial judge was in error in leaving to the jury as a possible issue of fact that the appellant aimed the rifle at his father. This submission is founded on a fact actually not in evidence, namely, that at an earlier trial for murder the jury returned a verdict of not guilty of murder but indicated that they were unable to agree on a verdict of manslaughter. Although there was no plea in this trial of autrefois acquit or of issue estoppel denying the Crown the ability to prosecute the indictment for manslaughter it was said that an issue of fact to be decided in the earlier trial was whether the appellant had aimed the rifle at his father, and that upon acquittal on the charge of murder that issue must be taken to have been found in favour of the appellant. Therefore, the Crown, it was said, could not later assert against the appellant that he had so aimed the rifle. Consequently, so the argument ran, the trial judge was in error in including in his summing up the following, as well as other comparable passages. The judge said:

> "The first matter about which you have to be satisfied - that is to say, satisfied beyond reasonable doubt - is that the accused's father was killed by a bullet fired by the accused. You must be satisfied that the father died and that his death was caused by the act of the accused. But killing itself is not sufficient; you must be satisfied of a further matter. It is that the killing resulted from an unlawful and dangerous act on the part of the accused. It is an unlawful act to fire a bullet at another person or to fire a bullet close to another person with a view to frightening him or intimidating him."

This is not, in my opinion, the appropriate place to discuss the extent, if any, to which the doctrines of issue estoppel developed in connection with the litigation of civil claims are applicable in criminal prosecutions. Suffice it to say that there was in my opinion nothing inappropriate in relation to a charge of manslaughter in any of the passages of the summing up to which counsel referred us in this connection. In the absence of any plea to the indictment such as autrefois acquit, or, if it be available, of issue estoppel the trial judge was quite entitled in my opinion to leave to the jury facts or possible conclusions of fact which would have formed elements on a charge of murder as well as of a charge of manslaughter. In my opinion, this ground of appeal fails.

The third ground of appeal was that the trial judge in his summing up had unfairly treated the evidence of psychiatrists to the disadvantage of the appellant. The defence to which the evidence related was one of what is sometimes referred to as automatism, or as the psychiatrist dubbed it, dissociation. The trial judge took the course of instructing the jury that it was upon the Crown to establish to their satisfaction to the requisite degree that the appellant's acts

were conscious and voluntary. For my part, I do not think the evidence of the psychiatrist to which we have been referred very carefully by Mr. McGregor would have entitled the jury to conclude that the act of the appellant in firing the rifle aimed at his father was other than a willed act. But the trial judge did leave the matter to the jury. In doing so, in my opinion, he did not fail to put the appellant's case as evidenced by the medical witnesses. What he did say was, in my opinion, not done unfairly or prejudicially. Even if to some extent his language might indicate a view of the evidence which he himself held he at all times seems to me to have been careful to remind the jury that the matter of their understanding of the medical evidence was a matter for them. In my opinion this ground was not made out. Therefore, in my opinion, the appeal should be dismissed.

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McTIERNAN J.

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In my opinion, none of the grounds of appeal argued by Mr. McGregor should be sustained. I concur with the Chief Justice.

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GIBBS J.

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With one minor qualification, I agree with the judgment of the Chief Justice. I would express no opinion on the question whether the statements made to the accused constituted an inducement, having regard to some of the earlier decisions that particular forms of words, similar to those used here, should be regarded as inducements. Whether or not they did amount to an inducement, it was clearly open to the learned trial judge to hold that the means by which the confession was obtained was not in fact likely to cause an untrue admission of guilt to be made within s. 68(2) of the Evidence Ordinance 1971 of the Australian Capital Territory and to admit the evidence.

In respect of the other matters I agree with what has fallen from the Chief Justice and would dismiss the appeal.

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JUDGMENT
(ORAL)

STEPHEN J.

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I am in agreement with what has been said by the Chief Justice on this matter and I, too, would dismiss this appeal.

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JUDGMENT
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MASON J.

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I agree with what has been said by the Chief Justice and I would dismiss the appeal.