SELECTED UNREPORTED DECISIONS

P.P. v. Chan Kah Hock

District Court No. 7 in DAC 2162 of 1978

The accused approached P.W.I, detained him by catching hold of his shoulder and accused him of having been involved in a gang-fight in which the accused's brother had been beaten up. The accused then brought P.W.I to the 7th floor of a block of flats and told him to remain where he was whilst the accused went to fetch his brother to identify P.W.l. On the pretext that he wanted to ensure that P.W.I did not run away, the accused demanded from him his money and wrist watch as security. P.W.I initially refused, but upon being repeatedly shoved against a wall and threatened with a beating, out of fear handed his watch and $25 to the accused.

The accused then left and did not return. On discovering that he had been tricked, P.W.I went in search of the accused. He found the accused and demanded the return of both his watch and money. The accused returned the watch and asked P.W.I to meet him at 2 p.m. of the same day. P.W.I then left. When he met the accused at 2 p.m., the accused again took his watch, told him to remain where he was, left and did not return.

The accused was subsequently arrested by the police and charged with robbery under section 392, Penal Code (Cap. 103). A notice in writing pursuant to section 121(6), Criminal Procedure Code (Cap. 113) was prepared and read out to him in Hokkien by an interpreter. The accused then made a statement admitting the offence, saying that he had done so because he did not have any money. At the trial, the accused did not deny taking P.W.1's watch or money but maintained that P.W.I had voluntarily handed them over to him. He challenged the admissibility of his statement on the ground that it was not voluntary and that the interpretation of the notice in writing was defective.

Held: (1) The accused had understood the charge and notice in writing and had made the statement voluntarily. Merely because two words (unfortunately, the grounds of decision did not disclose the two words) of the notice had not been literally translated does not render the interpretation defective. An interpretation does not become defective merely because every individual word has not been interpreted.

(2) It was clear from the evidence that P.W.I had handed over the watch and money to the accused after he had been pushed and threatened with hurt.

The fact that P.W.I had not been involved in any incident with the accused's brother and had been brought to a place which was relatively deserted, made it highly improbable that when he was asked for his watch and money, he had voluntarily handed over the items.

[Summary by T. Shue]

Commentary: Ever since the 1976 amendment to the Criminal Procedure Code[1] introducing the "notice in writing"[2] under section 121(6), it has been a source of constant conjecture as to what should be the position regarding a statement made by an accused person where no notice in writing has been served on him.[3] As section 121(6) provides that the accused "shall be served with a notice in writing," this would amount to a clear case of non-compliance with the mandatory requirements of a statute. The instant case draws attention to a similar problem: where a notice in writing has in fact been served on the accused as required by section 121(6) and if such notice is subsequently held to be bad because it had been defectively interpreted, what should be the position regarding a statement made by an accused in response to that notice.

In a case where no notice in writing has been served on the accused, more than one approach may be taken on the question of admissibility of an accused's statement. It may be said that as the mandatory requirement of section 121(6) has not been complied with, such a statement should be completely excluded. To hold otherwise would be to sanction the breach of a mandatory provision in the Criminal Procedure Code. Against this it has been said that such a statement may yet be admissible in evidence under section 121(5) of the Code, if it is otherwise voluntary.[4] If it is so admissible under section 121(5), the question then is whether the court may invoke the provisions of section 122 to the disadvantage of the accused. Section 122 permits the court to draw inferences (usually adverse to the accused) from the failure of the accused to mention in his statement any fact "which in the circumstances existing at the time (he was charged) he could reasonably have been expected to mention." It has been expressed as the better view[5] that no adverse inferences may be drawn under section 122(1) against the accused in such a case, precisely because he had not been warned, as required by section 121(6), of just such a consequence if he fails to mention relevant facts.

Can the same be said in a situation where a notice in writing, duly served, has been found to be bad for defective interpretation? Although, there has been apparently a compliance with the mandatory

[1] Cap. 113, Singapore Statutes, Rev. Ed. 1970.

[2] This notice reads: "You have been charged with/informed that you may be prosecuted for:- (set out the charge).
Do you wish to say anything in answer to the charge? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now and you would like it written down, this will be done."

[3] See generally, S. Chandra Mohan, "Admissibility and Use of Statements made to Police Officers: A Re-examination" (Part II) [1977] 1 M.L.J. lxxxiv.

[4] *Ibid.*

[5] *Ibid.*

requirement of section 121(6) in that a notice has in fact been served, it should be noted that section 121(6) further provides that such notice "shall be explained" to the accused. Clearly, this requirement is to ensure that the notice in writing is not served on the accused merely as a formal gesture. The police officer or "any other person charged with the duty of investigating offences or charging offenders"[6] is under a statutory duty to ensure that the accused appreciates the full import of the consequences when he fails to disclose any relevant fact. That being the case, should the notice in writing be *inadequately* explained *(e.g.* as where the interpretation is defective), the accused should not be any more prejudiced than he would be in a situation where no notice has been served on him.

In fact, there may be more compelling reasons for saying that the statement should be excluded completely. It is even more dangerous for the accused to make a statement in response to a half-understood or wrongly-understood notice in writing than when he makes one without the benefit of such notice. As the common saying goes, "a little knowledge is a dangerous thing". The danger lies in the accused being misled however inadvertently, thereupon making his statement under some misapprehension. It is not difficult to imagine such a situation. In fact, the legislature in enacting sub-section 7[7] to section 121 is indirectly acknowledging that there could be instances when the notice may be construed as an inducement, threat or promise contemplated by the proviso to section 121(5). Hence, the need for a "saving" provision like section 121(7). It should be noted however that section 121(7) is tolerable only if it presupposes a "proper" issue of the notice in writing in section 121(6). It cannot be seriously argued that a statement, made in response to a notice in writing which has been wrongly interpreted so as (for instance) to convey that failure to mention facts is on pain of some dire consequence (which has not been spelt out but left to the imagination of the accused) is a statement that can be admitted. In such a case, there is no question of holding the statement admissible under section 121(5) with the concession of not drawing any adverse inferences under section 122. This is because the prejudice to the accused which must be avoided is not in the drawing of adverse inferences from his failure to mention relevant facts without having warned him first. The prejudice lies in admitting statements, prejudicial or damaging to the accused, which he had been *induced* to make as a result of a "misrepresentation", inadvertent or otherwise, on the part of the police. The danger of prejudice is very real as it must be remembered that usually, at this stage, the accused is making statements without having had the benefit of counsel first.

In the instant case, the District judge found that the accused had understood the notice in writing and that its interpretation was not defective. As he also found the statement made by the accused, in response to the notice, to be otherwise voluntary, he admitted it in evidence. It is unfortunate that there was no opportunity for the court to rule on the effect of a defective notice in writing or the

6 See sub-section 8 of s. 121, Criminal Procedure Code, Cap. 113.

7 S. 121(7) reads: "No statement made by an accused person in answer to a written notice served on him pursuant to subsection (6) shall be construed as a statement caused by any inducement, threat or promise as is described in proviso to sub-section (5), if it is otherwise voluntary."

admissibility of any statement given in response to it. Had the court taken upon itself such a task, what might have been said would be treated as an *obiter dictum.* Be that as it may, it would have been useful had there been some indication from the bench as to what the position is under the law.

[Note: The case is now on appeal. It is hoped that the appellate court will have an opportunity to comment on this area of the law.]

T. SHUE