**CHULU v THE PEOPLE (1969) ZR 128 (HC)**

HIGH  5 COURT

MAGNUS J

31st JULY 1969

**Flynote and Headnote**

[1]   **Criminal procedure - Judges' Rules - Effect of breach - No automatic invalidation of official conduct pursuant to breach - Presumption of**10 **irregularity.**

   Although a breach of the Judges' Rules does not automatically invalidate anything done in pursuance thereof, it does raise a presumption of irregularity and suspicion that justice has not been done. 15

[2]   **Evidence - Confessions - Judges' Rules - Effect of breach - Reasonable doubt as to voluntariness.**

   A breach of the Judges' Rules in the obtaining of a confession from the accused raises a reasonable doubt as to the freedom or voluntariness of the confession; accordingly, the prosecution has 20 not discharged its burden to support the confession's admissibility into evidence.

[3]   **Evidence - Confessions - Voluntariness - Effect of prolonged custody without food accompanied by lengthy interrogation.**

   When an accused has been kept in custody for a long period 25 without food and has been subjected to lengthy interrogation, and the police obtain a statement from the accused in these circumstances, the Judge should exercise his discretion to exclude this statement from evidence.

Cases cited:  30

   (1)   *Sauka v R* (1958) R & N 533.

   (2)   *Zondo v R* (1964) SJNR 102.

**Judgment**

**Magnus J:** (Interim judgment only):

[The learned judge reviewed the deficiencies in the police evidence and continued as follows.]  35

I am satisfied, on the evidence of the medical assistant at the Chipata Main Prison and the Registrar of Chipata Hospital, that neither of these two accused received any medical treatment, and I am not satisfied that any physical assaults were committed on them. It is, however, common ground that both accused were detained in the police cells from

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the morning of the 19th August until about 7 p.m. on the 20th August without food or drink. I am quite shocked to hear that such a thing is possible, and I trust that it will not occur again in the future. Furthermore, it is common ground that both accused were interrogated several times for quite substantial periods. There is evidence that A.2 went to 5 the lavatory once, but Superintendent Bemba has said in evidence that, when an accused under interrogation goes to the lavatory, he is always accompanied.

Similar circumstances prevailed in the case of *Sauka v R* [1], except that the accused in that case was only kept without food from 8 a.m. to 10 4 p.m. on that day and in that case, Spenser - Wilkinson, C. J, said, at 537, that this procedure was irregular. The position as to confessions, which is set out in some detail in *Archbold,* Criminal Pleading Evidence and Practice, 36th ed., at para. 115, is summed up by Conroy, CJ, in *Zondo v R* as follows - (at 104 - 105): 15

   "It is trite law that when the Crown seeks to put in a confession the burden rests on the Crown to establish, beyond a reasonable doubt, that the confession was made freely and voluntarily, and that the prisoner was not induced by any promise of favour, or any menace or undue terror, to confess. It is also trite law that a judge has a 20 discretion to exclude a statement, even though freely and voluntarily made and otherwise admissible, if he considers it was taken in circumstances unfair to the accused. Thus a confession, freely and voluntarily made, is sometimes excluded in the exercise of this discretion if there has been a breach of the Judges' Rules." 25

[1] I appreciate, of course, that the Judges' Rules are merely administrative and advisory, and a breach of them does not automatically invalidate anything done in pursuance thereof. It does, however, raise a presumption of irregularity and a suspicion that justice has not been done. All the authorities, including Conroy, C. J, refer to the Court's 30 *discretion* to reject a confession obtained in such circumstances. [2] The same may be correct, but I think the position is, rather, that such a breach gives rise to a reasonable doubt about the freedom or voluntariness of the confession so that the prosecution has not discharged the *onus* which lies upon it. 35 However, whether it is discretionary or not, I feel that, certainly in the case of A.2, and probably in the case of A. 1, the Judges' Rules were not complied with in the manner of the taking of the statement. If it is a matter of discretion, therefore, I would be inclined to exercise my discretion and exclude both statements. 40

I am, however, impelled to exercise my discretion on rather stranger grounds. [3] When an accused has been kept in custody for a long period without food and has been subjected to interrogation for long periods, I think that these are circumstances which are unfair to the accused and a statement obtained in such circumstances is open to the gravest 45 suspicion. For that reason alone, therefore, I feel that those statements

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ought not to be admitted and, in the exercise of my discretion, I direct that they should both be excluded.

*Order accordingly*

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