

RUNGUN v. TRUST TERRITORY

state which, if any, local custom was violated. Notwithstanding the appellant was found guilty and sentenced concurrently for such violation.

The government has confessed error. We do not hold that a confession of error requires reversal in all cases, but in the instant case, it is clear that the fair and impartial trial to which any accused is entitled does not permit these convictions to stand.

Reversed and remanded for a new trial.

RUNGUN, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 8

Appellate Division of the High Court

April 22, 1957

Appeal from conviction of larceny from a dwelling house in violation of T.T.C., Sec. 396, in the Trial Division of the High Court, Yap District. In a Per Curiam opinion, the Appellate Division of the High Court held that admissions of accused which were obtained subsequent to involuntary confession were properly excluded and were inadmissible since they were tainted by original involuntary confession.

Reversed and remanded.

1. Confessions—Admissibility

Conviction resulting from use of coerced confession is no less void because accused testifies in proceedings that he never in fact confessed, voluntarily or involuntarily.

2. Confessions—Admissibility—Subsequent Tainted Admissions

In criminal proceedings, where confession is held inadmissible as involuntarily obtained, but accused later makes admissions to police officers during subsequent re-enactment of crime, subsequent admissions are inadmissible if influenced by original taint and not free from original influence which led accused to confess.

3. Criminal Law—Rights of Accused

Defendant in criminal proceedings may testify at any time when testimony for defense is being received. (T.T.C., Sec. 187(e))

Counsel for Appellant: ROSCOE L. EDWARDS, *Public Defender*
Counsel for Appellee: ROBERT M. ROBSON, *District Attorney*

Before FURBER, *Chief Justice*, SHRIVER, MANIBUSAN, *Temporary Judges*

PER CURIAM

This is an appeal from the Yap District. The appellant, Rungun, was convicted in the Trial Division of the High Court of the crime of larceny from a dwelling house in violation of Section 396 of the Trust Territory Code and was duly sentenced.

The evidence, as construed most favorably to the government, shows that the occupant of a trailer missed money from his pocket on different occasions but on two of three occasions was not sure it was stolen. On the third occasion he counted his money before going to bed and shortly after arising the next morning discovered that the money was missing. He reported his loss to the constabulary. The appellant had done laundry for him and some two weeks after the theft, she was taken into custody for investigation by a Sergeant of Constabulary upon the basis that she had been spending larger amounts of money than she would ordinarily be expected to have.

While in custody she was repeatedly questioned, including questioning late at night and was apparently told that if she confessed she would be released from custody. She made an oral confession which was subsequently reduced to writing and then released with instructions to return at some future time to re-enact the crime. She returned the next day after her release and in the presence of the complaining witness, the arresting officer and an interpreter she described how the thefts were accomplished. Without the admissions made at the time of the re-enactment of the crime, there was no adequate proof that she had committed it. The trial judge refused to admit the written

confession upon the ground that it was obtained through fear, but held that admissions made at the time of the reenactment of the crime were voluntary. The trial judge apparently did not consider that any statements, oral or written, made by the appellant were to be considered while she was in custody without having been warned of any of her rights. The court said, Tr. p. 64:

The court ruled that the so-called confession in this case was inadmissible, and the reason that the court ruled that was on several grounds. We felt that the confession, or offered confession, was not voluntarily made. We felt that perhaps the defendant didn't realize or actually understand what that paper or so-called confession was at the time it was made. We felt it wasn't necessarily her words in substance even. We felt that she was under fear, not necessarily as an intention upon the officer's part. But sometimes people are under fear under the circumstances or within their own mind, and perhaps most of it caused by the person himself. We certainly feel that an officer could or should have time to have an investigation of a defendant during working hours. And the fact that the questioning was done, or at least some of it, in almost the middle of the night within itself might have a fearful effect upon the defendant.

The court permitted the actions and the statements by the defendant made in daylight up at the trailer to be entered into the record and be considered as an admission, and we believe that this admission was made freely and without fear or hope of reward or any enticement to the extent that would affect the admission. We suppose that any defendant had just as soon not make an admission if he felt that he never would have to answer any questions about it. But we ruled and we believe, that it was proper to admit this admission. And from this admission we felt that there was strong circumstantial evidence as to the guilt of the defendant.

The government in its brief does not rely upon the statements, oral or written, made by the appellant while in custody, but contends that after her release from custody she voluntarily made admissions of guilt in the process of describing at the trailer how she stole the money. It is true that she appeared the next day after her

release from custody, but it is equally clear that she was told by the arresting officer to return for that purpose, Tr. p. 10:

Mr. Robson: Did you order the defendant to go with you to the house, or you and the defendant just have a promise that you two will go together to the house? Why did the defendant go with you to the house?

A: The defendant accompanied me and went to the house because she told me that she took the money, and I asked her to go with me the next day to the house to show me how she got the money, and where she got the money from, and I told her at the same time she could come at any time during the working hours.

[1] The question before us is as to whether, as a matter of law, the appellant's subsequent admissions after her release from custody may supply the basis for her conviction. In that connection it should be noted that the appellant did not contend in her testimony that she made such admissions because she had been promised immunity from prosecution. She denied that she had made any such admissions. In *Lee v. Mississippi*, 332 U.S. 742, 68 S.Ct. 300, 92 L.Ed. 330, the court stated in connection with an appeal from a state court:

A conviction resulting from such use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily.

[2] We are not dealing here with the use of stolen property subsequently obtained through an involuntary confession. Rather we are dealing with the question as to whether the untrustworthy nature of the original confession carried over to the subsequent re-enactment of the crime and alleged admissions made in connection therewith. The release of the appellant was conditioned upon her confession and agreement to return and re-enact the crime. We cannot say that subsequent events were not in-

fluenced by the original taint. The appellant had never been warned; she was given to understand that she would not be prosecuted. The consequences of her failure to keep her promise to return, within her limited capacity for understanding, might have meant reincarceration. In the alternative her cooperation could have meant freedom. Confronted by these alternatives we cannot say that her subsequent admissions were voluntary or were free from the original influences which led her to confess.

[3] The defense informed the court that it had rested and after a recess requested permission to put the accused on the stand. The court permitted this but advised that in the future a defendant accused of crime would only be permitted to testify as the first witness for the defense. Section 187(e) of the Trust Territory Code provides that the defendant "may give evidence on his own behalf at his own request at the trial, although he may not be compelled to do so." There is no rule as to the order in which he must testify. The defendant, like any other witness, may testify at any time when testimony for the defense is being received.

Reversed and remanded for a new trial.