



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO.23 OF 2000

STATEREPUBLIC

VERSUS

CALEB NYANGAU MANYIZA ACCUSED

RULING:

Chief Inspector Charles Kamito (PW 11) was the O.C.S of Nyangusu Police Station. He deponed that on the 13th July 1999 the accused in this case named Caleb Manyiza Nyangau was taken to the police station. Then on the following day i.e. 14th July at 2.30 p.m. the accused was taken to the said Chief Inspector for a statement under inquiry. The Chief Inspector swore that he adhered to all the relevant rules regarding extracting a statement from a suspect who is in police custody.

He said he allowed the accused a seat and that he explained to him that he was inquiring into the death of a child (the deceased in the present case) and that he expected a statement from him (the accused). He said that he then proceeded to caution the accused that he (the accused) was not obliged to say anything but that whatever he chose to say would be taken down and would be given in evidence against him. PW11 said that after the caution was duly administered the accused voluntarily elected to make to him a statement which he (PW 11) recorded and now seeks to produce as evidence against the accused. He denied that he ever induced the accused to make a statement by force or promise brought to bear upon the accused.

But, on his part, the accused retracts the statement. When the advocate was cross examining the Chief Inspector (PW 11) he (the advocate) created an impression that the accused was assaulted by Sgt. Masila as a prelude to coercing him to make a confession to the Chief Inspector (PW 11), and that the statement was thus a direct sequel to Masila's assault on the accused. The prosecution recalled Sergeant Robert Maluki Masila (PW 9) who denied having assaulted the accused after he rearrested him on 13th July, 1999 and when he escorted him to the Chief Inspector, who was the officer empowered by the law to extract a cautioned statement from a suspect.

The accused subsequently gave sworn evidence to say that the assault on him took the two forms namely having his penis pricked with needles, being hit on the left hip and on the chest with a chair.

Whereas it is the duty of the prosecution to demonstrate clearly that the cautioned statement was voluntarily extracted from an accused, an accused person who on his part retracts a confession on the allegation of ill-treatment and inducement by the police (to extract the said confession) has the onus to prove such ill treatment and inducement (see Sarkar's Law of Evidence by C.S. Sarkar 9th Edition at Page 212 on section 24). The learned author went on at Page 213 to state as follows:

"In the evidence that a confession of an accused has been induced by illegal pressure it is not to be presumed that such confession was not induced. According to s.24 a confession is inadmissible only if the court considers it to have been induced by illegal pressure."

Of course, Sakar is dealing with the Indian Law of Evidence but it is relevant to note that our Act (Cap 80) is almost identical to the Indian Act s.24 is similar to s. 26 of our Evidence Act.

To mind an accused is easily able to discharge the duty placed in him if he appears credible about his allegation that he was induced or assaulted in order to make him give a confession. In the present case the accused said that the Chief Inspector himself did not assault him or induce into making the statement. He also denies that he complained to the chief Inspector that he had been assaulted elsewhere. But then he is not then convincing as to why he still ended up confessing. Moreover he did not complain to court when he first appeared before. He does not say he did not do so. If he had done so the court would have ordered that he be examined and treated in a hospital and this would certainly have impelled this court to believe that indeed the confession was illegally induced. But the accused is totally silent as to why he did not bother to complain to court that he was assaulted while in police custody.

He did not even seek medical treatment for the severe injuries which were allegedly inflicted on him to induce him to confess.

In these circumstances it would be foolhardy for me to say that there are really any truth in the accused's evidence. I find it was all concocted. So, I believe both PW11 and PW9 when they deny having assaulted the accused at the time when he was in their custody. I find that the statement was voluntarily given to PW11 and it is therefore admissible.

Dated and delivered on the 18th day of December, 2001.

ISAAC C.C. WAMBILYANGAH

JUDGE



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