

DOUGLAS R. BEATTY..... APPELLANT;

1943

AND

*Oct. 6, 7.

HIS MAJESTY THE KING..... RESPONDENT.

1944

*Jan. 6.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
COLUMBIA

Criminal law—Murder—Written confession—Statement in confession admitting theft of a revolver—Evidence at trial that revolver was weapon with which deceased killed—Admissibility of whole confession—Relevancy of theft—Effect of judgment of this Court in Thiffault v. The King [1933] S.C.R. 509—Comments as to extent of that decision as to the admissibility of a confession in whole or in part.

On a charge of murder the possession by accused of the weapon (revolver), with which the murder was committed, at the time of the killing was a relevant fact to be proved by the Crown. The evidence of the theft of the revolver was admissible; it was admissible because it was relevant as showing how the accused obtained possession of the revolver. Therefore the mention of the fact that the revolver was stolen in the confession of the accused did not vitiate that confession as evidence.

In *Thiffault v. The King* ([1933] S.C.R. 509), the decision of this Court was that the evidence pointed to the conclusion that the statement tendered in evidence was not a correct statement of what the accused had said and intended to say; and it was also held that a document, professing to embody the effect of admissions obtained in the way the admissions were obtained in that case and containing *inter alia* a record of an admission of a fact that would be inadmissible as evidence against the accused and was calculated to prejudice him, ought not to be admitted as evidence against him.

The decision of this Court in the *Thiffault* case does not lay down that, where a document contains a true record of a declaration by an accused which, it is established to the satisfaction of the trial judge, was a voluntary statement in the pertinent sense, the whole declaration must necessarily be excluded because it contains a statement of some irrelevant fact. If the declaration was obtained in circumstances and in a manner which makes it otherwise unobjectionable, and if the statement of the irrelevant fact can be separated from the rest of the document without in any way affecting the tenor of it, then the trial judge in most cases would probably be able to effect the exclusion of the objectionable statement while permitting the unobjectionable part of the document to go before the jury. To this course in such circumstances there could be no objection. *Rex v. Sampson* (62 C.C.C. 49, at 51) approved, subject to the observations in the judgment. But where a written declaration by an accused contains statements of facts prejudicial to the accused and not relevant to the issue, the trial judge may find it necessary to scrutinize with exceptional care the circumstances in which the declaration has been obtained.

Judgment of the Court of Appeal ([1943] 2 W.W.R. 449; [1943] 3 D.L.R. 584) affirmed.

*PRESENT:—Duff C.J. and Davis, Kerwin, Hudson, Taschereau and Rand JJ.

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APPEAL from the judgment of the Court of Appeal for British Columbia (1), affirming the conviction of the appellant on a charge of murder.

The accused (appellant), when being interviewed by the police with respect of the theft of revolvers from a barracks, handed over a revolver then in his possession and confessed that he had stolen it. After a third and final interview had been apparently concluded, the accused blurted out "I killed Phil Davis", a taxi-driver. No mention of Davis had previously been made during the first two interviews. The usual warning had been given and the accused's confession was taken down in writing and signed by him; it included the theft of the revolver. The written statement embodying both confessions was admitted in evidence at the trial, after it had been found, following a "trial within the trial", to have been free and voluntary. The trial judge instructed the jury they could find the appellant guilty of murder, either on the confession itself, or apart from it, on his evidence given in the witness-box when he repudiated the confession and explained his possession of the deceased's watch and flashlight. The accused was convicted of murder. On appeal to the Court of Appeal, it was contended that the testimony of the theft was not material, since there was ample evidence of the accused's possession of the revolver, and that such testimony was not only irrelevant to the charge of murder but was also prejudicial to the accused. The majority of the appellate court held that, under all the circumstances, the fact of the illegal possession of the revolver was admissible and that the appeal should be dismissed. The accused appealed to this Court, and the appeal was dismissed.

P. D. Murphy for the appellant.

J. A. Clark K.C. for the respondent.

At the conclusion of the argument by the appellant's counsel, without calling upon counsel for the respondent, the Chief Justice, speaking for the Court, delivered the following oral judgment:

THE CHIEF JUSTICE.—Mr. Clark, we think it will not be necessary to call upon you.

We have had the advantage of an admirable argument from Mr. Murphy; and what I am saying now, in a very

summary way, is, first, that we are satisfied that evidence of the theft of the revolver was admissible and that mention of the circumstance that the revolver had been stolen in the confession does not vitiate it.

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As regards the application that has been made, we have come to the conclusion that we ought not to accede to that application, because we are satisfied there is no conflict between the decision of the Court of Appeal in this case and the decision referred to, in the relevant sense.

I must add, however, that a decision of this Court in the *Thiffault* case (1) was the subject of discussion in the Court below and we think it is possible that there has been some misapprehension of the effect of that judgment in that case, and for that reason we think some explanation should be given on that point. We will, therefore, give some reasons later.

The appeal will be dismissed.

Some time later, the following written reasons for judgment were delivered by the Chief Justice speaking for the Court.

THE CHIEF JUSTICE.—In the reasons given on the 7th of October, 1943, in this appeal, it was stated that there would be further reasons dealing with a point raised as to the application of *Thiffault v. The King* (1). As was stated in those reasons, we are satisfied that the evidence of the theft of the revolver was admissible; it was admissible because it was relevant as showing how the accused obtained possession of the revolver. Therefore, the mention of the fact that the revolver was stolen in the confession of the accused does not vitiate that confession as evidence.

In *Thiffault v. The King* (1) it was necessary to consider a declaration which had been received in evidence against the accused. The accused on the occasion on which the declaration was signed had been interrogated by a detective whose questions were directed to ascertaining not only the connection of the accused with the fire in which his wife had lost her life, but also to obtaining admissions of damaging facts in his past history. The clerk who was present made what professed to be a record of the effect of the statements of the accused, which the latter signed after it had been read to him. Admittedly

(1) *Thiffault v. The King* [1933] S.C.R. 509.

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the statement contained one most serious error, highly prejudicial to the accused. It also contained a statement that the accused had once been arrested for fighting and that he had paid the costs. The clerk who drew up the statement was not produced as a witness and no adequate explanation for his absence was given. Other witnesses who were present during the interrogation were not produced. Apart altogether from any question touching the voluntariness of the statement, this Court took the view that

the evidence points to the conclusion that, although the document was read over to him before he signed it, it is not a correct statement of what the accused said and intended to say.

We also considered that a document professing to embody the effect of admissions obtained in the way the admissions were obtained in that case, and containing *inter alia* a record of an admission of a fact that would be inadmissible as evidence against the accused and was calculated to prejudice him, ought not to be admitted as evidence against him.

The judgment in that case does not lay down that where a document contains the record of a declaration by an accused which, it is established to the satisfaction of the trial judge, was a voluntary statement in the pertinent sense, the whole declaration must necessarily be excluded because it contains a statement of some irrelevant fact. If the declaration was obtained in circumstances and in a manner which make it otherwise unobjectionable, and if the statement of the irrelevant fact can be separated from the rest of the document without in any way affecting the tenor of it, then the trial judge in most cases would probably be able to effect the exclusion of the objectionable statement while permitting the unobjectionable part of the document to go before the jury. To this course in such circumstances there could be no objection.

Subject to what has just been said, we are in agreement with the judgment of Mellish J. in *Rex v. Sampson* (1).

Of course, where a written declaration by an accused contains statements of facts prejudicial to the accused and not relevant to the issue, the trial judge may find it necessary to scrutinize with exceptional care the circumstances in which the declaration has been obtained.

Appeal dismissed.

(1) (1934) 8 M.P.R. 237; 62 Can. Cr. Cas. 49, at 51; 18 Can. Abr. 901.