R v Janima [2012] NTSC 16

PARTIES:	THE QUEEN
	v
	JANIMA, Paul
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	21019744
DELIVERED:	8 MARCH 2012
HEARING DATES:	5 AND 6 MARCH 2012
JUDGMENT OF:	KELLY J

REPRESENTATION:

Counsel:

Plaintiff:	S Robson
Defendant:	J Tippett SC

Solicitors:

Plaintiff:	Office of Director of Public Prosecutions
Defendant:	John McBride

Judgment category classification:	C
Judgment ID Number:	KEL12007
Number of pages:	5

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

R v Janima [2012] NTSC 16
No. 21019744

BETWEEN:

THE QUEEN
Plaintiff

AND:

PAUL JANIMA
Defendant

CORAM: KELLY J

REASONS FOR DECISION

(Delivered 8 March 2012)

[1] The Crown has indicated that it intends to adduce evidence of statements made by the accused as he was being charged. The accused was arrested on 15 August 2011. He was invited to participate in an electronically recorded interview with police. At that time he was cautioned and no issue is taken concerning the adequacy of that caution and no suggestion made that he did not understand at that time that he did not have to say anything to police. After the caution was administered, the accused exercised his right to remain silent.

[2] The next day he was charged and, while that was happening, the accused made certain statements. The transaction was captured on cctv and the following is a transcript taken from that footage.

> "JAMISON: COME THIS WAY SIR. GOOD AFTERNOON – MORNING. MY NAME IS SERGEANT JAMISON. I'M THE WATCH COMMANDER ON TODAY. CAN YOU TELL ME YOUR FULL NAME PLEASE?
>
> JANIMA: PAUL JANIMA
>
> JAMISON: ALRIGHT PAUL. ALRIGHT PAUL YOU DON'T HAVE TO SAY ANYTHING BUT ANYTHING YOU DO SAY I'M GOING TO WRITE DOWN ON THIS PIECE OF PAPER AND THAT JUDGE IN COURT MIGHT USE IT AS EVIDENCE AGAINST YOU. DO YOU UNDERSTAND?
>
> JANIMA: YEAH.
>
> JAMISON: OKAY. THANKYOU. PAUL I'M CHARGING YOU WITH SEXUAL –AH- INTERCOURSE WITHOUT CONSENT SO BASICALLY RAPE. DO YOU UNDERSTAND THAT?
>
> JANIMA: YEAH. [INAUDIBLE] ATTEMPTED RAPE [INAUDIBLE].
>
> JAMISON: OKAY –AW- SO, DO
>
> JANIMA: ATTEMPTED BECAUSE I DIDN'T
>
> JAMISON: DO YOU WANT TO SAY ANYTHING ABOUT THAT?
>
> JANIMA: YEAH.
>
> JAMISON: WHAT DO YOU WANT TO SAY?

JANIMA: I JUST WANT TO SAY

JAMISON: IT WAS AN ATTEMPTED RAPE, IS THAT WHAT YOU'RE SAYING?

JANIMA: YEAH.

JAMISON: IT WAS AN ATTEMPTED RAPE. ANYTHING ELSE YOU WANT TO SAY?

JANIMA: NO THAT'S IT.

JAMISON: THAT'S IT. OKAY. WELL THANKYOU FOR YOUR HONESTY. OKAY?"

[3] The Crown contends that this conversation amounts to an admission that the accused at least tried to rape the complainant. The Crown also contends that even if the word "rape" was used to mean simply "sexual intercourse" and not "unlawful sexual intercourse" – as may be suggested by the Defence, the assertion that there was only an attempt at sexual intercourse which did not succeed is a lie from which an inference of consciousness of guilt can be drawn.

[4] The provisions of s 142 of the *Police Administration Act* do not apply to render the statements inadmissible as the conversation was captured on cctv – both audio and visual.

[5] Defence counsel has objected to the admission of this evidence. He concedes that the statements were made voluntarily but says that this evidence should be excluded on discretionary grounds as unfair. The reason

for the unfairness, it is submitted, is that a full caution was not administered. Counsel relied on *R v Ninnal*[1] for the propositions that it was essential that an accused be cautioned properly and that a caution administered the previous day would not suffice. However, while those propositions are undoubtedly true and important, in my view they do not apply to make it appropriate to rule out the evidence at issue in this case.

[6] *Ninnal* was a case in which, as a result of numerous deficiencies in the procedures adopted, the court found that the Crown had not established that the statements in question had been made voluntarily. Hence they were inadmissible and no question of discretionary exclusion arose. Here voluntariness was not in issue. In *Ninnal*, the police were actively questioning the accused with a view to having him adopt notes made by police of a conversation they had had with him the previous evening. Here, the accused was being charged; he was not being questioned by police and one would not necessarily expect them to go through the entire process in the Anunga Rules when they had no intention of asking him any questions which he must understand he did not have to answer. Nevertheless, before charging him they did remind him that he did not have to say anything if he did not wish to. The statements made by the accused after that were not elicited in answer to questions by police; they were made voluntarily, spontaneously in what appears to have been an attempt by the accused to exculpate himself.

1 (1992) 109 FLR 203.

[7] In the circumstances, I do not consider that it would be unfair to admit those statements into evidence.