

Crimes--Murder--Whether a Confession is Voluntary is a Question of Law (People v. Barbarto, 254 N.Y. 170 (1930))

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competent as tending to show preparation and thus bearing upon premeditation and guilt.⁷ The defendant, by offering himself as a witness, subjected himself to interrogation as to any vicious or criminal act of his life for the purpose of impeaching his character and credibility as a witness.⁸ Where his credibility is assailed by compelling him upon cross-examination to give testimony which, although competent for the purpose of impeachment, is collateral to the main issue, the prosecution, at whose instance the collateral evidence was elicited, is bound thereby and has no right to contradict it.⁹ It is then the province and duty of the trial court to clearly state the limitations of the scope of such evidence and the application to be observed by counsel and jury.¹⁰

In the circumstances of this case, the dissenting opinion questions whether the evidence, even if technically objectionable, so influenced the jury against the defendant that justice requires a new trial, and expresses the view that whether the defendant had one weapon or a dozen would not materially change the nature of his offense. As pointed out by the prevailing opinion, however, it is essential, in order to assure to a defendant a fair trial, that well-established principles regulating the orderly procedure of trial be observed, for the question of whether a guilty man goes free or not in a criminal prosecution is a small matter compared with the maintenance of those principles which safeguard a person accused of a crime.

R. L.

CRIMES—MURDER—WHETHER A CONFESSION IS VOLUNTARY IS A QUESTION OF LAW.—Defendant was convicted of murder in the first degree. Prosecution relied on defendant's confession to establish his guilt. The defense was an alibi and convincing evidence was offered to show that the confession was entirely involuntary and extracted by means of threats and severe physical violence. This evidence was only partially denied and wholly uncontroverted. The question on appeal was whether, where the weight of the evidence is that the confession is involuntary, the jury should be left to determine whether the confession was voluntary. *Held*, reversed. *People v. Barbarto*, 254 N. Y. 170, 172 N. E. 458 (1930).

The practice of forcing confessions from defendants in criminal actions, or the commonly-called "third degree" has been a well-

⁷ *People v. Scott*, 153 N. Y. 40, 46 N. E. 1028 (1897); *supra* Note 1 at sec. 238.

⁸ *People v. Hinksman*, 192 N. Y. 421, 85 N. E. 676 (1908); *People v. Webster*, 139 N. Y. 73, 34 N. E. 730 (1893).

⁹ *Stokes v. People*, 53 N. Y. 164, 176, 13 Am. Rep. 492 (1873); *People v. De Garmo*, 179 N. Y. 130, 134, 71 N. E. 736 (1904).

¹⁰ *People v. Webster*, *supra* Note 8.

recognized institution in this country.¹ Recent decisions of the appellate courts seem to show, however, that it is not so firmly founded.² It has been defended and advocated on the ground that the state can in this way obtain a conviction of a defendant³ which can often be secured in no other way. It has become difficult to obtain a conviction because the law gives to the defendant the advantages of a fair trial by jury, the presumption of innocence, the aid of counsel, the protection of rules of evidence and the benefit of the doctrine of reasonable doubt.⁴ This practice vitiates the rights which the Constitution so zealously secures to a defendant. It renders ineffectual sections of the Code of Criminal Procedure, one of which states that a defendant may not be forced to testify against himself,⁵ and another which prevents a defendant from entering a plea of guilty to a charge of murder in the first degree.⁶ The prosecution had to prove the confession voluntary before it could be submitted to the jury.⁷ In this it failed. The evidence was overwhelmingly to the effect that the confession was involuntary.⁸ No question of disputed facts or credibility was involved. It was, therefore, the duty of the Court to determine, as a matter of law, that the confession was involuntary and to permit it to go to the jury constituted error. In the instant case the Court leans toward the view of the English courts.⁹ The wonder is not that the Court is now tending to disapprove of and discourage this procedure but that it has so long survived that it is yet an important part of prosecution tactics: If the rules of evidence were strictly adhered to this problem would not arise.

J. M. C.

¹ *People v. Lipszinski*, 212 Mich. 484, 180 N. W. 617 (1920); *People v. Doran*, 246 N. Y. 409, 159 N. E. 379 (1927); *White v. State*, 88 Tex. Cr. Rep. 87, 225 S. W. 177 (1920); *Karney v. Boyd*, 186 Wisc. 594, 203 N. W. 371 (1925).

² *People v. Trybus*, 219 N. Y. 18, 113 N. E. 538 (1916); *People v. Weiner*, 248 N. Y. 118, 161 N. E. 441 (1928).

³ We cannot describe the defendant as a *criminal* for that would be prejudging him.

⁴ Code of Crim. Proc., sec. 8 (Laws of 1881, ch. 442).

⁵ *Ibid.*, secs. 10, 393.

⁶ *Ibid.*, sec. 332.

⁷ *Ibid.*, sec. 395.

⁸ Defendant testified that he was alone with police officers for several hours and that they struck him, knocked him about and threatened him with further abuse if he did not confess. Upon being arraigned he was so broken he could not talk and upon being examined by the jail physician his body was found to be covered with black and blue spots and lumps which might have resulted from a beating.

⁹ *Rex v. Best*, 2 Cr. App. R. 30 (1909); *Ibrahim v. Rex*, A. C. 599 (1914); *Rex v. Turner*, 19 Cr. App. R. 171 (1926).