IN THE SEYCHELLES COURT OF APPEAL

Geoffrey Marie — Appellant

v/s

The Republic — Respondent

Criminal Appeal No. 7 of 1988

Miss Butler-Payet for appellant
Mr. A. Derjacques for respondent

JUDGMENT OF THE COURT

The appellant was on the 9th November 1983 charged in the Magistrate's Court Victoria District for having (i) on the 4th September 1983 at Mont Fleuri, Mahe had in his possession dangerous drugs, namely 280 mg. cannabis without being duly authorised.
(ii) on the 5th September 1983 at Greenwich, Mahe had in his possession dangerous drugs namely a certain quantity of cannabis without being duly authorised.

According to the record he was summoned to appear before the Magistrate Court in Victoria. However it appears that accused was taken before His Lordship F. Wood Judge and pleaded not guilty.

As the accused was absent from Seychelles the trial started on 11th July 1988. On 7th September 1988 he was found guilty on count 1 and not guilty on count 2 and sentenced to 3 years imprisonment.

He has appealed on three grounds which after amendment allowed by this Court read as follows;-

1. The Learned Chief Justice erred in admitting Exhibit 1.

2. The Learned Chief Justice erred in finding that Exhibit 3 was made by the Appellant without holding a trial within a trial.

3. In all the circumstances of the case the conviction of the accused was unsafe and unsatisfactory.

At the start of the hearing counsel for the appellant st ated that at the last moment she noticed what appeared to her to be an irregularity which would render the proceedings in the Supreme Court null and void. She consequently moved to amend her memorandum of appeal by adding as Ground 4:- The Supreme Court had no jurisdiction to hear the case against the Appellant because no complaint had been instituted before the said Court. After hearing argument on both sides as learned Counsel for the Respondent objected to the motion for amendment we decided to hear Counsel, who stated that they were ready to address us and to postpone to a later stage the decision on the motion. Having done so we have decided not to grant the motion. Not only didit come at a very late stage but it did not in our view raise a question of Jurisdiction. At most it is a clerical error. And as far as the Appellant is concerned the case against him always took place before the Supreme Court, before which he pleaded to the charge which must be regarded as one which had been laid before the Supreme Court and which the Supreme Court had jurisdiction to try. For those reasons the motion for amendment to add Ground 4 to the Memorandum of Appeal is set aside.

We shall now deal with Ground of Appeal No. 2 which is a procedural matter. The Appellant contends that the learned Chief Justice erred in finding that Exhibit 3 was made by the Appellant without holding a trial within a trial.

For the Appellant it was argued that the procedure followed in the case of Gobine (S.C.A. (Criminal Appeal) No. 14 of 1983 was out of date as the Ajodha case which it followed and which wasa Privy Council decision reported in (1981) W.L.R. has been criticised in England as a result of the coming into operation in England of the Police and Criminal Evidence Act 1984.

We find that the English change in procedure, if any, results from a decision of the Legislature in the United Kingdom.

On this point it is our considered view that the procedure traced out in the Gobine case is applicable in

As a matter of fact there are in this case several facts which are different from the Gobine's case. In this case the Appellant objected to the productionof the statement before its admission whereas in Gobine "the statement was admitted before the Appellant had made his objection clear." In this case the statement was ruled admissible, but not in Gobine's case where it is only after the case had been heard that the trial Judge said in his judgment that he found that the appellant's statement had been correctly recorded, and that the accused was the maker of the statement.

In Gobine's case the Court of Appeal decided that "when voluntariness is not in issue at all but a statement alleged to have been made by the accused is challenged in whole or in part on the ground that the accused did not make it then the Magistrate or Judge before admitting the statement in evidence is obliged to hear such evidence as the prosecution may wish to produce to satisfy himself that a prima facie case is made out that the impugned statement was in fact made. A ruling to that effect should appear on the record. At that point of the trial the Magistrate or the Judge is not bound to hear evidence in rebuttal either from the accused or from the witnesses he wishes to call. However the Magistrate or the Judge may in his discretion, according to the circumstances of the case allow such evidence to be given."

The ruling of the learned Judge on the 25th July 1988 on the objection of Counsel for the Defence to the production of the statement was totally in accordance with the direction in Gobine's case. And then on the 2nd August 1988 after satisfying himself that a prima facie case is made the statement is admitted as Exhibit 3.

Ground No. 2 therefore fails.

With reference to Grounds Nos. 1 and 3 we have considered the able arguments of Counsel for the Appellant but we are unable to agree that it was an error to admit the envelope Exhibit 1 or that it was in any way unsafe or unsatisfactory for the Supreme Court to convict the Accused as it did.

The appeal is dismissed with costs.

Dated this 25th day of April, 1989.

A. MUSTAPHA
PRESIDENT

H. GOBURDHUN

C. D'ARIFAT