

IN THE SEYCHELLES COURT OF APPEAL

GARRY FLORENTINE

APPELLANT

Versus

THE REPUBLIC

RESPONDENT



Criminal Appeal No: 1 of 1998

[Before: Goburdhun, P., Silungwe & Ayoola, J.J.A]

Mr. F. Elizabeth for the Appellant

Mr. M. Vidot for the Respondent

JUDGMENT OF THE COURT

(Delivered by Silungwe, J.A)

On May 2, 1996, the appellant (unrepresented) was, upon his own plea of guilty, convicted before the Senior Magistrate's Court, Victoria, on a charge of breaking into a building and committing a felony therein, namely, stealing, contrary to Section 291(a) as read with Section 260 of the Penal Code. Although the appellant was a first offender, he received the mandatory minimum sentence of 5 years' imprisonment, in terms of Section 260 of the Penal Code, as amended by the Penal Code Amendment Act No. 16 of 1995.

Subsequently, learned counsel who had been appointed to represent the appellant on Legal Aid, launched an appeal in the Supreme Court (Amerasinghe, JS). The only ground of appeal that was ultimately canvassed was against conviction, namely: that the appellant not being legally represented, should have been advised by the Senior Resident Magistrate whether he wished to exercise his constitutional right to retain legal representation and whether or not he wished to exercise that right before the plea could be taken. As the record of proceedings indicated, the Senior Resident Magistrate had merely stated: "Accused advised if he wishes he may take legal advice." Mr. Elizabeth contended that that was insufficient to make it

clear to the appellant that he had a constitutional right under Article 18(3) of the Constitution to retain legal representation and that he was entitled to exercise that right before the plea could be taken. In the circumstances, Mr. Elizabeth continued, the appellant's plea of guilty was unreliable, unsafe and grossly unfair with the result that the plea was null and void.

Mr. Vidot for the respondent reckoned that the ground of appeal was futile. He maintained that the learned Senior Magistrate had actually advised the appellant of his right to legal representation and that there was nothing more that he could have done. He submitted that Article 18(3) of the Constitution speaks of a person who is arrested or detained as having a right to be informed at the time of arrest or detention ..., not when a person is brought before court.

Amerasinghe, J.S., dismissed the appeal on the basis that the appellant had sufficiently been made aware of his right to legal representation, if he so wished; and consequently held that no breach, either of practice or of any constitutional provision had occurred.

On appeal to this court, the same points raised before the Supreme Court have been rehearsed and no new material has been introduced. If there is any difference at all, then this is merely by way of detail and emphasis. Mr. Elizabeth reiterates his submission that the trial court is under an obligation to inform an unrepresented person of his constitutional right to legal representation of his choice under Article 18(3) of the Constitution. He urges that constitutional provisions should always be given a liberal interpretation and that, as such, Article 18(3) is not only limited to the time of a person's arrest but also continues to the time that he appears before a court if he is not legally represented. Failure to explain to the unrepresented person that he has a right to legal representation of his choice and that he may exercise the right if he so wishes would render any plea tendered by the person thereafter null and void.

The rights of arrested/detained/accused persons in Seychelles enjoy constitutional protection, for instance, under Articles 18 and 19 of the Constitution. In particular, article 18(3) and 19(2)(d) provide:-

“18(3) A person who is arrested or detained has a right to be informed at the time of arrest or detention or as soon as is reasonably practicable thereafter in, as far as is practicable, a language that the person understands of the reason for the arrest or detention, a right to remain silent, a right to be defended by a legal practitioner of the person’s choice and, in the case of a minor, a right to communicate with the parents or guardian.”

“19(2) Every person who is charged with an offence –

(d) has a right to be defended before the court in person, or at the person’s own expense by a legal practitioner of the person’s own choice, or, where a law so provides, by a legal practitioner provided at public expense.”

The right of a detainee to be informed of the right to legal representation seeks to achieve two objectives: first, the detainee may need legal representation to enforce his rights, for instance, to challenge the lawfulness of his detention. Secondly, a detainee who is arrested for a criminal offence (or is simply an arrested person) may need legal representation in order to enforce his rights the most important of which is the right to remain silent and not to be compelled to make any confessions or admissions that could be used in evidence against him. The arrested person’s right to legal representation indirectly ensures the fairness of the subsequent trial.

Further, an arrested person may also need legal representation to assist him with an application for bail. A person who has been charged with a criminal offence may need legal representation to

enforce his rights (as an accused person) to a fair trial in terms of article 19, as read with article 18, of the Constitution.

Thus, the purpose of the right to legal representation and its corollary to be informed of that right, is to protect the right to remain silent, the right not to incriminate oneself, and the right to be presumed innocent until proven guilty. The Constitution itself makes it abundantly clear that this protection exists from the inception of the criminal process, that is, on arrest, until its culmination up to, and including, the trial itself. The protection has everything to do with the need to ensure that an accused person is treated fairly during the entire criminal process. See S v Melani 1996 (1) SA CR335 (E) 3481. The rationale is that the criminal process must conform with notions of basic fairness and justice and that all courts involved in the criminal process are duty-bound to give content to those notions.

The issue in the current case is neither that the appellant was not informed of his right to legal representation at the time of his arrest nor that he was not informed of that right when he appeared before the Senior Resident Magistrate for plea. The issue is that the information that was furnished to him at the time of his plea "was insufficient in the circumstances to make it clear to the appellant that he has the constitutional right to legal representation of his choice and that he may exercise it if he wishes to do so."

The following record was maintained by the Senior Magistrate:

"For defence: Accused present....

Charge read over, interpreted and explained to the accused.

Plea(s):-

I am guilty with explanation.

.....

Court: Explain?

Accused: I accept I took them all. Please order me to pay fine. I will. That is all.