(3)

IN THE SEYCHELLES COURT OF APPEAL

MOHAMED SAREEF NIYAS ***APPELLANT***

VERSUS

REPUBLIC ***RESPONDENT***

SCA No. 5 of 2003

*[**Before:** Ayoola, P., Silungwe and De Silva JJA]*

Mr. F. Elizabeth for the Appellant
Mr. R. Govinden for the Respondent

JUDGMENT OF THE COURT
(Delivered by Ayoola, P.)

On January 15, 2003 at the Supreme Court after a trial before Alleear, CJ, the appellant was convicted on two counts of offences of unauthorised fishing in Seychelles waters contrary to section 14(1) of the Fisheries Act (Cap 82) and sentenced to fines of Sr.100,000/- or six months' imprisonment in default of payment of fine in respect of each of the two counts. An order of forfeiture of the vessel Charintha Puntha III used by the appellant to commit the offences was made. He has appealed against his conviction and sentence.

At about 6.30 am on October 26, 2002 one Antoine Polite, a fisherman employed by Seychelles Fishing Authority (SFA) arrived at the Coreira Bank where he had gone fishing with five other fishermen. At Coreira Bank, Antoine Polite spotted a yellow foreign fishing boat at a distance of about 1¼ of a mile to 1½ of a mile. Looking at the GPS on his fishing vessel Polite located the position of the foreign fishing vessel as 06°, 29 minutes, 319 seconds South and 57°, 10 minutes, 373 seconds East. The

fishing vessel, St Michel, on which Polite was, moved in the direction of the foreign fishing vessel when it reached within 50 meters of it, Polite saw the crew who looked like Indians drop something which looked like a line into the sea. When St Michel came closer to the foreign vessel Polite saw the crew of the foreign vessel cutting their net and started moving faster than St Michel. Polite memorised the name of the foreign vessel and its number, made hand sign to the vessel to stop and spoke to the appellant who was the captain of the vessel. Eventually, after an SFA plane had joined the chase of the foreign vessel, a Coast Guard patrol vessel, Andromanche, sighted the foreign vessel on its radar at about 22.40 hours and reached the foreign vessel at 22.40 hours. Officers of the Coast Guard boarded the foreign vessel, Charitha Putha 3 the position of which was 07°,08.5 minutes south and 05°, 22.8 minutes East. The foreign vessel was brought to Port Victoria on October 28, at 11.30 hours. Where the foreign vessel was first seen and where it was apprehended were both within the Seychelles Exclusive Economic Zone. The Chief Inspection Officer of SFA took possession of the fish book on board the foreign vessel and handed it over to the Police.

The appellant did not testify at the trial or adduce evidence. He made a statement to the police which was produced in evidence by the prosecution. His defence, put through his counsel, was that the prosecution witnesses should not be believed particularly on the question whether he was fishing or not. From his counsel's submissions it is reasonable to imply that his defence was that he was not fishing in Seychelles waters.

The Chief Justice found that it was not open to the appellant to state that he had strayed unintentionally into Seychelles Exclusive Territorial Waters because it had been proved that at the time of the commission of the

offence the GPS on the Charitha Puntha had been functioning. He held that the crew of Charitha Puntha had been fishing at all material times and were doing so without license in terms of section 17 of the Fisheries Act.

Before the court, it was argued by Mr. Elizabeth, counsel for the appellant, that the Chief Justice erred in convicting the appellant because it had not been proved that on both days on which the offences were alleged to have been committed the appellant had been fishing in Seychelles Exclusive Economic Zone and that several of the prosecution witnesses should not have been believed because of inconsistencies, contradictions and inaccuracies in the prosecution case.

The appeal is all on facts. The principle has long been established that where findings of fact made by the trial judge is supported by evidence an appellate court will interfere with such findings only if they are unreasonable and could not be supported having regard to the evidence. It is not sufficient to approach the matter on the basis that there are some discrepancies and that the appellate tribunal felt some doubt about them. The appellate court must find whether the discrepancies were so material that the findings of the trial court were unreasonable. [see *Naiken v The Republic* 1981 SLR 19.]

Mr. Elizabeth submitted that on the strength of the principle in *R v Golder* [1960] 3 ALLER 457 because of inconsistent statements made by Polite the credit of Polite had been destroyed and, with it, the prosecution's case on the second count. *R v Golder* (Supra) is authority for the proposition that previous statements may be put to an adverse witness to destroy his credit and render his evidence given at the trial negligible and that such previous statements do not themselves become evidence of the truth of the

facts stated therein. The principle in *Golder* does not take away the responsibility of the trial judge to determine what value to ascribe to evidence of the particular witness in the context of the entire case. In discharging that responsibility, relevant factors include the materiality of the fact on which the witness had given a previous statement and the evaluation of the trial judge of the explanation, if any, of the reason for the previous inconsistent statement.

In the present case the evidence was overwhelming in support of the finding that the foreign vessel was within the Seychelles Exclusive Economic Zone. Coreira Bank, in relation to which Polite described the position of the foreign vessel, is as charted on the map Exhibit P2 prepared by Joseph Legras and put in evidence in support of the prosecution's case. Similarly, the position of the vessel when apprehended was well within that zone and was consistent with the evidence of Polite. Besides, the statement of the appellant substantially corroborated the evidence of Polite that the foreign vessel and the vessel St Michel were in the same vicinity on October 26, 2002. The appellant confirmed that: *"26th early morning we saw the white boat"*. It also corroborated the evidence that St. Michel came in pursuit by stating: *"As we are aware about sea pirates who attack boats and kill sailors we suspected this also as one of them. Hence we tried to flee away at the maximum speed to save our live. They chased us till night."*

As to whether the foreign vessel was being used for fishing on October 25, 2002 there was the entry in the fish book Exhibit P5 that: *"25 put the line"*. As to whether the vessel was fishing on October 26, 2002 there was the statement of the appellant to the police that *"when we saw the*

boat we had already put the line. It was done around 08.00 previous night GPS was not functioning at that time".

The Chief justice disposed of the inconsistency as regards the means employed by the appellant in fishing in Polite's previous statement and his testimony, shortly by holding thus:

> *"For the offence of unauthorised fishing in Seychelles Waters to be committed, any method of fishing within the Seychelles Exclusive Economic Zone suffices".*

It has not been suggested that he was wrong. We do not think he was. In the face of the appellant's admission that he *"put the line"* and the uncontroverted evidence that Polite did see a foreign vessel and pursued it, the question whether he saw the foreign vessel fishing with a line or with a net is inconsequential.

Mr. Elizabeth further argued that some contradictions in the evidence of prosecution witnesses should have cast some doubt on the prosecution's case in regard to the position of the foreign vessel at the material time. However, the evidence was clear that from the time it was spotted by St Michel and the time St Michel and SFA plane went in pursuit of the foreign vessel up to the time it was apprehended by the coast guard that vessel was in Seychelles waters where it was moving away from the position where it was spotted, towards the direction of the eastern edge of the Exclusive Economic Zone.

In determining whether a finding of fact is reasonable, evidence in a case is not considered in isolation. A finding supported by the totality of the evidence, a not inconsequential part of which cannot be challenged or doubted, cannot be held to be unreasonable. In this case the totality of the evidence pointed inexorably to the fact that the foreign vessel was within the Exclusive Economic Zone at the material time. The Chief Justice was right in the finding of fact he made in the case. We see no reasonable grounds for interfering with those findings.

Although the appellant appealed on sentence on the ground that it was harsh and excessive, that ground was not argued in the written submission. However, oral arguments were proffered. The appellant was on conviction liable to a sentence of Rs.2.5 million but was sentenced to only Rs.100,000/- on each count. It has not been suggested that the Chief Justice adopted wrong principle or took irrelevant factors into consideration in sentencing. We do not find anything harsh or excessive in the sentence passed.

In the result this appeal fails in its entirety and it is dismissed.

Dated at Victoria, Mahe, this ..5.....day of ..June.....2003