

**Republic v Dubignon
(1998) SLR 43**

Romesh KANAKARATNE for the Republic
Frank ELIZABETH & John RENAUD for the accused

Ruling delivered on 25 August 1998 by:

PERERA J: The defence had called L/C Maxime Payet, who had assisted in the investigation connected with the case, to testify regarding the various aspects of that investigation in which he was personally involved. He testified that in the course of the investigations he recorded a statement made under caution by one Kerer William, also known as Kamal William, on 16 December 1997. That statement was recorded by him after administering the caution. He further testified that the said William made the statement voluntarily and that it was read over to him and that he was given an opportunity to make any corrections or alterations before he signed it. L/C Payet stated that that statement duly recorded by him in his handwriting was witnessed by Inspector Percy Omath who was present at that time.

L/C Payet also testified that William made that statement when he was a suspect for importing 109 kg 689 g of cannabis resin, the same offence, the present accused Tony Dubignon is being charged with. It is a matter of record that the charges against William were withdrawn by the prosecution after the charges and been filed against him, and subsequently the present accused was charged with the same offence under count 1 and a different offence under count 2.

Mr Elizabeth, counsel for the accused, seeks to introduce the statement of Kerer William alias Kamal William through L/C Payet as evidence for the defence on the basis of relevancy. He contends that all relevant evidence is admissible unless there is an exception to that rule which does not allow evidence to be so admitted. Counsel stated the purpose of his application tersely as follows

All we are saying is that this evidence is relevant evidence for the defence and this witness was present at the time that statement was given to the police. He is the one who recorded the statement and therefore, he can testify before this Court that he recorded the statement and that the statement was given to him by another person and it is admitted solely for that purpose.

L/C Payet has already testified regarding those matters except that the contents of the statement have not yet been read out by him in court. Counsel for the accused applies for that statement to be read out so that the contents could be made evidence for the defence. That is where the issue of admissibility arises, and the issue of relevancy departs.

Basically, if the contents of the statement are admitted in evidence per se, it would amount to admitting hearsay evidence. William was a suspect at the time of making the statement and hence he alone could state whether he made that statement voluntarily and without any promise or threat being offered. As Lord Normand stated in the case of *Teper v R* [1952] AC 480

The rule against the admission of hearsay evidence is fundamental. It is not the best evidence, and it is not delivered on oath. The truthfulness and accuracy of the person whose words are spoken by another witness cannot be tested by cross-examination and the light with his demeanour would throw on his testimony is lost.

In this respect it is pertinent to note the following observations made in the case of *R v Turner & Ors* (1975) 61Crim App R 67:

The idea which may be gaining prevalence in some quarters, that in a criminal trial the defence is entitled to adduce hearsay evidence to establish facts which if proved would be relevant and would assist the defence, is wholly erroneous.”

The instant application is based on the same fallacy and hence I disallow the application of the defence to admit hearsay evidence under the guise of relevancy.

The defence may however adduce the evidence of Kerer William alias Kamal William for the purpose of testifying as to the voluntariness and accuracy of the statement made by him and be subjected to cross-examination before being admitted as direct evidence for the defence.

Record: Criminal Side No. 3 of 1998