IN THE SUPREME COURT OF SEYCHELLES

The Republic

Vs

Joseph Anthony Emmanuel Anna

Defendant

Criminal Case No: 44 of 2001

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Mr. R. Govindan for the Republic
Mr. F. Ally for the Defendant

D. Karunakaran, J

RULING

The defendant above named stands charged before this court on count 1 with the offence of " *Breaking into building and committing a felony therein"* contrary to and punishable under ***section 291*** of the Penal Code and on count 2 with the offence of "*Stealing*" contrary to and punishable under ***section 260*** of the said Code.

As per charge the defendant on or about 19th of June 2000, at Glacis, Mahé broke and entered an office in the District Administration Building and committed a felony therein. Further, the defendant, having thus gained access therein, stole cash

amounting to SR3, 300/-, the property of the Government of Seychelles, which was in the District Administration Office. The defendant denied the charge. The case proceeded for trial. The defendant was represented and duly defended by Learned Defence Counsel Mr. F. Ally. The prosecution adduced evidence by calling a number of witnesses to establish the case against the defendant. After the close of the case for the prosecution, the Learned Defence Counsel chose to submit on no case to answer and contended in essence, that the finger print expert evidence adduced by the prosecution cannot be relied and acted upon because of its inherent weaknesses, unreliability and inaccuracy of the opinion given by the expert. Therefore, according to Mr. Ally, the prosecution has failed to establish a prima facie case against the defendant and hence this Court cannot safely convict the defendant in this matter for the offences charged. The defence counsel hence, seeks dismissal of the charges and acquittal of his client. On the other side, Learned State Counsel Mr. R. Govindan submitted in reply that the evidence adduced by the prosecution including that of the finger print expert is very reliable, strong and cogent. Hence, the Court may safely rely and act upon it to base a conviction for offences the defendant now stands charged with.

As regards the submission of no case to answer, it is a trite saying nevertheless should be restated that prosecution at this stage of the trial only need to show that it has made out a prima

facie case against the defendant. This has to be determined by the court on a balance of probabilities. Indeed, the relevant question for determination now is this:

> *"Is there evidence before the court on which any reasonable tribunal may- not would- convict the defendant?"*

If the answer to this question is in the negative, then the defendant should not be required to give any further explanation. He should be acquitted forthwith and set free. If the answer to the question is in the affirmative, then the defendant should be called upon to present his defence.

It is pertinent to note that in order for a submission of no case to answer to succeed, the defence must satisfy the court that there has been no evidence to prove an essential element of the offence charged. On the other hand, where evidence has been adduced, the defence must show that such evidence has been so discredited and become manifestly unreliable that no reasonable court could safely rely and act on it. Obviously, the court in this respect has only to determine whether there is a prima case made out against the defendant and should not consider whether the burden of proof required has been met by the prosecution. See, *Republic Vs. Jean Mellie Cr. Case No: 11 of 1997.* Indeed, the proper test required to be applied here is to

find out objectively, whether the evidence adduced is such that a reasonable tribunal ***might*** convict the defendant in the presence of such evidence but not to determine subjectively whether the trial Court ***would*** convict the defendant based on that evidence.

Bearing the above principles in mind, I carefully perused the evidence including the opinion evidence given by the finger print expert in this case. I gave meticulous thought to the submissions made by both counsel on the issue as to reliability and accuracy of the opinion evidence given by the expert witness in this respect. At this juncture, it is pertinent to note that a person, who has acquired expertise in a specialised field either by learning and studying or by experience (or both), is entitled to state his opinion to the Court because he has the necessary knowledge and understanding of the specialised matters in question, which the trial Judge cannot possibly hope to have. Therefore, the Court will allow him to give an "*informed opinion*" on the question involved. Having said that I should mention that a counsel, who simply represents his client in any legal proceeding cannot be allowed to give his opinion from the bar in order to controvert the opinion evidence given by an expert in the specialised field, unless the concerned counsel through admissible evidence, satisfies the Court that he himself is an expert having necessary knowledge and understanding of the specialised matters in this respect. Be that as it may. Firstly, on a cursory look at the evidence on record, it appears to me that the

prosecution has made out a prima facie case covering the essential elements of the offence charged against the defendant. Secondly, I note that no part of the evidence has been discredited to such an extent that it cannot be relied and acted upon by any reasonable tribunal to base a conviction in this matter. In the circumstances, it seems to me that the evince adduced thus far, reveal a prima facie case against the defendant and any reasonable tribunal properly constituted may rely and act upon it to base a conviction against the defendant. Therefore, I find that the answer to the above question is in the affirmative. For these reasons, this Court rules that the defendant has a case to answer for the offences charged. Hence, the motion of no case to answer is dismissed. The defendant is accordingly, called upon to present his defence, if any.

D. KARUNAKARAN

JUDGE

Dated this 14th day of October 2005