

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

VALLIPURAM MURALI

Criminal Side No. 37 of 2007

Mr. Camille for the Republic

Mr. Bonte, Mrs. Amesbury and Mr. Hoareau for the Accused

JUDGMENT

Gaswaga, J

The accused stands charged with four different counts of corruptly offering to give benefit to a person employed in the public service, contrary to and punishable under section 91(b) of the Penal Code, Cap 158.

The particulars allege that:

Count 1

Particulars of offence

Vallipuram Murali on the 14th June, 2007 at Le Rocher, Mahe, corruptly offered to give a person employed in the public service, namely Police Sergeant 80, Jenita Belmont of the Seychelles Police Force SR10, 000/- or anything that the said Jenita Belmont wanted on account of her agreeing to hand over to the said Vallipuram

Murali exhibits that she seized in connection with an investigation she was carrying out against the said Vallipuram Murali.

Count 2

Particulars of offence

Vallipuram Murali on the 14th June, 2007 at the Central Police Station, Victoria, Mahe, corruptly offered to give a person employed in the public service, namely Inspector Justin Dogley of the Seychelles Police Force anything that the said Justin Dogley wanted on account of letting Vallipuram Murali go and stop the investigation against the said Vallipuram Murali.

Count 3

Particulars of offence

Vallipuram Murali on the 19th June, 2007 at the Central Police Station, Victoria, Mahe, corruptly offered to give a person employed in the public service, namely Inspector Justin Dogley of the Seychelles Police Force anything that the said Justin Dogley wanted on account of letting Vallipuram Murali go and stop the investigation against the said Vallipuram Murali.

Count 4

Particulars of offence

Vallipuram Murali on the 26th June, 2007 at the Central Police Station, Victoria, Mahe, corruptly offered to give a person employed in the public service, namely Inspector Justin Dogley of the Seychelles Police Force money on account of letting Vallipuram Murali go and stop the investigation against the said Vallipuram Murali.

When the accused denied all those offences, prosecution called two witnesses to

adduce evidence in support of the said charges. Briefly, the evidence was as follows:

On the 14th of June, 2007 Inspector Justin Dogley (PW1) invited the accused to the Central Police Station for an urgent meeting. He was arrested then taken to his office at Hospitality Supplies Ltd located at Le Rocher for a search. Certain documents relating to transactions of his work were retrieved for the purpose of investigations in a complaint lodged by Mr. Sanikan, the Director of Hospitality Supplies. It is worth mentioning that two other criminal cases **Criminal Side No. 30 of 2007** and **Criminal Side No. 36 of 2007** have been filed in this Court against the accused basing on the strength of those documents.

During this search, the accused pleaded with Sergeant J. Belmont (PW2) to return to him the said documents with a promise that he will pay to her SR10, 000/-. Although the accused persisted with his demand Sergeant Belmont declined the offer and carried on with the investigation. On the same day, while in the office of the Inspector at the Central Police Station the accused promised PW1 ‘anything that he wanted if he only let him go’. The accused repeated this request five times but Inspector Dogley just ignored him and instead placed him in the cells. By that time, the accused who was under arrest was being investigated in the above cases. The same incident reoccurred on the 19th and 26th of June, 2007 when on both occasions the accused offered to give Inspector Dogley any sum of money that he wanted. The Inspector rejected the offers.

Being convinced that a prima facie case had been established, the accused was put on his defense on all counts, including count 3 in respect of which a submission for no case to answer had been made. **See section 184 of the Criminal Procedure**

code, Cap 54. The gist of the defense case as presented by the accused himself in his statement from the dock is that he has never offered any money or anything to the two police officers. That he had no reason to offer a bribe or anything to the police officers as claimed. Further, that on the 14th of June 2007 the Inspector was not alone at the CID but with Sergeant Belmont all the time and there was no way he could have offered a bribe to him in her presence. That even when they went to the accused's office at Le Rocher, Inspector Dogley found Sergeant Belmont already doing the search in the presence of the accused.

It was further stated that on the 19th of June 2007 the accused never saw or spoke to the Inspector. However, on the 26th of June 2007 it was Inspector Dogley that accompanied the accused to the fingerprint section and that while in the Inspector's office he saw a gift voucher for R10, 000 from the Labriz office which made him suspect that the Inspector had been paid to keep the accused in prison. He concluded that it was out of malice that the Inspector made these allegations.

For a conviction to be secured under section 91(b) the prosecution must prove beyond a reasonable doubt that the accused did; (i) corruptly give or promise or offer to give (ii) any person employed in the public service (iii) any property or benefit of any kind (iv) on account of any such act or omission to be done (v) on the part of the person so employed. In the case of **Attorney General vs. Kajembe (19580) E.A 505, The East African Court of Appeal** held that *“it must be proved that the giver acted corruptly.”*

In looking at the essence of this offence the Court considers the motive which animates the give; if he gives or intends or offers to give either on account of some past act or omission in his favour, or with the hope and expectation that his gift

may so influence the donee that something may thereafter be done or omitted in his favour. It is undoubtedly true that in cases under section 91(b), it is the mental attitude of the giver which is very crucial in determining whether or not an offence against that subsection has been committed. In fact, it matters not whether the donee may have intentions of showing favour or complying.

Uncontradicted evidence has been led by two witnesses whom the Court found to be truthful and therefore reliable. By offering Sergeant Belmont Sr10, 000/- to return the documents retrieved from the accused's office the accused acted with a corrupt intention and his main object was to bungle up investigations. Omitting to include such documents with pertinent information to the pending investigation in the police docket would have favoured the accused. In the same vein and with similar motive, when the accused persistently asked Inspector Dogley 'to let him go' he was acting with a corrupt intention. He wanted to evade justice and preempt the investigations. He very well knew that Inspector Dogley was in charge of the investigations of the '*false accounting*' charges against him and it was well within his powers at the time to decide whether to release the accused or not, or even discontinue investigations.

The general corrupt intention of the accused was to influence the two witnesses, who are police officers and therefore employed in the public service (the police force) of the Republic of Seychelles, not to carry out their respective duties in that case due to his offer and bribe. The various offers or promises made by the accused were also intended to hinder, derail and or divert the investigations against the accused so he could regain his liberty. This was interference with the course of justice. Moreover, the police officers testified that they understood and construed the accused's demands as well as offer, in the context of the case, to have the above effect.

The evidence clearly brings out the requisite elements of *mens rea* and *actus reus* of the offences charged.

I see no convincing reason for the said police officers to act with any malice or fabricate evidence (charges) against the accused as suggested by himself when he stated that “*Inspector Dogley was being well looked after by the company and that he has been paid to keep him in prison.*” This allegation remains unfounded. In fact the accused ‘merely suspected’. Suspicions, however strong, have no place in a Court of law. The officers had a genuine and good reason to summon, interrogate and detain the accused. It was not conduct outside the normal police practice.

A reasonable delay of (twelve) 12 days in reporting or initiating a criminal case does not in any way discredit the evidence of a complainant or witness. Further, the alleged surplusage in the particulars of count II has no effect of rendering the charge defective since the offence has been clearly defined. This Court is unable to accept the defence version of events. Instead, I find the prosecution to have proved beyond a reasonable doubt all the above ingredients of this offence.

The accused is found guilty and accordingly convicted on each of the four counts in the charge sheet.

D. GASWAGA

JUDGE

Dated thisday of, 2009

