

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

ALCIDE BOUCHEREAU

ACCUSEDCriminal Side No 61 of2007

Mr. Esparon for the Republic

Mr. B. Hoareau for the Accused

JUDGMENT**Perera ACJ**

The accused stands charged under two counts under the Misuse of Drugs Act. Count 1, trafficking in a controlled drug, namely 153.3 grams of cannabis, and count 2 cultivation of 85 plants of cannabis, which at the time of analysis, was 3.1 kilograms.

The case for the Prosecution is that on 22nd October 2007 Corp Louis Rath (PW1) together with two other Officers went to the residence of the accused in connection with a complaint made against him by a neighbour that he had injured some dogs. Upon seeing the Officers he ran towards the bushes. The Officers went back, but returned. Once again he ran, but was caught by the Officers. Thereupon while going round the house, P.C. Clothide saw herbal material put to dry on a table behind the house near the bathroom. The accused told them that the material did not belong to him and stated that he saw a plantation in that area which he volunteered to show them. He went there with P.C. Mathiot and P.C Aglae. They came back with several plants suspected to be cannabis. The plants and the herbal material were kept in a locker in the Office of P.C. Mathiot who brought them from Praslin to

Mahe the following day. The exhibits were taken by him to Dr. Jakaria the Analyst after obtaining the necessary documentation (P4) from the Adams Unit at New Port. The witness identified the signature of P. Cecile and that of Dr. Jakaria on the letter (P4) and the packages which were sealed after analysis. Thereafter they were kept in the safe at Adams Unit in the custody of Corp. Lablache. The Analyst certified that the 85 green plants were cannabis plants weighing 3.1 kilograms (P6). Corp Rath stated in his testimony that there were 15 seeds and buds of plants that were seized from the table behind the house. They were taken to the Analyst by him with letter (P1). The Analyst certified that the herbal material in one plastic bag with branches and leaves of green plants was cannabis, weighing 153.3 grams. They were also kept in a safe in the Office of Corp. Lablache.

P.C. Cliff Mathiot, an Officer of the S.S.U. testified that he was directed to assist the Baie Ste Anne Police to investigate a complaint regarding someone cutting dogs. When they went, the accused ran away to the bush. He and P.C. Cesar ran after him. When the gun was shown, he returned to the house. Once again he tried to run but was stopped by two officers. He was under pressure as he had cut a dog's head. He told them "there is a drug plantation in the woods, if you want I can show it to you". He accompanied them to that plantation which was near a boulder. 85 plants were uprooted and seized. There was also a spade and a box with plants there.

Dr. Jackaria the Analyst testified regarding the procedure he followed in analyzing the 85 plants and the 15 shoots and buds handed to him by P.C. Mathiot and P.C. Rath. He then produced the reports marked P3 and P6. The expertise of the Analyst was not challenged by the defence. The Court is satisfied that the Prosecution has established the chain of evidence in producing the exhibits from the

time of seizure up to the time they were analysed and later produced in Court. The Court is also satisfied that those exhibits are cannabis as certified by the Analyst.

P.C. Darrel Clothilde was the driver of the vehicle in which the Officers went to the residence of the accused regarding the complaint of injuring dogs. He ran to the woods stating he had not done anything wrong. When he and P.C. Rath went to the back of the house, they saw some herbal material left to dry on a table. The accused said that he did not know what it was and who had put it there. They picked up 15 shoots. The accused told them about the plantation and pointed to a rock. Two officers went there and brought the plants.

Corp Maryse Souffe was attached to the Drug Squad at the New Port when the accused was brought there on 23rd October 2007. She cautioned him around 10.35 a.m. After the rights were explained, he spoke about the offence for which he had been arrested and stated that he came to give a statement. The statement was recorded by her in the presence of P.C. Janet Thelermont and P.C. Terence Dixie who was also in the office.

The defence objected to the admission of that statement on the ground of oppression and non compliance with the Judges Rules. Consequently a *voire dire* was held. After the Prosecution adduced the evidence of Corp. Souffe and L/C Thelermont to establish the voluntariness of the statement, the accused also testified that the two officers who took him from the Central Police Station to the Adams Unit at New Port told him that if he gave a statement he could be released. He stated that those officers told him that twice or thrice on the way to New Port. So he believed them. He was also under pressure as his wife and the children were in Praslin. Hence when he came to the New Port Office he said "*ok no problem, I*

would give a statement". He decided not to ask for a lawyer as the two Police Officers had told him that he would be released after recording the statement. He was however unable to identify those two officers except to say that *"one was a bit big and dark and the other of fair colour."* On being cross examined he denied that he had decided to make a confession even before he was being taken to the New Port. He further stated that in Praslin he went with the Police Officers to show the plantation he had seen. As regards the statement, he stated *"yes, there is nothing wrong, I just told them the truth"*. Questioned as to whether he wanted to tell the truth even before the Police Officers came, he stated *"yes this was in my brain"*. In answer to a question by Court whether he asked Corp Souffe and L/C Thelemont who recorded the statement whether it was true that he would be released after making the statement, he was evasive and replied that they only asked him to come and give the statement. Questioned further whether they promised anything, once again he stated". *"No, I expected to be released after the statement"*.

By a ruling dated 25th April 2008, the Court admitted the statement as having been made voluntarily, on the ground that the accused, as a mature and intelligent person would not have made an incriminating statement merely on an alleged promise made by two Police Officers that he would be released. The Court also held that, even if those Officers had given that assurance, he could have verified the position from Corp. Souffe before making the statement. As regards the ground that the Judges rules had not been followed, the Court, for reasons stated in that ruling held that the nature of the caution administered by Corp Souffe in no way affected the voluntary nature of the statement made by the Accused.

The statement under caution is as follows-

"I am residing at Anse La Blague, Praslin, for a long period of time; my

house is situated at the same place. Two weeks ago whilst waling along the forest at Anse La Blague looking for dry latanier leaves for one Jose Accouche who works with the hotels on Praslin, I came across a drug plantation at about my height which were planted on a rock. I do not know how many plants were there. I did not say anything to anyone, and that same date, I picked some branches from a plant for me to make them dry to smoke. I placed those drugs to dry on a table behind my house.

So, yesterday which was on Monday 22nd of October 2007, I got a small problem with my neighbour namely Paolo, who is an Italian residing close to my house, and the police came to arrest me, and they saw the drugs on that table where I placed them to dry. I was arrested, and brought to Grand Anse Police Station. Whilst at the Police Station, I told the Police that I've got those branches from a drug plantation on a rock in the forest at Anse La Blague, and from there I went to show the police the drug plantation. They uprooted them, but id do not know how many plants were there altogether. I know that it was drug, because I consume it. I know that the drugs are for Dann Rosalie, because he used to cultivate on Praslin, and me, I 've cut the leaf and stole two small branches.

Sgd. Alcide Bouchereau"

At the end of the case for the Prosecution, the Court called upon the accused to present his defence. He elected to make an unsworn statement from the dock, which is as follows-

"I was working, as I said in my statement, I found this small plantation. I was fully corporative with the Police. I have gone to the Police and made a complaint that they have to assist me at my home, I have a problem. They never cooperated with me. I have cooperated to show them this

little plantation and they have destroyed it. They have gone to the forest and destroyed this plantation. That is all I wish to say. I have no witnesses to call, but honestly, this plantation was not for me”.

I shall first consider the charge of cultivation under Count 2. “*Cultivation*” like “*possession*” of dangerous drugs required some mental element. In the case of ***R v. Gill (1983) S.L.R. 22***, Seaton CJ following the decision in ***Rampersad v. The Queen (1975) M.L.R. 5***, held that the Prosecution had “*failed to establish any overt act to connect the accused with the crime*” and hence acquitted the accused. However, in the Canadian case reported in the ***English and Empire Digest (Vol 15) Para 1082, R v. Busby***, it was held that –

“Evidence of some overt act is *not* necessary for conviction where the circumstantial evidence points to an irresistible inference of cultivation”.

In the present case, there is no evidence that the accused was tilling, manuring, watering or doing any act to connect him with the offence of cultivation. The statement of the accused in the confession that he came across a drug plantation in the forest which belonged to someone else is corroborated by the evidence for the Prosecution that the accused told the Police Officers that there was such a plantation in the forest and volunteered to take them there. Hence there is no circumstantial evidence to implicate the accused with the offence of cultivation of cannabis plants. In those circumstances, it is unsafe to convict the accused under Count 2. Accordingly he is acquitted under Count 2.

As regards Count 1, the accused stated in his confession that he stole two small branches from the plantation in the forest and placed them on a table to dry for his

consumption. The Analyst, in his report (D3) stated that he analysed “one plastic bag with branches and leaves of green plants. P.C. Rath took “15 shoots of cannabis plants of various sizes, from 25 cms to 35 cms”. In his evidence he called them “15 hearts or buds”. He admitted that he referred to them as plants. When they were counted in Court, it was observed that the shoots had dried and some of them had broken in the process of handling. There were therefore 16 such shoots. Hence this evidence corroborates the accused’s statement that he stole two branches from the plantation. What was found on the table were shoots and not separate plants. They should therefore have been from those branches. The accused had therefore knowledge that what he was in possession was cannabis.

In these circumstances, the Court is satisfied that the retracted confession has been corroborated on material particulars implicating the accused with the offence charged under Count 1.

As regards the presumption of trafficking, the mere fact that the quantity is above 25 gms is insufficient. Here the burden is on the accused to rebut the presumption. In his statement from the dock he limited himself to the offence of cultivation. If the accused sought to rebut the presumption of trafficking for the offence under Count 1, he would necessarily be pleading guilty to the offence of possession.

In the statement under caution, which the Court has admitted as one having being made voluntarily, the accused has sought to rebut the presumption by stating that he knew that the herbal material was drugs because *he consumed it*. This statement is insufficient to rebut the presumption that he was trafficking. The quantity of cannabis he was in “possession was 153.3 grams, which is far in excess of the statutory limit for the presumption to operate. Hence the presumption has not been rebutted. Accordingly, the accused is convicted under Count 1 for the offence of trafficking in a controlled drug, namely 153.3 grams of cannabis.

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A.R. PERERA

CHIEF JUSTICE

Dated this 22nd day of September 2008