IN THE SUPREME COURT OF SEYCHELLES

The Republic

vs

Andrew Camille

1st Defendant

Brigit Marcel

2nd Defendant

(Both of Anse Aux Pins, Mahe)

Criminal Case No: 12 of 2008

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Ms. Jumaye for the Republic

Mr. B. Hoareau for the 1st Defendant

Mr. J. Renaud for the 2nd Defendant

D. Karunakaran, J

JUDGMENT

The 1st defendant **Andrew Camille** and the 2nd defendant **Brigit Marcel** both jointly stood charged before the Court with the offence of

“Trafficking in a controlled drug” contrary to Section 5 read with Section 26(1) (a) of the Misuse of Drugs Act 1990 as amended by Act 14 of 1994 read with Section 23 of the Penal Code and punishable under Section 29(1) read with the Second Schedule to the Misuse of Drugs Act, hereinafter called the “Act”.

The particulars of the charge alleged that both defendants of Anse Aux Pins, Mahe on 12th February 2008, were found in possession of a controlled drug to wit: 30.5 grams of Cannabis, which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

Both defendants denied the charge. The case proceeded for trial. The defendants were duly defended by competent defence Counsel Messrs. B. Hoareau and J. Renaud, who represented the 1st and the 2nd defendants respectively. The prosecution adduced evidence by calling a number of witnesses to prove the case against the defendants. After the

close of the case for the prosecution, Mr. J. Renaud, learned counsel for the 2nd defendant submitted on no case to answer. He contended that there was no evidence before the Court to incriminate his client namely, Brigit Marcel with the alleged offence. On a cursory look at the entire evidence adduced by the prosecution, it appeared to the Court as well that there was not even one iota of evidence direct or circumstantial against the 2nd defendant - Brigit Marcel - to substantiate the charge against her. Hence, the Court in its ruling dated 23rd July 2008 held that the 2nd defendant had no case to answer and so dismissed the charge and acquitted her accordingly. However, as regards the charge against the 1st defendant - Andrew Camille **-** it appeared to the Court - at that stage - that there was sufficient evidence on record to base a conviction against him. Hence, the Court found that he had a case to answer in defence for the offence charged. He was accordingly, put on his election in terms of Section

184 (1) of the Criminal Procedure Code. In response, the 1st defendant, who is hereinafter referred to as simply the "defendant" elected to give unsworn statement from the dock and so he did.

The facts of the case as they transpire from evidence are these:

The defendant and Brigit were at all material times, residents of Anse Aux Pins, Mahé. They were living together as man and wife in a portion of a large house, situated on the seaside of the Anse Aux Pins main road. This portion is a self-contained residential unit, consists of one bedroom and a toilet see, exhibit P7, a sketch drawn by PC Dufrene (PW3), and admitted in evidence. This unit has a separate door that serves as its main entrance to gain access from outside. There is also a window made of glass louvers located close to that door.

In passing, I should mention here that because of certain questions, which the defence counsel put to the police-witnesses in cross-examination, the Court came to know the following information, which in my view, could possibly prejudice the mind of any reasonable tribunal against the defendant.

i) In the past, prior to the instant case on hand, on several occasions the police have conducted search at the residence of the defendant for drug related offences and as such the police witnesses were familiar with the location and the inner structure of

the said unit, which the defendants were occupying at the material time.

ii) The police had already known - even before the incident that gave rise to the present charge - the defendant as a suspected drug-dealer and they had also arrested him in the past for suspected illegal activities involving controlled drugs.

Before I proceed further, I warn myself of the possible danger of prejudice following the exposure of the said information to the court. Herein, I have to reiterate that this Court still has an open mind. It does not draw any adverse inference nor does it have any prejudice against the defendant resulting from that information. The Court still presumes the defendant to be innocent in the eye of law.

I will now go back to the facts of the case. On 12th February 2008, at around 5 a. m a Drug Squad of ADAMS Unit based at New Port was on a mobile patrol. The squad comprised eight police officers including Police Sergeant Vevers Rose (PW2), Police Constable Robert Dufrene (PW3), police officers Lucas, Hoareau, Friminot and others. They were travelling in a jeep from Victoria towards south. At around 6.15 a. m upon certain information, the squad proceeded to conduct a search at the residence of the defendant. They reached Anse Aux Pins. They

parked the jeep nearly 20 feet away from the defendant's house and all officers got out of the jeep. Five of them proceeded to the defendant's house. The other officers were on surveillance surrounding that area. On reaching the defendant's house the officers noticed the main door of the house had been closed, locked from inside and the window also remained closed with curtain. Sergeant Rose (PW2) knocked at the door. The other officers were standing behind him. There was no response. However, Sergeant Rose (PW2) noticed the 1st defendant Brigit pulled away the window's curtain, looked outside and saw the police officers standing near the door. Sergeant Rose immediately, moved closer to the window and saw Brigit as she was running away from the window. He could also observe clearly what was happening inside. Brigit did not come to open the door. She rather ran towards the bed inside, wherein the defendant was sleeping. She woke him up telling him that police were outside. In the mean time, the other officers upon instructions from the sergeant broke open the door and gained access. Constable

Dufrene (PW3) was the one who first entered the room. Sergeant Rose (PW2) and PC Lucas followed him. The testimony of Constable Dufrene (PW3) in this respect runs thus:

“Brigit called her husband (defendant) “Andrew Andrew it is the police” We heard the noise in the house as if someone had woken up. Then the sergeant ordered PC Lucas to break the door of the house. PC Lucas broke the door. When I entered the house I went towards the direction where Andrew (defendant) had run. The room has a bathroom attached to it. Then I saw Andrew by his back, which was facing towards me. I got hold of him by his back. There was some herbal thing in his hands, which he was throwing away. I pulled him from his back. When got hold of him, Sergeant Rose entered the house and he picked up the herbal things that was on the ground”

Sergeant Rose (PW2) testified that he picked up the herbal material, which the defendant threw and in the process got spilled on the floor close to the toilet. Besides, he noticed that certain amount of the said herbal material had also been spilled into the toilet bowl. However, he gathered only that part of the herbal material, which had been scattered on the floor in the toilet. He took a plastic bag from the defendant’s house, put them all in it and kept the bag in his possession. The defendant was immediately arrested. He was taken to Anse Aux Pins Police Station as it was the practice that when a drug squad arrests someone for an alleged drug offence, they should take the person to the nearest police station and register the case accordingly. A case was thus registered against the defendant at the Anse Aux Pins Police Station. The seized herbal material in the plastic

bag, hereinafter called the “substance” was put in an envelope. The officer in charge of the police station marked it with CB No. 80/08. This was done in the presence of Sergeant Rose (PW2). As soon as they completed the necessary formalities at the AAP Police Station, the same morning at around 8. 15 a. m the police took the defendant to the Adams Head Quarters at the New Port for further investigation.

In the mean time, Sergeant Rose (PW2) continued to keep the “substance” safely in his personal possession as he travelled along with the defendant to the Adams Head Quarters. Having brought the substance to the Head Quarters, Sergeant Rose obtained a letter of request - exhibit P4 - from the Police Inspector Ron Marie of Adams in order to have the “substance” analysed by a government chemical-analyst. The same morning of the 12th February 2008 Sergeant Rose (PW2) took the “substance” and the letter of request to Miss. Meghjee (PW1), a government chemical analyst based at the Forensic Laboratory, Mont Fleuri. She carried out the analysis of the substance the same day. The next day - 13th February 2008 at 10.50 a. m - she returned the same in a sealed envelop - exhibit P6 - with the analyst report - exhibit P5 - to Sergeant Rose (PW2). At this juncture, I should mention that this Court having

examined the credentials and the expertise of the witness Miss. Meghjee held that she was an expert in the field of chemical analysis and found her competent to give expert evidence in the specialised field of drug analysis.

Indeed, the analyst testified that on the 12th February 2008 at 9. 45 a. m, whilst she was on duty in her office at Mont Fleuri, Sergeant Rose (PW2) brought an envelop (exhibit P2), which contained the “substance” folded in a plastic bag and the letter of request - exhibit P4 - from Adams. As she opened the envelope and the plastic bag, she found some dried herbal material reddish brown in colour, which contained fruiting and flowery tops, some stalks, seeds and a small piece of cigarette paper. She took the net weight of the herbal material. It weighed 30.5 grams. After that she proceeded to do microscopic examination on the physical and structural characteristic of the substance. The colouring tychos and multi cellular tychos on the fruiting and the flowery tops confirmed that the nature of the substance was cannabis. She also carried out colour

test and chemical analysis of the substance. She conducted four tests taking samples at random. They all confirmed that the substance brought to her by Sergeant Rose (PW2) for analysis was “cannabis” a controlled drug. Accordingly, she issued the analyst-report exhibit P5 confirming her findings. She also while testified, opened the sealed envelop - exhibit P6 - which was handed over to her by Sergeant Rose (PW2) in open court. She took out all the items contained in that envelop, identified and produced them in evidence. The Court marked them all as exhibits including the “substance” which was marked as exhibit P8. Be that as it may.

In furtherance of investigation, at around 8.30 am in the same morning of 12th February 2008 the defendant, who had been brought to the Adams Head Quarters, was interviewed by Police Constable Terence Dixie (PW4). He explained to the defendant of his constitutional rights. According to this witness the defendant freely and voluntarily elected to give a statement under caution. He recorded that statement in the presence of another Police

Constable Meriton (PW5). The defendant retracted the said statement in Court and objected to its admission in evidence. However, after holding a trial within a trial, the Court found that the statement, which the defendant gave under caution to the police on the 12th February 2008 was a free and voluntary statement, not vitiated by oppression or any other adverse factors. Hence, the Court admitted that statement in evidence, marking the same as exhibit P8. This statement reads thus:

"It was at around 06.30 hrs, in the morning, today the 12th of February 2008. I was at my place at Anse Aux Pins and I was sleeping when I heard a knock on the door. So, I woke up and I heard being stated that it was the Police. Then the door was broken and I ended up seeing the Police inside my place. And they informed me that a search was going to take place in my home. Whilst they were searching they came across some "stuff" and the "stuff" was found from the toilet. Before that the "stuff" was on a surface close to a washing basin. I would like to clearly state that it was Rs 100/- value of "stuff". After their finding, I was informed that I would be arrested. After their search I was brought to Anse Aux Pins Police Station. During the search, my girl friend, Brigitte

MARCEL, was also there. I would like to point out that the “stuff” that was found in the house, I don’t sell. I use it for my own consumption and I don’t use any other types of drugs”

(Sd) Andrew CAMILLE.

PW2, Sergeant Rose and PW3, Constable Dufrene while being cross-examined by the defence categorically denied the defence suggestion that the police had planted the controlled drug at the residence of or on the defendant to incriminate him falsely and framed him with the charge. In view of all the above, it is the case of the prosecution that the defendant was in possession of the controlled drugs as particularised in the charge first above mentioned.

On the other side, the defence did not dispute any of the material facts pertaining to the said police operation and the resultant arrest and detention of the defendant for the alleged drug offence. In defence, the defendant gave unsworn statement from the dock. He stated in essence that he was a resident of Anse Aux Pins. On the day in question, the police came to his house. He was lying naked on his bed. The police having gained entry pressed him on the bed and started searching the room. They found nothing in the house. After five minutes, they came with a plastic bag and told him that they found

that inside the house. According to him, there were no controlled drug kept anywhere in his house. Thus, it is the case of the defence that the police had planted the controlled drug at the residence or on the defendant and had foisted the evidence to incriminate him with drug offences.

Mr. B. Hoareau, learned defence counsel in his final submission contended that the prosecution had failed to prove the guilt of the defendant beyond reasonable doubt, in that the evidence given by the police officers leaves a doubt as to whether the defendant was in possession of the substance. According to Mr. Hoareau, both police officers PW2 and PW3 are not credible witnesses. Mr. Hoareau submitted that there are a number of discrepancies in the evidence given by the police officers, which create a doubt on the credibility of the witnesses. Counsel also submitted that since the confessional statement - exhibit P8 - was a retracted one, it needs corroboration for it being relied and acted upon. Further, counsel submitted that the substance, which the sergeant Rose claimed to have had in his possession, might have been tampered with by some other unauthorised person. According to counsel, in any event, the case was not proved to the standard required in criminal cases, in view of the doubtful evidence on record. Moreover, it is the submission of Mr. Hoareau there is possibility for other person to tamper with the substance during the period it had been kept in the safe at the office of the analyst.

In the circumstances, Mr. Hoareau argued that the prosecution had failed to establish their case against the defendant beyond reasonable doubt and hence this Court cannot convict the defendant in this matter for the offence charged. For these reasons, learned defence counsel urged the court to dismiss the charge and acquit the defendant.

On the other side, Learned State Counsel Ms. Jumaye in reply, submitted that the evidence adduced by the prosecution including the testimony of the two police officers were very reliable, strong, consistent and cogent. The discrepancies alleged by the defence counsel were immaterial to the charge levelled against the defendant. According to the State counsel, there were no weaknesses or inconsistencies in the evidence adduced by the prosecution. According to her, the prosecution has established the case against the defendant beyond reasonable doubt. Hence, she submitted that the Court should rely and act upon the evidence on record and convict the defendant for the offence he stands charged with.

I meticulously perused the entire evidence on record. I diligently analysed the submission made by both counsel touching on a number of issues, mostly, based on facts. First of all, on the issue as to credibility of the witnesses, I observed the demeanour and deportment of both police witnesses PW2 and PW3, when they testified in Court. From my observations, I conclude that both of them are credible and spoke the truth to the court. Their evidence is strong and reliable in all material particulars, which was not shattered or discredited by cross-examination. However, the defendant’s unsworn statement did not appeal to me in the least nor appeared to be credible. On the other

hand, the evidence given by Sergeant Rose (PW2) was aptly corroborated by the cogent evidence given by PC Dufrene (PW3), in all material particulars necessary to constitute the offence levelled against the defendant. On a careful examination of the evidence on record, I find the following facts have been proved to my satisfaction and to the required degree in criminal law:-

i) The defendant was in possession of the substance - exhibit P8 - namely, 30. 5 grams of cannabis at the material time, whilst he was seen by PW2 and PW3 in his house, as he was throwing that substance presumably to be flushed into the toilet and in the process he spilled that material on the floor as well as into the toilet bowl.

ii) PW2 did collect and seized the substance - exhibit P8 - scattered on the floor of the toilet at the residence of the defendant. This PW2 did in the presence of the defendant and PW3 Dufrene.

iii) From the time the substance was seized until it was handed over to the analyst, it had all along been kept in safe custody and possession of PW2. No other person at any time had circumstances and opportunity to tamper with it. There had been no break in the chain of possession of the substance either by PW2 or PW1 during the intervening period between the seizure and its production in Court.

iv) There was no possibility at all for the analyst to muddle up the “substance” in question with some other items in her laboratory nor was there any possibility for any other person to tamper with it during the night it had been kept in the safe at the office of the analyst.

v) The defendant's statement to the Police under caution in exhibit P8 is nothing but a clear cut and unequivocal confession as to the fact that he was in possession of the so called "stuff", which terminology obviously refers to "cannabis" or to say the least, refers to "a controlled drug" having regard to the cognate sense and the context in which it has been used therein and more so taking all the circumstances in to account.

vi) Although the confessional statement of the defendant has been retracted, its pith and substance is evidently corroborated by the independent evidence of PW2 and PW3. They all concur on the material particulars as to defendant's possession of the substance at the material time and his knowledge as to the nature of the substance he possessed.

vii) Neither Sergeant Rose (PW2) nor Constable Dufrene (PW3) nor any other police officer from the drug-squad for that matter, planted or could have planted the "substance" at the house of the defendant nor did the police officers in the squad conspire to frame the defendant in this case.

viii) Undoubtedly, the substance that was found in defendant's possession and seized by PW2 from the toilet floor at the residence of the defendant was controlled drugs namely, 30. 5 grams of Cannabis.

ix) Since the quantity of the said controlled drug exceeded 25 grams, the defendant is presumed in law of having possessed that controlled drug for the purpose of trafficking by virtue and operation of Section 14 (d) of the Act.

x) Obviously, the defendant did not adduce any evidence to rebut the said presumption activated against him by operation of law or to rebut the quantity of drug as proved by the prosecution.

At this juncture, it is pertinent to quote what the Chief Justice Seaton (as was he then) stated in ***Phillip Cedras vs. Republic [Criminal Appeal No: 7 of 1988]*** on the issue of possession that amounts to trafficking in law. This runs thus:

"If the prosecution has no evidence, which it can present to the Court to show either an act of trafficking or an offer to traffic in the drug or preparatory to an act, then it might show that the accused person has had possession of the drug and that the quantity amounted to 15 grams or more (as it was 15 grams then under the previous Dangerous Drugs Act, whereas now 25 grams under the Misuse of Drugs) (mine) in which case there would arise a presumption of trafficking, which could lead to a conviction unless the accused person rebutted the presumption"

Although I note, the defendant has stated in his retracted confessional statement - exhibit P8 - that he possessed the stuff (the substance 30. 5 grams of cannabis) for his own consumption, that part of the statement in my view, is simply a self-serving statement. It is not strong and sufficient enough to be treated as evidence in rebuttal of the presumption of trafficking activated against him by operation

of law. Indeed, he did not adduce any evidence in rebuttal nor did he testify under oath about his personal consumption so as to negate the presumption. In any event, I do not believe his claim of personal consumption in this respect. I reject this part of his statement as I find it untrue. Indeed, the Court after admitting a voluntary statement given by an accused person to the police, is not bound to accept or reject it in toto, but although the whole of a confession must be received in evidence, the trial Court is entitled to form an opinion as to the credit to be given to the different parts of the statement and to believe only such parts found to be true. ***Vide R vs. Marie SLR [1973] Case No: 14.***

I will now turn to the submissions of Mr. Hoareau on the issue as to unreliability of evidence due to discrepancy allegedly found in the testimony of the two police witnesses PW2 and PW3. In fact, these two percipient witnesses having recalled their memory, narrated the sequence of events as they individually observed, which led to the arrest of the defendant and the seizure of the substance at the material place and time. In this respect, I would like to repeat what this Court had to state in the case of ***Republic vs. Marie-Celine Quatre [2006]*** which runs thus:

"…. [I]t is pertinent to note that human memory is not infallible. All tend to forget things sometimes; some all the time; others may be, from time to time. It is normal. Witnesses are not exceptions or superhuman. The ability of individuals differs in the degree of observation, retention and recollection of events. Who is the more credible - the witness who recalls in tremendous

detail every bit of what went on when he was involved in or observed some incident, or the one who says honestly that he cannot exactly remember every minute detail? I am not here referring to dishonest witnesses who so often seem to suffer from selective amnesia for reasons best known to them. Of course, a liar ought to have a good memory to keep his lie alive! Obviously, it is a task set before the Court to try and distinguish a genuinely forgetful witness from the one who chooses not to remember"

Hence, to my mind, forgetful witnesses though at times give seemingly different or discrepant or even contradictory description on minute details based on their observations of the same incident, they need not necessarily be dishonest all the time, in all cases. Having said that, in the case on hand, I do not find any discrepancy or contradiction or inconsistency in the evidence of either PW2 or PW3 on any material fact or particular that constitutes the offence alleged against the defendant. The discrepancies on trivial details are not uncommon; they are bound to occur as ability of individuals differs in the degree of observation, retention and recollection of events.

The last but not least, is the issue as to the standard of proof. In fact, the standard of proof defines the degree of persuasiveness, which a case must attain before a court may convict a defendant. It is true that in all criminal cases, the law imposes a higher standard on the prosecution with respect to the issue of guilt. Here the invariable rule is that the prosecution must prove the guilt of the defendant beyond reasonable doubt or to put the

same concept in another way, the court is sure of guilt. These formulations are merely expressions of high standard required, which has been succinctly defined by ***Lord Denning (then J.) in Miller Vs. Minister of Pensions [1947] 2 All. E. R p372&973*** thus:

"It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt….. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice"

Having said that, on a careful analysis of the evidence on record firstly, I find that the prosecution evidence is so strong and no part of it has been discredited or weakened or contradicted by any other evidence on record. I am sure on evidence, that the police officers did not plant the controlled drugs in question at the residence of or on the defendant. Secondly, I am satisfied that the prosecution has proved the case beyond reasonable doubt covering the essential elements of the offence the defendant stands charged with.

In the final analysis, therefore, I find the defendant **Andrew Camille** guilty of the offences of "Trafficking in a controlled drug" contrary to Section 5 read with Section 26(1) (a) of the Misuse of Drugs Act 1990 as amended by Act 14 of 1994. Accordingly, I convict him of the offence he stands charged with.

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D. KARUNAKARAN

JUDGE

Dated this 26th day of November 2008