

IN THE SUPREME COURT OF SEYCHELLES**THE REPUBLIC
VS.
DAVIS LESPERANCE**

Criminal Side No: 29 of 2008

Mr. Labonte for the Republic
Mrs. Lucy Pool for the Accused

RULING**Burhan J**

This is a ruling in respect of a *voire dire* held regarding the admissibility of the statement of the accused recorded by the police. Learned counsel for the accused objected to the production of the said statement as an exhibit, on the grounds that the statement was not admissible as it had been,

- a) Recorded in violation of the accused constitutional rights,
- b) Recorded in violation of the provisions contained in the Judges' Rules,
- c) Recorded under a promise that he would be released.

Recorded under oppression as the accused was frightened and had not been given his meals on time.
Recorded stating facts not mentioned by the accused.

The main ground urged by learned counsel for the

accused, to establish the fact that the constitutional rights of the accused were violated, was that the accused had not been informed of his right to remain silent and his right to be defended by a legal practitioner of his choice under Article 18 (3) of the Constitution of the Republic of Seychelles. However Corporal Maryse Souffe categorically stated in her evidence under oath that prior to recording the statement of the accused, she had explained to him his right to remain silent and his right to counsel. She stated thereafter he had given his statement and she recorded what he said. She further stated that the accused did not tell her that Corporal Hoareau had promised to release him if he gave a statement. No one was allowed to enter the room when the statement was being recorded. Only persons present were the accused the witnessing police officer and herself. The evidence of this witness was fully corroborated by Lance Corporal Terrence Dixit who stated he witnessed the statement which was given under caution. Although subject to cross examination there were no serious contradictions or inconsistencies in the evidence of these two witnesses. This court is therefore satisfied that the proper cautions under Article 18 (3) have been administered to the accused, prior to his statement being recorded and thus no violation of the accused constitutional rights have occurred.

Learned counsel's next contention was that the police officers had come into the house armed with guns and having taken the accused into custody, placed him in a cell after arresting him and hence his statement could not be considered to be voluntary as he had been frightened by such conduct. Furthermore counsel contended that the accused had given his statement as Corporal Hoareau had promised to release him if he did so and hence his statement could not be considered to be a voluntary statement.

It is pertinent to mention at this stage that Appendix A, paragraph (e) of the Judges' Rules of England, **Archbold Criminal Pleading, Evidence and Practice 42nd Edition page 1090**, sets out the *overriding* principle involved namely " That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, *that it shall have been voluntary*, in the sense that it has not been obtained from him by *fear of prejudice* or *hope of advantage*, exercised or held by a person in authority, or *by oppression*".(Emphasis added).

It is to be noted that the Judges' Rules 1964 of England have been adopted and applied in Seychelles with effect from 1st January 1972 by Practice Direction 2 of 1971

superseding the Judges' Rules in force at that time

The overriding principle of voluntariness as mentioned in the Judges' Rules of England is also ingrained in the case law of our jurisdiction.

In the case of ***Leon v The Republic 2 SCAR 188***, it was held the onus is on the prosecution, in proving beyond reasonable doubt, that the statement of the accused was voluntary and therefore admissible.

It is clear that counsel was attempting to show court that the statement was not a voluntary statement as the accused had been frightened into giving it, therefore suggesting that the statement had been obtained under "oppression" and further as the statement had been obtained on the promise of him being released it had been obtained in the "hope of advantage" of being released.

However the manner in which the raid was conducted cannot in anyway be considered to be oppressive conduct by the police officers as this is standard practice in conducting a raid. It is normal for police officers to carry firearms and it is normal for them to place an individual in a police cell after arresting him and cautioning him. This court sees no oppressive conduct by the police in

this respect, especially as Corporal Hoareau mentions the fact that the accused was cautioned at the time of his arrest.

Corporal Hoareau gave evidence to the fact that the accused was cautioned at the time of arrest and categorically denied the fact that he made a promise to the accused that he would be released if he made a statement. There was a discrepancy in the evidence of Corporal Hoareau in respect of the time the accused was taken to the police station from the house he was living in, but the accused does not complain of any oppressive conduct by the police officers during this time and furthermore the accused himself admits the police were staying in the hope of catching two more suspects. The accused counsel made a somewhat belated complaint through the evidence of the accused at the *voire dire* that the accused had not been given his meals. However the accused has not sought to complain immediately to any higher police authority of this fact or that he was induced into giving his statement on a false promise made by Corporal Hoareau even though he had been represented by counsel.

For the aforementioned reasons this court is satisfied that the statement of the accused has not been obtained under oppression or by hope of any advantage or in violation of

any of the provisions of the Judges Rules.

Learned Counsel for the accused also contended that the police officer who recorded the statement had recorded certain facts not mentioned by the accused. The accused categorically denied that he stated the incriminating words recorded in the statement. The question in issue here is not in regard to the voluntariness or admissibility of the statement, it is a question of fact which need not be decided at this *voire dire* inquiry.

For the aforementioned reasons after considering the evidence led at the *voire dire* as a whole, this court is satisfied beyond reasonable doubt that, the statement has been voluntarily given by the accused and is admissible.

M.N. BURHAN

JUDGE

Dated this 8th day of May, 2009.