

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

RODNEY LAIRA (Accused)

Criminal Side No. 16 of 2008

Mr. Labonte for the Republic

Mr. Herminie for the Accused

JUDGMENT

Gaswaga, J

Mr. Rodney Laira stands charged with one count of trafficking in a controlled drug contrary to section 5 of the Misuse of Drugs Act read with section 14 (d) and 26(1) (a) of the same Act as amended by Act 14 of 1994 and punishable under the second schedule of the Misuse of Drugs Act as read with section 29 of the same. The particulars alleged that the accused on the 19th day of February, 2008 at Hangard street, Mahe was found in possession of a controlled drug to wit 34.1 grams of cannabis (herbal material), which gives rise to the rebuttable presumption of having possessed the same for purposes of trafficking in it. He denied the charges and the prosecution adduced evidence in a bid to discharge its burden of proof.

The evidence as led by the prosecution is to the effect that upon information received by the police on the 19th day of February, 2008 at 12:00 pm, Constable Paul Meriton (PW3) and Lance Corporal Benard Hoareau (PW2), both of the ADAMS unit departed for Hangard street, Mahe. Also in their company were LC

Saunders, Constables Meriton, Freminot and Jupiter all from the same Unit. That after they disembarked the vehicle and walked across the small bridge in the area PW1 and PW2 saw the accused drop on the ground a red plastic bag which he then covered with dry leaves using his feet. He then moved away towards the river to wash his feet. PW2 picked and opened the plastic bag before the accused. He was arrested because the herbal material contained therein was suspected to be cannabis- a controlled drug. In his report (PE1) Dr. Jakharia (PW1), the forensic chemist confirmed the herbal materials (PE3) to be cannabis. This he did after carrying out physical, color, microscopic and confirmatory thin layer chromatography tests.

In his defence the accused did not deny most of the facts as put across by the prosecution. Thus that he was at the scene of crime and indeed the said police officers did arrest him there. That he was showed the red plastic bag together with its contents. He however categorically denies any knowledge of the red plastic bag and or its contents. Instead the accused states that he had gone to that place to buy himself some “steam” drugs.

First of all the court is satisfied with the manner and chain in which the exhibit was handled all through from the scene of crime to the time it was analyzed, stored and tendered in court. It is the same herbal material that has been exhibited. As to whether the accused was at the material time in possession of the said cannabis, the evidence of PW2 and PW3 is very crucial. Both police officers testified that after crossing the small bridge used as a public footpath they saw accused who was at the time standing about five to six meters away. They also corroborated each other on the fact that on noticing the presence of the police the accused immediately dropped the red plastic bag from his right hand before moving away from it.

However, in cross-examination PW2 stated that as they approached the accused was standing and facing the direction where the police officers were coming while PW3, who had also witnessed the same events unfold related that the accused was standing in front of the two men seated on **a rock**. It is also PW3's evidence that whereas the other two men faced the direction of the small bridge the accused stood facing them with his back to the police officers. In further cross-examination PW3 stated "*I do not know if perhaps his two friends told him that the police was coming but when we went over the bridge he turned and looked at us.*" With this evidence and prevailing circumstances I am unable to agree with the submission of Mr. Herminie that the two police officers have contradicted themselves to the extent of rendering their evidence incredible and unsafe to rely on. Indeed under the normal and usual flow of events, even if an incident is fully witnessed by several people in similar circumstances at the same time and distance, we cannot expect the witnesses to say the same thing all the time. There could be differences here and there in their observation, perception, retention and order of narration of events which should not be treated as contradictions or lies. However, the degree of divergence and the issue on table are pertinent. That is why the court in **Marie Celine Quatre Vs Rep. SCA No. 2 of 1996** stated that "*what is fundamental to the case is whether there are basic material contradictions with regard to the main issue before the trial court.*"

Moreover, the alleged contradictions and inconsistencies herein, if any, have been satisfactorily explained by PW3. Even if the same were to be considered as such, I find them to be immaterial and of no consequence as they are not sufficiently significant to be incompatible with the intrinsic truth of the basic story. Further, I find the prosecution witnesses truthful and their evidence credible. **See Faure and Anor. Vs Rep. SCA Report 1978 – 1982.**

Indeed the court is convinced that the accused and not any other person was in actual or physical or exclusive possession of the red plastic bag exhibited as (PE3). However, mere possession is one thing and possession with *mens rea* is another. Possession which incriminates must have certain characteristics. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. Without these characteristics possession raises no presumption of *mens rea*. Without *mens rea* possession cannot be criminal except in certain cases created by statute. Again I am convinced that all the above characteristics were present in the case at hand. The accused knew well the nature of the contents of the red plastic bag. By throwing it on the ground and covering it with leaves the accused demonstrated control over the bag. He was concealing it to disassociate himself from it. He also had clear knowledge of what was going on in that area as stated in his own words “*I was looking for a steam (drugs)*”. It was only imperative for him at that time, as one of the men with him had loudly warned of the police presence in the vicinity, to distance himself from the plastic bag.

Accordingly, the prosecution has proved all the requisite ingredients of the offence herein beyond a reasonable doubt. The accused is found guilty and convicted of the offence of trafficking in a controlled drug since no evidence has been adduced to rebut the presumption of trafficking.

D. GASWAGA

JUDGE

Dated this 11th day of February, 2009.