

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

DAVIS DODIN (Accused)

KURT MARIMBA (Accused)

Criminal Side No. 73 of 2008

Mrs. Marengo for the Republic

Mr. Gabriel for the 1st Accused

Mr. Gabriel standing in for Mr. Freminot for the 2nd Accused

Both accused – present

RULING

Gaswaga, J

This is a ruling in respect of an impugned statement which the defense contends that was received by coercion and, as a result of a promise to release accused if he confessed and implicated Mr. Davis Dodin (A1). In short the voluntariness of the statement is in issue.

During the vóir dire, the prosecution called three witnesses, Sergeant Stella Francoise (PW1), PC Jose Nennesse(PW2), and Corporal Mike Monthy(PW3) while the defense called one witness, the accused himself. Sergeant Stella Franscoise, PC Jose Nennesse were extensively cross-examined with regards to the manner, steps and circumstances under which that statement was written. They corroborated each other in their testimonies and outlined the procedures followed.

I have taken into account the demeanor of the accused. I note that every person under arrest would obviously feel some considerable discomfort and amount of pressure. Allegations of assault occasioned by the police officers have only come out during cross-examination. At the earliest opportunity of gaining liberty the accused did not make any report of the same nor any complaint regarding the ‘false’ statement he made implicating the first accused.

From the assessment of Court, all these allegations are an afterthought coming up when the accused started feeling the ‘pinch’ of that statement. It is unbelievable

that police officers would just ask a person to write a statement without any warning of the consequences thereof and a pronouncement of his rights even if they were to break the Judge's rules and force the accused to write a statement.

Besides that the witnesses stated that they had other evidence against the first accused, other than the second accused's statement only that he had not yet been arrested by that time. Further to that Sergeant Stella Francois and PC Jose Nennesse could not have been influenced by Lance Corporal Mike Monthy, as suggested by defence counsel, who only transported the second accused to the police station and did not make any contact with them before or during the writing of the statement.

Having listened to all witnesses and counsel on both sides, this Court is satisfied that the second accused was properly cautioned and his rights read out to him, to which he opted not to call any counsel but give a statement voluntarily.

He did not alter it but signed it as correct when read over to him. He was not under any pressure or threats from neither Sergeant Francois nor PC Nennesse. The statement was written in a calm and conducive environment although the accused experienced the normal and usual fears of going to prison any person in his situation would have felt. I reject his version of the story that he was pressured, assaulted and also promised to be released if he confessed and implicated the first accused.

Accordingly I find the prosecution to have proved beyond a reasonable doubt that the accused made this statement voluntarily and it is admissible.

D. GASWAGA

JUDGE

Dated this 28th day of May, 2009