

# **IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VERSUS**

**VINCENT ALLAINSON GABRIEL**

Criminal Side No 82 of 2004

Mr. D. Esparon for the Republic

Mr. A. Juliette for the Accused

## **JUDGMENT**

**Perera J**

The accused stands charged on two counts. Count 1 with the offence of possession of 110 milligrams of heroin, and Count 2 with the offence of possession of 220 milligrams of cannabis resin.

The accused was a taxi driver at material time. P.C. Sophie, was attached to the Adams Unit of the Police Force on 18<sup>th</sup> January 2004. He was on Patrol duty with L/C Belle and P.C. Mousbe around 10 p.m, when L/C Belle received a message from ASP Mousbe that there was a drug transaction at the premises of one Vincent Samson at Anse Aux Pins. When they went there, there were people standing and some seated. There were also cars. He informed them that they should not leave, and entered the house to search. One Officer, Jimmy Samson, was posted outside the house. The search did not reveal anything, so they searched Vincent's car. Still there were no drugs. Then they searched three persons present there, Roch Ventigadoo, Charles Etienne and Vincent Gabriel (*the accused*). As there were no drugs found in their possession, they searched the taxi car of

the accused. P.C. Sophie stated, that P.C. Mousbe who did the search, found, in his presence, a “*Rizla*” cigarette paper under the seat, and in the pocket of the door of the driver's seat, there was a silver paper with some powder and a piece of black substance. The accused was then arrested. The accused then told P.C. Mousbe “that *he had his children to maintain. We were at the NYS together, and if he could give him a little money will he be satisfied. And P.C. Mousbe stated no.*”

P.C. Mousbe kept the substance seized in his possession. P.C. Sophie stated that from the light of the car, the powder was “*something like white*”. However when shown the same substance in Court he stated that it was a “little brown”. As regards the other substance, he stated that he had only a glance at it when in the possession of P.C. Mousbe. He saw a small part of “*hashish*” but he could no longer see it in Court.

It was put by Learned Counsel for the defence that the statements made by P.C. Sophie and P.C. Mousbe, were not signed by either of them. P.C. Sophie admitted that he had not done so by mistake. Learned Counsel then put to him that in the statement he had stated that the powder was white, but in Court had stated that it was a “*little brown*”. He replied that he only had a fleeting glance and in the absence of a torch, he was not too observant. He however stated that although he had stated that it was “*white*”, it had a greyish colour at the time of seizure. He stated that he also saw one piece of dark substance, which was no longer with the exhibits. However, at that stage, the Court brought to the attention of the lawyers that according to the report, there was “*creamy white powder in a gold paper*” and “*crushed brownish resinous material in a silver paper*”.

S.I. Omblime testified that he wrote the statements of P.C. Sophie and P.C. Mousbe and that they were signed by them. However on being shown them in Court, he was constrained to admit that they had indeed not signed them. He stated that it could have been due to a mistake, and that he himself did not check it. However he maintained that these statements were made by those two Police Officers.

P.C. Michel Andre Mousbe, testified that Sgt Belle who was on patrol duty with him informed that he had received instructions to proceed to the residence of one Vincent Samson at Anse Aux Pins to search for drugs. He corroborated the evidence of P.C.. Sophie as regards the persons present at that place. There were no drugs inside or outside the house. Thereafter, two cars parked outside were searched. They belonged to one Asba and the other to Vincent Gabriel, the accused. There was nothing in Asba's car. However in the taxi of the accused, there was some substance in the door pocket. He stated that there were two packets, *"one contained some dark powder substance and the other packet contained white powder substance"*. The accused told him that *"the drugs must have been placed in his car and that he did not know to whom they belonged. It did not belong to him"* P.C. Mousbe further stated that the accused told him in the presence of L/C Belle and P.C. Sophie that as they were at the N.Y.S. together, and as he had children, he was prepared to make a deal. He however told him that he had to do his duty.

P.C. Mousbe stated that after seizing the substances from the accused, he gave them to L/C Belle to enter in the Register, and thereafter kept them in his locker. He took them to Dr. Gobine for analysis, with a letter from Inspector G. Hermitte (P2) on 12<sup>th</sup> February 2004.

That was nearly one month after the seizure. He collected the report dated 16<sup>th</sup> February 2004 and the exhibits from Dr. Gobine. On 18<sup>th</sup> February 2004 it was signed by him and Dr. Gobine. He brought the exhibits back to Adams Unit and gave them to Sgt James Matombe, the Officer in charge of the exhibits, who locked them in the safe. Shown the exhibits in Court, P.C. Mousbe stated that a paper attached to the envelope containing the exhibits was not placed by him. Otherwise the envelope does not appear to have been tampered with. He identified the powder in one envelope and stated that the wrapper was the same but the powder he seized was white, but now it was not pure white. As regards

cannabis resin, he stated he had seized some dark substance.

The accused elected to remain silent and not to call any evidence on his behalf. The Court does not draw any adverse inference from the exercise of his right.

The defence was mainly based on the identity of the exhibit produced in Court. Learned Counsel for the accused submitted that on the basis of the evidence of P.C. Mousbe, the fact that the material allegedly seized from the accused was white powder and a piece of dark substance, and that what has been produced in Court was a creamy white powder and crushed herbal material, was fatal to the Prosecution in establishing the element of possession. In this respect, Dr. Gobine in his evidence stated that he received "*some white powder wrapped in golden cigarette paper, and some brownish substance wrapped in silver cigarette paper a packet of Rizla cigarette paper*". In his report (P1), he was described the substances as follows-

**Item No. 1.** *The creamy white powder wrapped in a piece of golden cigarette paper contains 73.2% heroin*

Weight: 110 mg.

**Item No 2** *The crushed brownish resinous material having a slight green tint wrapped in a piece of silver cigarette paper is cannabis resin.*

Weight: 220mg."

Dr. Gobine testified that the exhibits were in his sole custody from the time he received them for analysis until they were handed back to P.C. Mousbe. He identified his signature on the white envelope in which he had placed the exhibits and sealed them before P.C. Mousbe took them, and stated that there had been no tampering. He however observed a piece of paper attached to it which, he stated, was not affixed by him. Upon opening the packet, he stated that the heroin powder was "*creamy white*", and explained that "it has gone a little

bit brownish, but, it is storage, because it is damp". He also identified the crushed brownish resinous material which he received for analysis.

On being cross examined by Counsel for the accused, he stated that a small piece of dark substance was not brought for analysis, and that what was brought was "*crushed powder*", as stated in the request letter (P2).

In these circumstances, the Court has to determine whether the Prosecution has established the elements of possession and knowledge. In the case of **Josianne Vital v. R S.C.A. (Crim) no. 3 of 1997**. The Court of Appeal quashed the conviction entered by the Supreme Court, as the evidence had disclosed that the substance seized from the accused had been kept in the same locker with similar substances secured from elsewhere, and that the only identifying mark in the form of a yellow "*post it*" placed on it had been removed *before* the packet was taken to the Analyst. The Court held that in the circumstances, it was doubtful that what was analysed by the Analyst was the same substance that had allegedly been found in the Appellant's possession. Similarly, in the case of **Robert Rioux v. R (Crim) No. 11 of 1997**. There was a discrepancy in the weight of the analysed drugs, and the weight stated by the Police officer in the Criminal complaint instituting proceedings. It was contended that the discrepancy was material as it was, in those circumstances, possible that the Analyst analysed the wrong parcel. The Court of Appeal held that the element of possession had not been established beyond a reasonable doubt, and hence set aside the conviction and sentence.

In the present case, the only fact relevant to the defence is that the exhibits seized from the accused were taken for analysis nearly one month later. Was there a possibility that someone tampered with them, changing white powder to a creamy white substance, and a solid piece of dark substance to crushed material?. Dr. Gobine testified that due to storage, dampness can change the colour. In any event, P.C. Sophie stated that he had

only a fleeting glance of the substance, and from the light of the car, it was “*something like white*”. However he stated that there was a small piece of cannabis resin. P.C. Mousbe however stated that at the time of seizure, the heroin was white, but as regards cannabis resin, he stated that it was “*some dark powder substance*”. Therefore he, who was the Officer who directly handled the substance did not state that there was a solid mass. In these circumstances, the fleeting glance of P.C. Sophie is not reliable.

On the totality of evidence, the Court is satisfied that, unlike in the cases of ***Josianne Vital (supra)*** and ***Robert Rioux (supra)***, there are no doubtful factors to assume the possibility of tampering or there being a mix up of substances taken for analysis to warrant a finding that the element of possession has not been proved. Hence the Prosecution has proved the elements of possession and knowledge, required to establish both charges under Count 1 and Count 2 beyond a reasonable doubt. Accordingly, I convict the accused on both Counts as charged.

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**A.R. PERERA**

**JUDGE**

(Pursuant to Article 132(3) of the Constitution)

Dated this 10<sup>th</sup> day of August 2009