

**IN THE SUPREME COURT OF SEYCHELLES****THE REPUBLIC  
VS.****JERRY HOAREAU**Criminal Side No. 61(A) of 2008

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Mr. Labonte for the Republic  
Mrs. Armesbury 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. When learned Counsel for the prosecution moved to produce the aforementioned statement, 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.

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

after arrest had been detained illegally by the police for a period of three days, after which his statement was recorded. The accused giving evidence under oath, strongly denied the prosecution's contention, that he was produced before a magistrate. However at the request of the defence, the relevant magistrate court records were produced in open court and perusal of the relevant entries made by the learned magistrate clearly show, that the accused together with another suspect was produced before the magistrate within the 24 hour period as set out in Article 18 (5) of the Constitution and further detained in police custody, only after having obtained a legal remand order from the learned magistrate. Documents marked X and Y, the two remand orders produced by the prosecution, further confirmed this finding. It is therefore apparent that the contention of the accused, that his statement had been recorded whilst in illegal detention and in violation of his constitutional rights cannot be accepted in the light of this evidence.

It is pertinent to mention at this stage, that in certain jurisdictions confessionary statements given by the accused to a police officer are inadmissible. However this principle does not find recognition in English Law. In our jurisdiction section 12 of the Seychelles Evidence Act (cap.46) provides as follows;

"Except where it is other wise provided for by special laws now in

force in Seychelles or hereafter enacted, *the English law of evidence* for the time being shall prevail”.

Hence as in England, a confessionary statement made by an accused person to a police officer is admissible in our jurisdiction too.

The object of the Judges’ Rules in England and in our jurisdiction is to ensure that the questioning and recording of the statement of the accused by the police does not take place in an unfair and prejudicial manner. These Rules do not have the force of law but are a set of administrative directions to the police as decided in the case of ***R v Voisin (1918) 1 K.B.531***.

***P Devlin in ‘The Criminal Prosecution in England (London) 1960 p. 37’*** describes the Judges’ Rules as “an expression of the judge’s discretionary power to exclude evidence unfairly or oppressively obtained.

It is to be noted that the Judges’ Rules 1964 of England have been adopted and applied in Seychelles with effect from 1<sup>st</sup> January 1972 by Practice Direction 2 of 1971 superseding the Judges’ Rules in force at that time. Rule II and III of the said Rules, sets out the numerous cautions that must be administered to a person, against whom there is evidence which would afford reasonable

grounds for suspecting that the person has committed an offence and against a person charged of an offence.

Appendix A, paragraph (e) of the Judges' Rules of England spells out the underlying 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).

In the case of ***Ibrahim v R (1914) AC 599***, it was held that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority.

It is pertinent to mention at this stage that the underlying principle of voluntariness as mentioned in the Judges' Rules 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.

In the present case before this court, learned counsel contended that the statement recorded was in violation of the provisions contained in the Judges' Rules and was not voluntary. The main contention of learned counsel for the accused was that the proper procedure as set out in the aforementioned rules had not been followed.

It should be noted at this stage that failure to observe the Judges' Rules does not necessarily render a confession inadmissible. This principle was emphasized in the case of *R v Stewart 1970 1 All E.R 689*. Further it was held in *R v Osbourne 1973 2 WLR 209*, that even where statements have been made without caution or where the rules have been contravened in some way, it is a matter for the trial judge to exercise his own discretion as to whether the statement should be admitted or not after considering the evidence as a whole.

However in this instant case, both police officers namely Inspector Ron Marie who recorded the statement and Constable Terrence Dixie who witnessed the recording of the statement, were called by the prosecution and testified to the fact that, the accused was properly

cautioned and his constitutional rights explained to him prior to his statement being recorded.

Further Learned counsel for the defence also cross examined the prosecution witnesses at great length on whether the accused was questioned during the recording of his statement.

Rule IV (d) of the Judges' Rules state;

"Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him".

There is no admission on the part of the police officers that the accused was prompted while giving his statement nor is it the defence contention, that the accused was prompted. Inspector Ron Marie's categorically states only relevant questions were asked by him. There is no evidence to the contrary. For the aforementioned reasons this court is satisfied that the Judges' Rules have been adhered to during the recording of the accused statement.

The accused in evidence attempted to convince court that his statement was not voluntary as he was promised that he would be released only after he gave the required statement. It is to be noted that the accused has not

sought to complain to any higher authority about this fact up to the date of giving evidence in the *voire dire*, even though he was represented by an attorney. Further the recording officer repeatedly denied, that the accused was promised, he would be released only after he gave the required statement. The officer who witnessed the recording of the said statement also denied this fact. The relevant case records and the learned magistrate's remand orders marked X and Y also confirmed the fact that both police officers were speaking the truth, when they said the accused was produced before a magistrate and detained thereafter on an order of court. There are no grounds to disbelieve the evidence of these two police officers.

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.

The prosecution is therefore permitted to produce the statement of the accused as an exhibit in the case.

**M.N. BURHAN**  
**JUDGE**

Dated this 6<sup>th</sup> day of March, 2009.