

**IN THE SUPREME COURT OF SEYCHELLES****THE REPUBLIC****VERSUS****DARREL CHOISY**Criminal Side No. 45 of 2008

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Mr. Labonte for the Republic

Mr. Gabriel standing in for  
Mrs Armesbury for the Accused**JUDGMENT****Burhan, J**

The accused in this case stands charged with trafficking in controlled drugs contrary to section 5 of the Misuse of Drugs Act read with section 14 (d) and 26 (1)(a) of the same as amended by Act No 14 of 1994 and punishable under the Second Schedule of the Misuse of Drugs Act read with section 29.

The particulars of the offence are that the accused Darrel Choisy of Anse Dejeneur, Mahe on the 17<sup>th</sup> May 2008 was found in possession of a controlled drug, namely 36.2 grams of Cannabis Resin which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

The accused Darrel Choisy pleaded not guilty to the aforementioned charge and trial against the accused commenced on the 23<sup>rd</sup> of February 2009. The prosecution in order to establish the charge beyond reasonable doubt called as witnesses Dr A Jakaria Government Analyst, Police Constable (PC) Alain Lucas, Lance Corporal (LC) Berard Hoareau and closed their case. As the prosecution had established a prima facie case the defence was called.

The accused in defence gave evidence under oath and called as witnesses his step brother Lenny Henry, his concubine Sabrina Ah-Khon his concubine's brother Richard Charlot and closed his case.

Dr A Jakaria Government Analyst giving evidence testified to the fact that he received a request from Constable Lucas marked P1 to analyse a substance presumed to be a controlled drug. The weight of the substance was 36.2 grams and having conducted the analysis on the substance he identified it to be Cannabis Resin. In addition to the substance analysed there were bank notes of Rs 100/=, 50/=, 25/= and Rs 10/= denomination. Witness marked his report P2 which confirmed the fact that the dark brown substance P3c brought for analysis and analysed by him was Cannabis Resin and weighed

36.2 grams. Under cross examination he stated that he had not done a percentage analysis of the components present in the Cannabis Resin but stated that the weight of the substance identified as Cannabis Resin was 36.2 grams.

The other witness PC Alain Lucas stated that while he was attached to the drug squad ADAMS he had on the on the 17<sup>th</sup> of May 2008 together with LC Hoareau gone to the house of the accused around 9.15 pm. They had got information he was involved in a drug transaction and after surrounding the house had knocked on the door. A man had opened the door and after identifying themselves as police officers they had gone in. The accused was

standing next to a bedroom and there was a woman and two children also present. He had informed the accused he was going to carry out a search and after carrying out a search on his person finding nothing they had searched the bedroom. On the flat surface of the wardrobe there had been some money. He had asked the accused whose money it was and the accused had said it was his. He had taken the money to have a look at it, when he saw the dark substance in the money which was folded. As he suspected it to be Cannabis Resin he had cautioned the accused and seized the money and substance and arrested the accused.

Thereafter a search of the house revealed nothing else. The accused had then been taken to Point Larue and thereafter to the Anse Aux Pins police station for

questioning. He had kept the dark substance suspected to be Cannabis Resin in his locker which was locked and had thereafter taken the substance for analysis to Dr Jakaria on the 19<sup>th</sup> of May 2008. On the 20<sup>th</sup> of May 2008, he had collected the sealed envelope P3a containing the substance and the report P2 from Dr Jakaria. Witness identified P2 and the dark substance taken into custody by him as P3c.

Under cross examination he stated that he searched only the room belonging to the accused and the other police officers searched the other rooms. He further stated that a woman and two children occupied the other room. He had come to this finding as all the necessary items for her and the children were inside. He stated on that day they only searched the house at Anse des Genets. He further stated that the accused had stated the woman was his wife and that the woman too said so.

Lance Corporal (LC) Berard Hoareau in his evidence corroborated the fact that the raid was conducted on information received. He also corroborated the fact that the accused admitted that the money on the wardrobe was his. He also testified to the fact that the money was folded and PC Lucas on opening it saw the dark substance suspected to be Cannabis Resin.

Under cross examination he stated that on the day in question the accused was at the house at Anse des Genets. He too stated that the accused was standing next to the room. He denied the fact that the door was broken

down by the police officers when they entered the house. He stated that the woman who was there that night was Sabrina Ah-Khon. He corroborated the fact that the accused had been cautioned prior to his arrest. Thereafter the prosecution closed its case.

The accused in defence testified under oath and categorically denied the fact that he lived at Anse des Genets. He stated he lived at Cascade. He stated that the house at Anse des Genet belonged to Benny and Maria-Noella Emmanuela and produced documents d1 and d2 in proof of same. He stated he lived with his concubine and son at Cascade. On the 17<sup>th</sup> of May 2008 he had gone to watch a football match with his son and concubine and Richard Charlot his brother in law at Stad Linite after which he had taken Richard back to Anse des Genets. As his son had wanted to use the toilet they had all gone to the house which belonged to Benny and Maria-Noella Emmanuela. There was nobody present in the house so they had entered the house as the verandah door was open. He admitted that usually no one lived there.

When he was in the bath room he heard the door being broken open and several persons in civil had entered and introduced themselves as police officers. They had searched him and the bathroom from where he had come

out. They had thereafter searched Richard. They had taken from the accused Rs 150/=. He had asked PC Alain Lucas to give his money back. PC Lucas had then gone into a room and after a short time called the accused in. When he had gone in, he had shown the accused a Rs 25/= note which was folded and then unfolded it and said "what is inside is yours" and then placed him in handcuffs. He stated that when he entered the room all the officers and Alain Lucas were facing the wardrobe.

He further stated that all the doors in this house were left open. He said his house at Cascade had never been searched earlier. The police had searched his house situated on the same land when he lived there earlier but not found anything.

He further stated that although the Rs 150/= belonged to him the Rs 25/= was not his. He stated that he had seen Berard Hoareau before and he had told him that next time they were going to "plant" drugs on him. He further stated that the drugs they "say" they found on him was different to the drugs which was produced in court. He further stated that after his arrest he was taken to Cascade and his house searched but nothing was found.

Under cross examination he admitted that he went to Anse des Genets to drop Richard but did not do so and

passed Richards house and went to Benny's house ( house where the raid occurred) to take his son to the toilet, despite knowing the house was unoccupied and that he had no key. In fact his concubine Sabrina admits under cross examination they took a risk. He also admitted that he passed his house at Cascade but did not go home even though his son wanted to go to the toilet. His excuse was that as his house at Cascade was a 5 to 10 minute walk from the main road he continued further to drop his friend Richard at Anse des Genets. He also admitted that even though they passed Richard's house, they had not stopped but continued to Benny's house. He further stated that Richard's house was not his house but his concubines. He denied that the controlled drug was found folded with his money.

The accused called several witness namely his step brother Lenny Henry, his concubine Sabrina and his concubine's brother Richard Charlot in an attempt to corroborate these facts.

Having thus carefully analysed the evidence it is clear that the defence has gone to great lengths to show court, that the accused was not living or having ownership of the house (Benny's or sometimes referred to in evidence as Maria-Noella's Emmanuela house) where the detection was made and the only reason he went to the unoccupied

Benny's house was because his son had wanted to go to the toilet. It is to be noted that despite the child wanting to go to the toilet as early as during the football match, they had sought to pass according to their own version their own house at Cascade, Richard Charlots the accused concubines brother's house at Anse des Genets and gone to a Benny's house which they knew was not occupied and to which they had no key to enter. In fact the concubine of the accused while trying to convince court that a house containing a fridge, television cooker and furniture was unoccupied and having such items was always kept unlocked, admits herself under cross examination at page 15 of the proceedings of 6th April 2009, that this was strange and also admits that by taking her son to a place which may have been unoccupied and to which she had no key was risky. It is difficult to accept the "strange" and "risky" evidence of the defence in this respect and it is clear that the reason why they went directly to Benny's house was because they were in occupation of same, though they may have not had ownership of the premises when the detection occurred. It is also to be noted according to the police officers evidence, they had parked their vehicle and walked on a narrow road to

this house. Hence the accused contention that he did not go to his house at Cascade because of the 5 to 10 minute walk considering the emergency of his child, is difficult to accept as even to Benny's house it was necessary to walk a distance.



The accused in his evidence under oath admits the police raided Benny's house when he was present, together with his concubine, his child and Richard Charlot his concubine's brother. The prosecution's version was that the controlled drug was found with some money which was folded on the flat surface of the wardrobe. The prosecution's main contention is that the accused admitted the money was his and after unfolding the notes the drug was found inside the money which the accused said was his. Hence whether the house was owned by the accused or whether he was there for the purpose of his son using the toilet or whether the accused had exclusive possession of the room or wardrobe are not material facts with regard to this detection. The accused admits he was in the house at the time the police came in and detected the drug and it is clear the prosecution relies on the admission made by the accused to them that the folded money (in which the drug was found) was his to prove possession.

When one considers the defence or defences put forward by the accused, he appears in one instant to state that the drugs were found in a Rs 25/= note in a room of a house in which by coincidence they were in at the time the police raided and in another instant suggests a defence that the drug was planted on him by the police, after

having warned him earlier that they were going to plant drugs on him.

With regard to the evidence given by the accused and his witnesses in regard to the detection, while the accused and his concubine say he was called into the room and shown the drug detected by PC Lucas, witness for the defence Richard Charlot says Lucas told them to stand where they were and came out of the room and showed the drug to the accused and at that time the accused was in the toilet with his son (vide page 19 & 20 of the proceedings of 6<sup>th</sup> April 2009 1.45PM). The evidence of the accused in respect of the detection is totally contradicted by the evidence of his own witness, his concubine's brother Richard Charlot and thus the accused evidence in respect of the detection and his defence that at the time of the detection there was nothing in his money but that another Rs 25/= note containing a substance was shown to him in the room cannot be accepted.

Furthermore although the accused has also taken up the defence that the drug was planted on him and that the police had warned him earlier they would do so, he has not sought to bring this serious threat or the serious act of drugs being planted on him, to the notice of the higher authorities at any time either after having received the

threat or after the alleged “planting” of the drugs on him. This court therefore sees no merit in such a defence as the accused has had ample time to take such necessary steps in respect of the threat to “plant” and the “planting” of the drugs by the police but has failed to do so. For the aforementioned reasons the defence of the accused is rejected.

Furthermore the fact that PC Lucas mistook the accused concubine to be his wife or that the accused, was not the lawful owner of the property are not material shortcomings, which weakens the case of the prosecution. It was also brought to the notice of court that the original statements of the witnesses in Creole were not available, however translated copies had been furnished to the defence. Learned counsel for the defence in order to clarify whether the money containing the controlled drug was rolled or folded, requested the Creole statement of the witnesses to be produced. The prosecution was unable to produce same however English copies of all statements had been served on the accused. Whether the money was rolled or folded is not a major contradiction which would discredit the case of the prosecution completely. As such I see no material prejudice being caused in this respect, specially considering that the copies of the English version of the statement have been served on the accused.

On considering the prosecution's evidence before court it is clear that the evidence of PC Lucas is corroborated by the evidence of LC Hoareau in respect of the detection of the controlled drug. Both witnesses categorically testify to the fact that the accused admitted the money, marked as P4 (in which the controlled drug was found), was his. Both witnesses have identified the accused, the money P4 and the controlled drug P3c taken into custody has been identified by PC Lucas the detecting officer in open court. Though subject to cross examination the defence was not able to create any doubt on these issues.

It is clear that the prosecution seeks to establish possession on this admission made by the accused. There are no serious inconsistencies or major contradictions in the evidence given by these two witnesses. It is clear that knowledge could be inferred, as the accused himself still claims the money (in which the controlled drug was found) was his. The accused has taken the defence that no controlled drug was found in his money. He has not taken a defence that the drug was with his money but he was unaware of it. His defence that no controlled drug was found in his money for reasons already given has been rejected. As such it is clear therefore that knowledge could be inferred from the circumstances of this case. In the case of ***R v Accouche (1982) SLR 120***

it was held that knowledge could be inferred from the facts of the case.

Dr A Jakaria the Government Analyst identified in open court exhibit P3c as the controlled drug brought by PC Lucas for analysis and analysed by him and identified as Cannabis Resin. His report P2 confirms this fact and establishes the weight of the Cannabis Resin as 36.2 grams. He also identified the sealed envelope containing the exhibits as P3a and its contents were produced through him namely the evidence envelope P3b and the controlled drug P3c and the money notes as P4. The fact that P3c was not the drugs taken into custody was never suggested or contested in the ensuing cross examination of this witness. PC Lucas states in his evidence that after detection, the controlled drug detected was kept locked in his custody and after receiving it from the Government Analyst it has been produced in the same sealed envelope P3a with seals intact to court. It is clear when one considers these factors that the prosecution has established the chain of evidence in respect of the exhibit P3c beyond reasonable doubt.

Furthermore the quantity detected namely 36.2 grams of Cannabis Resin in the possession of the accused attracts the rebuttable presumption that the accused was trafficking in the controlled drug. The accused has failed to rebut the said presumption.

For the reasons given above this court is satisfied that the prosecution has proved its case beyond reasonable doubt and thereby finds the accused Darrel Choisy guilty as charged and proceeds to convict him of same.

**M.N BURHAN**

**JUDGE**

**Dated 27<sup>th</sup> day of May 2009**