

IN THE SUPREME COURT OF SEYCHELLES**THE REPUBLIC
VS.****SANDERS VITAL**Criminal Side No. 63 of 2008

Mr. Labonte for the Republic
Mr. Hoareau for the Accused
Accused - Present

JUDGMENT**Burhan J**

The accused Sanders Vital of Belonie stands charged in 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 14 of 1994 and punishable under the second schedule of the Misuse of Drugs Act read with section 29 of same.

The particulars of offence are that the accused on the 24th of July 2008 was found in possession of a controlled drug, namely 46.3 grams of Cannabis (herbal material) which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

The accused denied the said charge and trial against the

accused commenced on the 10th of June 2009.

According to the evidence of the prosecution witness Senior Constable Steve Jupiter, on the 24th of July 2008 around 3.30pm while he was attached to the ADAMS unit and had been patrolling the town region near Castor road with Inspector Marie, Lance Corporal (LC) Jimmy Samson in a vehicle, they had seen the accused Sanders Vital and stopped the vehicle next to him. When he saw them disembark from the vehicle he had dropped a red plastic bag next to him. They had picked up the red plastic bag which was near him and opened it and shown what was inside to him. They had thereafter arrested him and taken him to Central Police station. Witness had thereafter put the controlled drug recovered in an envelope and placed it in his locker and the next day handed it over to Dr Jakaria together with the

request form. He further stated the money taken from the accused at the time of arrest was counted in front of the accused and thereafter kept in his custody. Witness identified the Cannabis herbal material taken into custody from the accused and given for analysis to Dr Jakaria and marked as P3c in open court. He also identified the money P4 taken into custody from the accused.

Under cross examination he stated the accused (a one legged individual) at the time he saw him was standing with one leg and one crutch. The other crutch was next to him on the ground and the drug was in his hand. He had

thrown it on the ground when he saw them and tried to move away. Witness repeatedly stated the accused had not tried to run away and that he was telling the truth. He further stated that they had come up from the English River side and that there was a shop on the right side of the road and the accused was on the left side. The other officer called by the prosecution LC

Samson corroborated the fact that the accused threw something in a red plastic bag on the ground on seeing them come towards him and the fact that the bag was picked up by officer Jupiter and its contents shown to the accused. He also corroborated the fact that it contained herbal material and that thereafter the accused was arrested and brought to the police station. Witness denied the accused was with an ex prison officer called Rosamond at the time he was arrested. It is clear from his evidence that there were no pieces of paper strewn near the dropped bag. He also mentioned that the bag was tied. When one considers the evidence of this witness, it is apparent he refers to the area where Sanders Vital was and not the entire length and breadth of Castor Road, when he states, that no one else was around or that there was no paper strewn on the ground. Witness admits that it was mistakenly written in his statement that the accused was walking towards them and it is also apparent that witness was confused with the left and right side but corrected himself subsequently.

The defence has not sought to contest the chain of evidence. Dr Jakaria called by the prosecution identified the exhibit P3c as that given to him for analysis by officer Jupiter and analysed by him and identified as Cannabis (herbal material) His report P2 confirms same. Officer Jupiter identified P3c as the herbal material in the red

plastic taken into custody when the accused had thrown it in their presence on the ground and given to Dr Jakaria for analysis.

The defence of the accused is that he is a fisherman and admits he had money with him that day from the sale of fish. In fact he states he had more money. He denied he either smoked or dealt in drugs. He stated on that day while he was having a drink with his friend Rosemonde he saw Berard Hoareau (a police officer) come and get down and look in his direction and thereafter several police officers arrived and he was arrested and brought to Central police. He had seen the bag containing the herbal material only at the police station. He also called Rosemonde Bonnelame and the Commissioner of Police as witnesses.

When one considers the defence, the main contention of the defence is would the accused knowing that there was a camera in the vicinity sell drugs. Firstly the prosecution has not sought to prove that he was selling drugs at the place he was detected. They have sought to establish that at the time he was detected, he was in possession of the drugs which were in a red plastic bag and which he threw away on seeing them. Hence the defence contention that he would not sell drugs in the presence of a camera is not acceptable as the prosecution has not sought to establish that the accused was selling drugs at the point of detection but the fact that he was in possession of the drug which was in a red plastic bag and

thus not visible to the camera. The prosecution may have produced the money found in the custody of the accused but have charged him for trafficking based on the quantity detected.

Furthermore the witness called by the defence the Police Commissioner personally testified that the camera had to be focused on the spot to record and the camera would rotate and that as nothing material had been recorded it had been automatically erased. From the evidence of this defence witness himself, it is clear that if the camera is not focused or its view obstructed it would not record and it is clear from his evidence that the act of dropping the plastic bag had not been recorded and it is for this reason and that the prosecution sought to rely on the evidence of the two police officers and not camera evidence.

From the prosecution evidence it is clear that they had stopped the vehicle in front of the accused and disembarked, as they knew him and it was at that stage that he had dropped the red plastic bag which was seen in his hand which had aroused their suspicions and made them check it out. The accused does not deny the fact that police officers came to the scene and

that the incident pertaining to his arrest occurred at this location. Therefore when one considers the evidence called by the defence it is clear that as the camera had not been focused and therefore had admittedly not captured the act of dropping the bag, it had been auto erased after a week and it is for this reason that the prosecution seeks to rely on the evidence of these two

witnesses in respect of the detection and subsequent arrest. No doubt the prosecution should prove its case beyond reasonable doubt but proof beyond reasonable doubt does not mean proof beyond the shadow of doubt as stated in the often quoted case of **Miller v Ministry of Pensions 1947 2 All.E.R 372.**

When one considers the evidence of the accused and his witness Rosamonde, the accused states that while he was drinking with his witness Rosemonde, Mr Berard Hoareau came first and thereafter the other police arrived on the scene. Witness Rosamonde says that the accused was not drinking on that date and she goes to the extent of saying his hands were empty and that he had only his crutches with him (vide pg 13 of the proceedings 12th June 2009 9 am). Further in her evidence in chief she states, that all the police officers came together (Vide pg 11 of same), in fact she mentions that the accused back was to the road and later states that there were car hire vehicles which were parked earlier but no one had got down so she was unable to say whether they were police vehicles. This is in sharp contrast to what the accused stated namely that Mr Hoareau had got down and had “continued to look in our direction” (vide pg 3 of same) prior to the others arriving.

In view of the contradictory nature of the evidence of the accused and his witness the defence of the accused is unacceptable to court.

When one considers the evidence of the prosecution, the evidence of Senior Constable Steve Jupiter clearly shows

that the accused was caught in the act of throwing away the controlled drug. The material facts regarding the detection are corroborated by the evidence of Lance Corporal Samson. Both prosecution witnesses have identified the accused as the person having the controlled drug in his possession prior to throwing it away. No material contradictions or major inconsistencies arose in respect of the prosecution's evidence in regard to the detection, even though both police officers were subject to rigorous cross examination. Court will therefore proceed to accept the evidence of the prosecution. On consideration of the evidence of the prosecution, this court is satisfied, that the prosecution has proved beyond reasonable doubt that the controlled drug was in the possession of the accused prior to him throwing it away.

The concept of possession connotes two elements, the element of custody or mere possession and the element of knowledge as held in the case of ***DPP. v Brooks (1974) A.C. 862***

With regard to the element of knowledge the accused on seeing the police officers disembark from the vehicle had thrown away the red plastic containing the controlled drug. This act in itself is indicative of the fact that the accused had knowledge that the red plastic contained the controlled drug.

For the aforementioned reasons court is satisfied that the prosecution has established the elements of possession and knowledge beyond reasonable doubt.

Dr Jakaria's evidence clearly establishes the fact that the substance taken into custody from the accused was Cannabis (herbal material) a controlled drug. His report marked P2 confirms this fact and also specifies that the quantity taken into custody was 46.3 grams. This court is satisfied that the prosecution has established the chain of evidence beyond reasonable doubt in respect of the exhibit.

The quantity detected 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 aforementioned reasons this court is satisfied that the prosecution has proved all the ingredients of the charge against the accused beyond reasonable doubt. The accused is found guilty as charged and convicted of same.

M.N. BURHAN

JUDGE

Dated this 14TH day of December, 2009.

