

IN THE SUPREME COURT OF SEYCHELLES

REPUBLIC

VS

KINSLEY VALENTIN

Criminal side no: 82 of 2008

Mr. Durup for the Republic

Mr. Hoareau for the Accused

Burhan, J

JUDGMENT

The accused Kingsley Valentine stands charged with trafficking in controlled drug, contrary to section 5 of the Misuse of Drugs Act read with sections 14 (d) and 26 (1) as amended by Act 14 of 1994 and punishable under the second schedule of the said Act, read with section 29 of the same.

The particulars of the offence are that on the 13th day of October 2008, of Mont Fleuri, Mahe, the accused Kingsley Valentine was found in possession of a controlled drug 4.2 grams of diamorphine (Heroin) which gives rise to the rebuttable presumption of having possessed the said drug for the purpose of

trafficking. The accused pleaded not guilty to the aforementioned charge and trial against the accused commenced on the 16th of March 2009.

The case for the prosecution as stated by the main prosecution witness Police Constable Joel Larue was that, on the 13th of October 2009 around 5.30 p.m. While he was on patrol with his colleagues Lance Corporal Hoareau, Police Constable Dufrene and Police Constable Camille at Les Mamelles, PC Dufrene had stopped a vehicle driven by the accused who had attempted to turn his vehicle away from the search point set up by the police. The accused had turned aggressive and prevented PC Dufrene from carrying out a search on his person. They had thereafter arrested him for preventing an officer from performing his duty. Thereafter assisted by PC Camille and PC Jean he had carried out a search on the person of the accused at the Mont Fleuri police station. Witness stated that after searching the pockets of the trouser the accused was wearing, he had removed the accused's belt and his trouser and he himself had lowered the boxer shorts the accused was wearing when something had fallen out. Witness described it to be a powder wrapped in cling film and red plastic. Thereafter he had placed it in an envelope and taken it for analysis. According to Dr Jackaria's evidence the results of the analysis confirmed the fact that it was Heroin a controlled drug. Under cross examination Dr Jackaria admitted that it was one of the lowest percentages of pure Heroin he had analysed.

Prior to proceeding further, it is pertinent at this stage to analyse the evidence of the main prosecution witness PC Larue. Under cross examination, witness first categorically denied he had

known the accused earlier and that it was only on the 13th of October 2008 that he got to know the accused for the first time (vide page 27 of the proceedings of 16th March 2009). He thereafter admitted under further cross examination, that he had seen him earlier but had got to know his name that day. He further denied meeting and having any confrontation with the accused or that he was angry with the accused, regarding an incident that had occurred the day before, the 12th of October 2008.

It is to be noted that although the principle witness for the prosecution PC Larue denies having had a previous confrontation with the accused, the accused in his evidence, refers to an earlier confrontation he had with this witness, where he had gone to fight this officer as the accused admits, he had taken alcohol at that time. Although this incident was denied by PC Larue, PC Kevin Jean who was the only other police witness called by the prosecution, confirms the fact that he was aware that there was a confrontation between the accused and the main prosecution witness PC Larue prior to this detection.(vide pg 10 of the proceedings of 4th June 2009 1.45 pm). In the light of this evidence it is clear that the principle prosecution witness PC Larue was attempting to hide this material fact whilst giving his evidence. Therefore considering the background facts to this detection, especially the existing bad feelings between the main prosecution witness and the accused, it would be unsafe to rely solely on the evidence of this witness, unless his evidence is corroborated by the evidence of other witnesses.

In his evidence PC Larue stated, that the accused had resisted a search on his person by PC Dufrene and hence was arrested and

brought to the police station. However the prosecution failed to call PC Dufrene to establish this fact.

The accused stated in his evidence that he was searched at the search point and his witness Marilise Eulentin called by the accused confirmed this fact. In fact it was suggested on behalf of the defence, that the vehicle and the accused was searched by PC Dufrene at the search point but that the accused had been arrested because of the earlier confrontation with PC Larue. It is to be noted that no other evidence was led by the prosecution to show that PC Dufrene or any other police officer was assaulted at the search point on the date of the detection or that the accused resisted a search on his person. Hence the only evidence before court in respect of the accused being aggressive and resisting a search on his person and attempting to turn his vehicle at the search point is that given by PC Larue.

It would have been important that PC Dufrene be called, to clarify the evidence of PC Larue on these material facts, as it was PC Dufrene who according to the evidence of PC Larue had been prevented from searching the person of the accused.

Further it is to be noted that once again, it was this very same witness PC Larue who had searched the accused at the Mont Fleuri police station. Although he stated that the accused had been searched by him in the presence of PC Camille and PC Jean after all three had entered and closed the door, the evidence given by PC Jean was that PC Camille had come in only after the search was concluded and was not present during the search on the accused. (vide pg 8 of the proceedings of 4th June 2009 1.45pm). In fact according to the evidence of PC Jean he had not been called by PC Larue to witness the search of the accused but

had casually followed on his own accord and observed it. PC Larue states he had removed the belt of the accused and his trouser and states he lowered the boxer shorts of the accused at the time of the search (vide pg14 of the proceedings of 16th March 2009 9am). According to PC Jean it was not PC Larue but the accused himself who had removed his belt and the trousers had fallen down, (vide pg 9 of the proceedings of 4th June 2009 1.45pm).

On considering the evidence of PC Larue the main prosecution witness his evidence in respect of the accused attempting to turn his car away at the search point, the fact that the accused was aggressive and resisted a search on his person at the search point stands uncorroborated. His evidence in respect of the search on the person of the accused is of a contradictory nature to the evidence of PC Jean. Although this witness has sought to deny any previous confrontation with the accused, this fact was admitted by the prosecution witness PC Jean himself, thereby corroborating the stance taken by the accused that there existed bad feelings between him and the principle witness for the prosecution.

It is clear therefore, that it would be unsafe and unfair to rely on the uncorroborated evidence of PC Larue the main prosecution witness. His evidence in respect of the abovementioned material facts stand uncorroborated and in fact contradicted.

For the aforementioned reasons this court is satisfied that the prosecution has failed to prove the charge against the accused beyond reasonable doubt. Therefore this court proceeds to acquit the accused of the charge against him.

M. BURHAN

JUDGE

Dated this 27th day of August 2009