IN THE SUPREME COURT OF SEYCHELLES

REPUBLIC

VS

ACHILLE RADEGONDE

Criminal side no: 07 of 2009

Mr. D. Esparon Principal State Counsel for the Republic

Mr. B. Hoareau for the Accused

JUDGMENT

Burhan, J

The accused Achille Radegonde stands charged as follows;

Cultivation of Controlled Drug contrary to section 8 of the Misuse of Drugs Act read with section 26 (1) (a) of the same punishable under section 29 (1) of the Misuse of Drugs Act read with the second Schedule of same.

The particulars of the offence are that Achile Radegonde on the 3rd of March 2009 at Mont-Plaiser, Anse Royale, Mahe was found cultivating a Controlled Drug namely 49 plants of Cannabis.

The accused denied the aforementioned charge. At the close of the prosecution case, learned counsel made a submission on no case to answer. The main grounds urged by learned counsel were that;

a) There was insufficient evidence for a defence to be called as the prosecution had failed to prove a prima facie case against the accused as the plants had been found on the roof of the house the accused was living in with his brother and his brother's common law wife.
b) The prosecution had failed to prove an "overt act" by the accused in respect of the said cultivation.

When one considers the case for the prosecution, the principal witness for the prosecution, Lance Corporal Jean Claude Marengo stated that on the 3rd of March 2009, he had received information in respect of the trafficking of a controlled drug and had together with Corporal Adelaide and Lance Corporal Freminot proceeded to a specific location at Anse Royale. On reaching the house at the said location, they had met the accused and had stated they wished to conduct a search on the said house. They had found a container on the roof with a few small plants which they suspected to be Cannabis plants. They had proceeded to arrest the accused. Under cross examination he admitted that the accused was living in the house with his brother and his brother's common law wife. It is clear from the evidence of this witness that the accused was not the sole occupant of the said house at the time of

the detection and that the plants were not found in a room occupied by the accused but on the roof of the house. It was also borne out in the cross examination that at the time of the arrest the accused was a distance away from the house and had accompanied the police officers to the house at their request and had cooperated with them in the search of the premises. The prosecution had thereafter sought to mark the statement of the accused which was rejected on the ground that the prosecution had not satisfied court beyond reasonable doubt that it had been obtained voluntarily. Thereafter the prosecution closed its case.

What court has to decide in a no case to answer application, as held in the case of ***R vs Stiven 1971 SLR 137*** is whether;

a) there is no evidence to prove the essential elements of the offence charged,

b) Whether the evidence of the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict.

Archbold in Criminal Pleadings, Evidence and Practice 2008 edition at page 492 sets out the principle that should be applied in a no case to answer application;

“A submission of no case to answer should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, if properly directed, could convict.”

The elements required to prove a charge of cultivating cannabis plants has been set down in the Mauritian case of ***Rampersad v The Queen (1975) M.L.R. at pg 7***

The Supreme Court of Mauritius had this to say:

"We consider that mere owner ship of a plot of land on which a plantation of Gandia is found does not 'per se' justify an irresistible inference that the owner of the land is guilty of cultivating Gandia. The prosecution must at least establish that the accused party was aware of the presence of the plantation on his land and had something to do with the cultivation thereof. In other words some overt act must be established to connect the owner of the land with the cultivation of the plants found thereon."

This authority was followed in our jurisdiction by Seaton CJ in the case of ***Republic v Jean Gill 1983 SLR pg 22.***

In the recent case of ***Alcide Bouchereau v The Republic SCA No 11 of 2008 at pg 2*** of the said judgment, it was held that as cultivation is not defined in the Misuse of Drugs Act, its meaning from English decisions would be of persuasive authority and stated it would suffice if it could be shown that the accused played *" some identifiable part in the production process."* (emphasis added)

In this instant case when one considers the evidence led by the prosecution, there is no evidence to establish an overt act of cultivation by the accused or that the

accused played some identifiable part in the production process. Further the plants were found on the roof of the house in which the brother of the accused his common law wife and the accused lived. It is clear the accused was not the sole occupant of the house. Even if one is to consider all the aforementioned pieces of evidence led by the prosecution as a whole, this court is not satisfied that the evidence is such that a reasonable tribunal could convict. Therefore this court holds that as the prosecution has failed to establish a prima facie case against the accused, the accused has no case to answer. The accused is herewith acquitted of the charge against him.

M.N. BURHAN

JUDGE

Dated this 3rd day of December 2010.