

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

v/s

AZIZ MAHANI

Case No: CR7 of 2010.

Miss B. Confait for the Republic

Mr C Andre for the Accused.

Accused Present.

Ruling

Dodin. J

The Accused, Aziz Mohani, an Iranian national, stands charged with the offences of fishing without a foreign vessel's license contrary to section 7 of the Fisheries Act CAP 82 as read with and punishable under section 24(1) of the same Act as amended by Act 3 of 1997, and of escaping from lawful custody contrary to section 116 of the Penal Code. The particulars of the offences are that Aziz Mohani being the master of the fishing vessel Al-Assad, used the Fishing vessel Al-Assad for fishing in the Seychelles waters in the month of January, 2010, without the said vessel having a fishing license authorizing it to conduct the said fishing activities, and that on the 18th January, 2010, whilst the vessel Al-Assad was in the lawful custody of the authorized officers of the Seychelles Fishing Authorities, escaped with the vessel from the said custody.

The prosecution brought 6 witnesses who testified in the case. The 1st prosecution witness was Judy Sinon, an officer of the Seychelles Licensing

Authority, who testified that the vessel Al-Assad had not been issued with a fishing license at the time in question. A document to that effect was admitted as exhibit P1. The evidence of Mrs Sinon was not challenged.

The second prosecution witness Mr Andrew Souffe testified that he is an enforcement officer working with the Seychelles Fisheries Authority and that on the 16th January, 2010, he boarded the vessel Al-Assad at Port Victoria and inspected the vessel and took photographs of the vessel and the fish and nets that were on board. The photographs were admitted as exhibits. Mr Souffe opined that the fish he observed on the vessel appeared fresh and that the nets he observed on the ship were driftnets which were banned from use in Seychelles waters.

The 3rd prosecution witness was Ahmed Gulam who testifies that he was requested by the police to assist by translating Urdu to English and English to Urdu when the Accused was being interviewed by the police.

The 4th Prosecution Witness, Major Simon Laurencine, testified that he was the commanding officer of the coastguard vessel Topaz which intercepted the vessel Al-Assad on the 15th January at about 3.45 pm at position 3° 45' South 56° East. That position is situated inside Seychelles waters where foreign vessels are prohibited from conducting fishing activities. The witness did not observe the vessel actually fishing when it was intercepted. The witness further testified that after intercepting the vessel, the vessel was boarded and escorted into Port Victoria. Further on the 18th January at around 1.40 am he led Topaz on another mission to intercept the vessel Al-Assad which had left its designated mooring place and was moving away from Port Victoria. The witness testified that the vessel Al-Assad refused to stop or return to Port Victoria and he had to order the firing of warning shots towards the said vessel to force it to stop and escorted it back to Port Victoria.

Karl Seraphine was the 5th prosecution witness who testified that he is an analyst attached to the Seychelles Bureau of Standard and as part of his job he conducted analysis on samples of fish taken from 4 vessels including the vessel Al-Assad.

After the analysis was made, Mr Seraphine prepared a report which was admitted as exhibit in the case. The witness admitted that there might be an error regarding the date on the report but the contents of the report correctly reflect his findings from the analysis he made. According to the witness the analysis of the fish from all the 4 vessels including the vessel Al-Assad showed that the fish were fresh. The witness testified that he also noticed that the refrigeration system on the vessel Al-Assad was set to slow freeze which in his opinion was not the proper method for long term storage of fish hence the fact that the fish were still fresh showed that they were recent catch.

The 6th prosecution witness Patrick Hoareau testified that on the 14th January, 2010, he witnessed a vessel moving slowly within Seychelles waters in an area reserved for local fishing vessel. He continued to keep an eye on the vessel and the next day his vessel approached that other vessel and he noticed that it was a foreign fishing vessel which he identified as the vessel Al-Assad. He contacted the Coastguard and continued to monitor the slow movement of the vessel until the arrival of the Coastguard vessel Topaz which intercepted the vessel. The witness testified that he did not witness the vessel fishing as it was night but the slow movement of the vessel and the fact that its lights were off suggested it was engaged in a fishing activity and not a simple right of passage.

At the close of the prosecution's case the Accused made a submission of no case to answer. Learned Counsel for the Accused based the submission of no case on three main grounds: Firstly that there was no evidence to prove that the vessel Al-Assad was actually fishing in Seychelles waters; secondly; that the evidence of the prosecution witnesses have been so discredited that no reasonable court could convict on it; and thirdly that the prosecution did not bring evidence to show that the Accused was aware that he was under arrest and his vessel under detention and therefore there is no evidence that the Accused escaped from lawful custody.

Learned Assistant State Counsel submitted that the evidence of Major Laurencine and Patrick Hoareau placed the vessel in Seychelles waters and the evidence of Judy Sinon that the vessel did not have a fishing license is uncontroverted.

Learned Assistant State Counsel submitted that although there is no direct evidence of any witness observing the vessel fishing, the circumstantial evidence suggest strongly that it could not have been engaged in any other activity other than fishing. Learned Assistant State Counsel further submitted that the evidence of the prosecution witnesses were reliable and strong and complimented as well as corroborated each other. Learned Assistant State Counsel submitted that there is clear evidence that the vessel was intercepted by the Coastguard vessel Topaz and upon arrival in Port Victoria the Accused was informed through a crew member on board who spoke English that the vessel was under arrest and that it was being detained and the reason for it being detained. Hence all the essential elements of the offences have been proved beyond reasonable doubt and moved that the Accused is called upon to make his defence.

The Court has carefully considered the submissions of the Accused and the prosecution. In considering whether there is a case to answer, the duty of the court is not to consider whether the prosecution has proved its case beyond a reasonable doubt but rather whether a prima facie case has been made against the Accused. The Court duty is to determine whether the evidence adduced taken as its highest would not properly secure a conviction. This has been well tested since the case of R v Galbraith [1981] 1 WLR 1039. The cases of Green v. R [1972] No 6, R v. Stiven [1971] No 9 and R v. Olsen [1973] No 5 are all in support of the above principle.

In the process of the determination of such application, the Court must make an assessment of the evidence as a whole and not simply focus on the credibility of the individual witnesses or of any evidential inconsistencies between the witnesses. It is clear that where the Prosecution evidence fails to address a particular element of the offence at all, then no conviction could possibly be reached and the Court should allow the application to succeed. Nevertheless where there is some evidence to show that the accused committed the offence, but for one reason or another it seems unconvincing the general principle is that it is a matter to be left to the end of the trial where the evidence would be weighed and the Court would reach a verdict after assessing the witnesses' credibility together with the available evidence.

From the evidence adduced by the prosecution there is uncontroverted evidence that the vessel on which the Accused is the Master did not have a license to fish in the Seychelles waters and that the vessel was a foreign vessel. From the evidence of Major Laurencine, Mr Hoareau and Mr Souffe, the Court is satisfied that the vessel was maneuvering in the Seychelles waters from the evening of the 14th January, 2010 until it was apprehended by the Coastguard vessel Topaz on the 15th January, 2010. The evidence of Mr Hoareau and of Mr Seraphine although circumstantial in nature strongly support the contention of the prosecution that the vessel was engaged in fishing activities during the period in question by reason of the maneuvering it was observed to be making and the freshness of the fish on board. The competencies of the Coastguard and the procedures that should have been followed in apprehending the vessel and its Master, the Accused, and the keeping of the vessel in detention are not material to the decision of the court at this stage as they go to the credibility of the witnesses and the weight to be attached to their respective evidence at the conclusion of the trial. Hence the court is satisfied that the prosecution has sufficiently addressed all the elements of the offence of fishing without a license in the Seychelles waters by the vessel Al-Assad which was at the material time skippered by the Accused.

On the second ground raised by the Defence, the Court considered the evidence of Karl Seraphine. The only discrepancy in the testimony of the witness was the date of the Report which was admitted as exhibit P5. The witness testified that although there was a mistake about the date it was the same report that he prepared subsequent to conducting the tests on the fish in question from all 4

vessels. The evidence of Major Laurencine, Andrew Souffe and Patrick Hoareau appeared consistent throughout. Whether such evidence would meet the standard required to prove the offence charged without a reasonable doubt is a matter that the Court would consider in giving judgment but not at this stage when considering whether there is a case to answer. It may be argued that the evidence of Karl Seraphine may not be clear but the Court does not agree that it has been so contradicted that not reasonable Court can reasonably convict on the same evidence. In any event the evidence of Karl Seraphine is only one of several testimonies going towards the circumstantial evidence in the case. The submission of the Accused is therefore not supported by the evidence before the court.

As regards the second count of escaping from lawful custody, there is clear evidence that on the 18th January, 2010 at around 1.40am the vessel Al-Assad had moved from its anchorage place near the Coastguard base and that it was detected and intercepted by the coastguard vessel Topaz at about 4 am at 10 nautical miles off Cap Ternay moving west at 12 knots and without any lights on. Learned Counsel for the Accused submitted that the vessel could not have escaped from lawful custody because it had not been lawfully arrested in the first place. As stated above, whether the procedures for stopping and detaining a vessel has been properly followed is a matter which the court would consider in reaching judgment as it would be determined based on the credibility of the witnesses who testified to the propriety of the procedures followed. The Court is satisfied that the Prosecution has adduced sufficient evidence to substantiate the fact that the vessel left its moorings at the Coastguard base without any permission having been given by any competent authority for it to do so.

In consequence of the above findings the Court is satisfied that the Prosecution has done the necessary and adduced sufficient evidence to prove the offences charged. The submission of no case to answer therefore fails and the Accused is called upon to make his defence accordingly.

C.G. DODIN

JUDGE

Made on this 25th day of August, 2010.