IN THE SUPREME COURT OF SEYCHELLES

PASCAL MEIN
APPELLANT
VS
REPUBLIC
RESPONDENT

Criminal Appeal no: 05 of 2009

Mrs. Amesbury for the Appellant
Mr. Esparon for the Respondent

JUDGMENT

Burhan, J

This is an appeal filed by the Appellant (2nd accused) Pascal Mein, against the conviction entered by the learned Magistrate on the Appellant's own plea of guilt and on the ensuing sentence imposed.

At the very outset it would be pertinent to set out the law in respect of this issue.

Section 309 (1) of the Criminal Procedure Code Cap 54, reads as follows;

"No Appeal shall be allowed in the case of any accused person, who has pleaded guilty and has been convicted on such plea by the Magistrates' court, except as to the extent and legality of the sentence."

Nevertheless learned counsel for the Appellant

has filed an appeal against the said conviction, based on the following grounds;

a) The Appellant being a first offender and unrepresented should have been informed of the consequences of a guilty plea, to a charge that could potentially carry a mandatory term of imprisonment.

b) The Appellant's guilty plea was not "voluntary" as it was not based on information to which he was entitled prior to entering the plea.

c) The Appellant did not get a fair trial in all the circumstances.

Having based her Memorandum of Appeal on these grounds, learned counsel proceeded in her oral to submissions to rely on a completely new ground not mentioned in the Memorandum of Appeal, namely that the Appellant Pascal Mein was of a low I.Q and thus did not fully understand the consequences of his plea and had repeated what the 1st accused was stating like a "parrot" as borne out by the record.

In support of her application and with the consent of court, a medical report was produced by learned counsel for the Appellant. When one considers the medical report filed, although it is clear that the Appellant is an individual of below average understanding, there is no indication in the report that he was not in a fit and proper mental condition to stand trial. In the day to day routine of courts there are accused who are produced in court who are below average understanding but yet in a fit and proper mental

state to plead. Had the medical certificate produced by learned counsel, indicated that he was not in a fit and proper state of mind at the time he pleaded, then the position would have been different. However as it stands, the medical certificate tendered does not suffice or warrant the quashing of the conviction entered.

Furthermore learned counsel in support of her contention that the Appellant repeated like a "parrot" what the first accused was saying, referred to the recorded proceedings to establish same. However on perusal of the said proceeding of 9th March 2009, it is to be noted that in mitigation, the 1st accused has stated "I apologise" whereas the Appellant the 2nd accused has stated "I apologise and ready to return the items," clearly showing he was not repeating like a "parrot" what the 1st accused was saying but independently stated, he was ready to return the items, which any normal person would say, expecting leniency. Hence it cannot be said, that the Appellant did not understand what was happening or that he was just repeating what the 1st accused was saying.

When one peruses the record the learned Magistrate (Mrs Laura Pillay) cannot be faulted, as both accused have been informed prior to the charge being read to them, their right to legal representation and of the minimum mandatory term of imprisonment of 5 years for the offence of Robbery which they were charged. There is no indication in any way to show, that the accused did not "voluntary" make such a plea, as stated in the

Memorandum of Appeal nor any evidence to show that either or both of the accused were coerced into pleading guilty. Therefore all three grounds of appeal as set out in the Memorandum of Appeal, hold no merit.

In the case of ***Paul Oreddy v Rep SCA 9 of 2007*** the conviction was set aside as the plea of guilt was based on a misapprehension of the law and facts by the accused and thus did not amount to an unequivocal plea of guilt by the accused. In the case of ***Raymond Tarneki v Rep SCA 4 of 1996*** the Court of Appeal set aside the conviction on the grounds that the plea was influenced by a "grossly erroneous view of the law given by counsel to a foreigner on vacation in Seychelles." The facts before this court in this instant case, do not show that the plea of guilt by the Appellant was based on any misapprehension of the law and facts or that he was influenced in anyway to have a grossly erroneous view of the law. For the aforementioned reasons, this court is satisfied that the facts before court clearly show that the accused plea of guilt was an unequivocal plea of guilt, not tainted or tarnished in anyway. Furthermore the sentence imposed by the learned magistrate, cannot be said to be manifestly harsh or excessive as it is the minimum mandatory term of imprisonment set down by law.

For the aforementioned reasons the appeal against conviction and sentence is dismissed.

M. BURHAN
JUDGE

Dated this 12th day of February 2010