IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC
VS
PATRICK GEMMEL
JOSE BONNE
SAMUEL ARRISOL
ANDREW PANAGARY
RAYMOND RABERA

Criminal side no: 11 of 2007

Mr. Esparon for the Republic

Mrs. Amesbury for the 1st and 3rd accused

Mr. Gabriel for the 2nd accused

Mr. Bonte for the 4th accused

Mr. Hoareau for the 5th accused

JUDGMENT

Burhan J

The aforementioned 5 accused in this case have been charged as follows:

Count 1

Possession of explosives under suspicious circumstances contrary to and punishable under section 17 of the Explosives Act (Cap 77)

The particulars of the offence are that Patrick Gemmel, Jose Bonne, Samuel Arrisol, Andrew Panagary and Raymond Rabera on the 4th of March 2007 at La Retraite, knowingly had in their possession or under their control explosives,

namely Molotov cocktail, in such circumstances as to give rise to a reasonable suspicion that they were not having them in possession or under their control for a lawful object.

In the alternative to count 1 the 5 accused were charged as follows;

Count 2

Possession of explosives contrary to and punishable under section 9 (2) of the Explosives Act (Cap 77)

The particulars of this offence are that Patrick Gemmel, Jose Bonne, Samuel Arisol, Andrew Panagary and Raymond Rabera on the 4th of March 2007 at La Retraite, were in possession of explosives without a valid permit.

The accused pleaded not guilty to the said charges and trial against the accused commenced on the 14th of January 2009.

The detecting officer, Chief Superintendent Paul Bedier giving evidence under oath, stated that on the 3rd of March 2007 while he was on duty with Lance Corporal (LC) Larue and LC Charles they had parked their vehicle on a secondary road at La Gogue past La Retraite. Around 15 minutes past midnight, he noticed a white car bearing registration No S8902 being driven onto the La Gogue road from the main road coming from Victoria. The car had stopped and 5 persons had disembarked from the vehicle for the purpose of passing urine. He had waited till they had all got

back into the car and then he had questioned the driver the 1st accused Patrick Gemmel who had stated they had stopped to pass urine. He had stated he wanted to search the car and had begun his search with the booth. Inside the booth he had noticed two bottles, one Sprite and one Coca Cola both containing some reddish liquid. Both were marked as exhibits PE 1 and PE 2. He had thereafter conducted a search in the vehicle and on the floor behind the passenger seat was a 'Supersave' plastic bag and had found inside it a plastic bottle which had toilette paper wrapped round it and a tuna cracker taped to the bottle by masting tape. He further clarified the fact that the bottle was found behind the front passenger seat towards the middle close to the hand brake. He stated the 1st accused was the driver while the 2nd accused was seated in the front passenger seat, the accused Panagary (4th accused) was seated behind the driver, the 3rd accused Arrisol was in the middle and the 5th accused Rabera was seated behind the front passenger seat. The said plastic bottle and its contents together with the fire cracker taped to it were marked as exhibit PE 3. Thereafter the three bottles were seized by him and kept in his possession in a cabinet. It was shown to Sub Inspector Henriette an explosives expert. He had thereafter taken the big bottle found in the plastic bag for a finger print report but no finger prints had been found. Mrs Kante from the Seychelles Bureau of Standards had taken samples from the 3 bottles for analysis in his presence. The said exhibits had thereafter been with him till they were produced in court. All 5 persons in the vehicle were brought to the Central

Police station and detained.

Under cross examination witness stated that the presence of the accused at that time of the night was suspicious, although they were not committing a crime at the time he saw them. He further stated that Patrick Gemmel was driving the car and had stated he was a mechanical engineer. He also stated he had approached the accused vehicle when they had got into the car after they had urinated. He also admitted the accused did not attempt to flee on seeing them. He stated that at the time of search the accused were seated in the car with the exception of the driver the 1st accused.

Mrs Mariam Kante an expert witness called by the prosecution stated she had analysed the contents of the liquids found in PE1 PE2 and PE 3. She stated that liquids found in PE1 and PE2 was gasoline and the liquid found in PE3 was analysed and found to be Kerosene. Her report was marked as PE4 (exhibit 4).

Under cross examination, she further explained that when she mentioned that a substance was contaminated with Kerosene she meant it contained Kerosene. It did not mean it was 100% Kerosene or gasoline it could be even that 10% of the liquid was Kerosene. She further stated only a qualitative analysis was conducted by her. She stated the samples taken from the bottles for analysis were kept in her custody until they were analysed. She further categorically stated that the Seychelles Bureau of Standards has never come out with wrong results in respect of tests carried out.

The other expert witness called by the prosecution Edwine Henriette stated he was an expert in arms, ammunition and explosives on an international level. The defence did not contest his expertise. He stated that by looking at the Tuna cracker he was able to say it was an explosive as all explosive devices are constructed in a particular way. He referred to it as the initiating agent of the Molotov Cocktail. He further explained that a Molotov Cocktail, usually contained a fuel contained in some type of container and an initiating agent which when associated together formed a Molotov Cocktail. He stated that the bottle was associated with the cracker as it was attached to the bottle by tape. He further mentioned that by looking at the time fuse and by visual inspection, with his expertise he could say it was a tuna cracker. He further stated that by using a tuna cracker they had made the device more dangerous as a regular fuse would be less powerful, while a tuna cracker would explode starting a bigger or wider fire and greater destruction. He referred to the exhibit as a “Molotov cocktail” an explosive. His report was marked PE5 (exhibit 5).

There after the prosecution closed its case. As a prima facie case had been established the defence was called. All 5 accused chose to remain silent while counsel for all the 5 accused made oral submissions on their behalf. At this stage it is pertinent that court warns itself that in terms of Article 19 (1) (h) of the Constitution of the Republic of Seychelles, no adverse inference may be drawn from the exercise of the right to silence of the accused persons.

When one considers the submissions by learned counsel, it is apparent that the implied defence of the accused is that the prosecution had failed to prove beyond reasonable doubt, that any of the accused was in exclusive possession of the said explosive, that the prosecution had failed to prove joint possession on the part of the 5 accused and that the prosecution had failed to prove beyond reasonable doubt that exhibit PE 3 was an explosive namely a Molotov cocktail.

When one considers the evidence of both expert witnesses namely Mrs Mariam Kante and explosives expert Mr Edwine Henriette, Mrs Kante categorically identified the liquid contents of PE 1 and PE 2 as gasoline and the liquid contents of the exhibit PE 3 as Kerosene. She went to the extent of stating that the Seychelles Bureau of Standards never made a mistake in analysis of substances. Mr Edwine Henriette identified the bottle containing kerosene with the tuna cracker strapped by tape onto it as a Molotov cocktail an explosive. He explained in detail the constituents of a Molotov cocktail and positively identified the tuna cracker as the initiating agent of the Molotov cocktail which when associated together with the fuel in the container formed the Molotov cocktail. Their evidence is well substantiated and corroborated by their respective reports. Therefore court is satisfied beyond reasonable doubt that the prosecution has proved that exhibit PE 3 was a Molotov Cocktail an explosive.

Section 17 of the Explosives Act under which the 5 accused are charged reads as follows;

“Any person who makes or knowingly has in his possession or under

his control any explosives, in such circumstances as to give rise to a reasonable suspicion that he is not making them or does not have them in his possession or under his control for a lawful object, is unless he can show that he made them or had them in his possession or under his control for a lawful object, guilty of an offence and is liable to imprisonment for fourteen years, and the explosive shall be forfeited".

This section is similar to section 4 of the Explosive Substances Act 1883 of England as set out in ***Archbold Criminal Pleadings, Evidence and Practice 2008 edition pg 2178.***

In this instant case in order to establish the charge, the prosecution has to establish;

a) that the accused were knowingly in possession or had under their control any explosive.

b) that the possession or control was in such circumstances as to give rise to a reasonable suspicion that they did not have it in their possession for a lawful object.

In respect to whether the 5 accused in the vehicle knew and had control of the explosive found in the car in which they were travelling, when one considers the circumstances of this case a presumption of concerted participation is clearly seen as also referred to in the case of ***Barnsley Lebon v The Republic SCA 2 of 2009 pg 7.***

The evidence of the prosecution establishes the fact that the accused were travelling together and the detection was made around 15 minutes past midnight. This evidence has hardly been disputed by the defence. The evidence of Mr Bedier clearly shows they were acting in concert when alighting

and getting into the vehicle. The evidence of the prosecution that the explosive was found concealed in a ‘Supersave’ plastic bag, in the midst of where the accused were sitting in the vehicle, i.e behind the front passenger seat near the hand brake, stood firm despite being subject to lengthy cross examination. The fact that there were two smaller bottles containing gasoline in the booth of the vehicle and an explosive (Molotov cocktail) inside the vehicle in the midst of the accused at that time of the night, are items of evidence which the prosecution has successfully established. This court is satisfied beyond reasonable doubt that all these circumstances when taken as a whole, raise a presumption of a concerted or combined participation by the accused and a reasonable suspicion that the 5 accused did not have it (the explosive) in their possession for a lawful object. Therefore learned counsel’s contention that mere presence of passengers in the car, does not establish knowledge of the fact that they knew there were explosives in the car or that possession has not been established by the prosecution cannot be accepted. Further in the case of ***The Republic v Accouche and Anor [1982] SLR 120*** it was held that it is necessary for the prosecution in order to prove possession, to satisfy the court that the accused *knew* that they had possession of the dangerous drug. This knowledge may be *inferred* from the facts of the case.

The evidence of Chief Superintendent Bedier clearly establishes the fact that the exhibits taken into custody were kept in his custody and the samples taken by Mrs Kante done in his presence. He had handed the exhibit for finger printing and

also for expert analysis by Edwine Henriette and personally collected the exhibits himself and kept it in his custody until producing it open court. He identified in open court the exhibits as those taken into custody by him on the day in question. Therefore court is satisfied beyond reasonable doubt that that chain of evidence with regard to the exhibits has been established by the prosecution.

For the aforementioned reasons this court is satisfied that the prosecution has proved all the necessary ingredients of count 1 beyond reasonable doubt. Therefore all five accused in this case are found guilty in respect of count 1 and convicted of same. As the accused have been convicted on count 1, no order is made in respect of the alternative charge in count 2.

M. N. BURHAN
JUDGE
Dated this 22nd day of January 2010