

IN THE SUPREME COURT OF SEYCHELLES

REPUBLIC

VS

VINCENT MATATIEN

Criminal side no: 03 of 2009

Mr. Esparon for the Republic

Mr. Derjacques for the Accused

RULING ON NO CASE TO ANSWER

Burhan, J

The accused Vincent Matatiken 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 Vincent Matatiken on the 23rd of January 2009 was found cultivating a Controlled Drug namely 12 plants of Cannabis.

The accused pleaded not guilty to the aforementioned charge

and the prosecution in order to establish the charge called as witnesses the Government Analyst and agents Marcel Naiken, Manuel Marie and Jeffrey Celestine and closed their case.

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) The prosecution had failed to prove an 'overt act' by the accused in respect of cultivation of the 12 plants of Cannabis.

b) There was insufficient evidence for a defence to be called as the prosecution had failed to prove a prima facie case against the accused.

When one considers the case for the prosecution, the evidence led shows, that on the 23rd of January 2009 on information received, agents of the NDEA namely Marcel Naiken, Manuel Marie and Jeffrey Celestine had conducted the said raid and come across a plantation containing manioc, sweet potatoes, Chillies, tomatoes and among them 12 Cannabis plants. The house of the accused which was about 4 metres away had been deserted and agent Naiken and Manuel Marie had thereafter gone to where the accused was staying, that is at his mother in laws house, arrested the accused and brought him to the plantation handcuffed and under armed guard. According to the evidence of the prosecution witnesses, the accused had admitted, the said plantation was his but had stated that he did not know what the plants were and had found them there, so he had left

them. Furthermore, the prosecution also relies on the evidence of the witnesses who stated that the said plantation had been cleaned and well maintained. It is on these items of evidence that the prosecution seeks to rely in order to prove the aforementioned charge against the accused. However at this stage that is at the close of the prosecution case, court must be satisfied that the prosecution has established a prima facie 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.

Further in the case of ***R v Olsen 1973 pg 188 at pg 189*** it was held, in deciding whether there is a case to answer, one should not depend on whether the adjudicating tribunal *would* at that stage convict or acquit but whether the evidence is such, that a reasonable tribunal *might* 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 ownership 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.*”

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, though the accused is said to have stated that the plantation was his, in respect of the aforementioned authorities, mere ownership of the land or plantation does not establish cultivation. The fact that the plantation was clean and well maintained, does not prove that it was the accused who was cleaning and maintaining the said plantation. The prosecution evidence itself shows, that the accused was not present at the time the detection was made but had to be bought from his mother in laws house, which was a fair distance away from the scene of cultivation. Furthermore the accused has not accepted the fact that he knew the said plants growing in the plantation were Cannabis .

Even if one is to take 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 might or could convict. Therefore this court holds that as the prosecution has failed to establish a prima facie case, the accused has no case to answer. The accused is herewith acquitted of the charge against him.

M. BURHAN

JUDGE

Dated this 29th day of January 2010