

IN THE SUPREME COURT OF SEYCHELLES

**THE REPUBLIC
VS
JERRY HOAREAU**

Criminal Side No: 61(A) of 2008

Mr. Esparon for the Republic

Mrs. Amesbury for the Accused

JUDGMENT

Burhan, J

The accused in this case Jerry Hoareau has been charged as follows;

Trafficking in controlled drug, contrary to section 5 of the Misuse of Drugs Act read with section 14(c) and 26 (1) (a) of same, as amended by Act 14 of 1994 and punishable under the second schedule of the said Misuse of Drugs Act read with section 29 of same.

The particulars of the offence are that the accused Jerry Hoareau on the 15th of July 2008 was found in possession of a controlled drug, namely 10.1 grams of Diamorphine (heroin) which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

The trial against the accused commenced on the 18th of February 2009. The evidence of the main prosecution witness Lance Corporal (LC) Mathieu Dookley was that on the 15th of July 2008 while he was working with ADAMS and conducting a routine patrol with 4 other officers around 11am near the "Supersave," he had noticed a green bus (a small bus) in which the accused and the driver Jean Baptiste were travelling in. The bus had been travelling towards town. On seeing the police officers the accused had pulled the rim of his hat down. They had followed the bus in order to carry out a search in a more appropriate area and before the Beau Vallon police station, they had overtaken the bus and informed the driver to stop the vehicle. While the police were ordering the bus to stop, the accused had thrown a plastic bag in his hand outside into the grass. Witness had got down, picked up the plastic bag, come back to the bus and opened it in front of the accused and had seen the powder in it. As witness suspected it to be drugs, they had arrested the accused and taken him to the Beau Vallon police station and proceeded to register a case against him. Witness identified in open court the powder taken into custody from the accused, exhibit P3c. Thereafter he had taken the suspect powder taken into custody by him for analysis to Dr Jakaria the Government Analysis.

Under cross examination witness identified the powder taken into custody by him and stated he could not explain why the powder had become fragmented. He stated he had started following the vehicle on seeing the accused in it. The vehicle in which the accused was travelling was not stopped next to the bus stop or the stadium in town by the police, as it was 11am on a Tuesday and it was not possible to overtake and stop it. He denied the suggestion that as they had not been paid money, they had planted the drugs on the accused. He further stated that the only drugs in the police station were that which were for court cases.

The evidence of Dr Jakaria Government Analyst confirms the fact that he received the exhibits relevant to this case on the 15th of July 2008 at around 1.30 pm from LC Dookely. He identified the request letter P1 and stated thereafter he proceeded to weigh and analyse the powder brought for analysis by LC Dookely and after doing so prepared his report. According to his evidence the net weight of the light brown substance was 10.1 grams and he concluded from the analysis of the light brown powder that it was heroin with a percentage purity of 62.5%. His report (P2) confirms these facts. He thereafter had placed the exhibits in the evidence envelope (P3b) and placed it in a larger white envelope (P3a) sealed it and handed it

back to LC Dookely on the 18th of July 2008 at 11.40 am. The sealed envelope (P3a) with its seals intact was produced in open court and opened in the presence of the accused and his counsel and the contents namely the powder taken into custody was marked as exhibit P3c and identified by the witness as that powder which was handed over to him by LC Dookely and that which was analysed and found to be Heroin of 62.5% purity. He categorically identified the exhibits in court and stated together with the fragments seen at present there was the powder which was taken for analysis. It could be noted the present state of the exhibit P3c is the same fragments with powder.

The prosecution next called Inspector Ron Marie who stated he had interviewed the accused and recorded his statement. The statement of the accused was produced and marked as P4 after a voire dire inquiry, in which court ruled on the 6th day of March 2009 that the statement had been recorded voluntarily and therefore could be admitted as evidence.

The accused in defence gave evidence under oath and called as witness Mr Nicolas Prea in support of his defence. The defence of the accused was that on the 15th of July 2010 while he was at home Garry Jean Baptiste

came looking for his brother as "they do things on the boat". As his brother was not around Garry had asked the accused to accompany him and they had first gone to Providence to purchase spares for an inboard engine. After that they had proceeded to Beau Vallon in their vehicle a small bus and on the

way near the 'three fish tails' (roundabout) they had noticed the police officers. Thereafter the police officers had began to follow them to Beau Vallon. When the police vehicle was following behind them, he was in the front passenger seat and Garry had been driving the small bus. At the Bakery shop near Beau Vallon the police had overtaken their vehicle and told them to stop. They had stopped their vehicle and had been instructed to disembark and were subject to a search. He stated the police had found nothing on him but had found money on Garry. He had then seen a police officer searching in the grass for around 10 minutes and seen him picking up a small plastic bag. He stated he did not know what the officer was looking for and when the officer had mentioned to the accused he had seen him throwing something away, he had denied it. Having stated he saw the officer picking up a plastic bag, he subsequently soon thereafter stated he did not see him pick up anything

(Vide pg 9 &10 of the proceedings of 8th June 2009 1.45pm). He further stated the first time he saw anything was at the police station and it was something different to what was produced in court. Thereafter he was taken to ADAMS and then Central police station. He stated Inspector Ron Marie had wanted him to give a statement implicating Gary and promised to release him if he did so. This was the reason he had given a statement to the police but states further he did not know it was a statement, as this was the first time something like this was happening to him. However soon thereafter he mentions he had been arrested before at the Belombre church by the drug squad (vide page 14 of the

proceedings of 8th June 2009 1.45pm). He further stated in the earlier case there had been several persons and all had run away leaving him behind and he had been arrested and subsequently beaten up by a police officer by the name of Allen Lucas. He stated his mother had reported this incident to the Police Commissioner and he had been threatened by Lucas that they would set him up. He stated there was no preplanning or dealing with drugs on that day by either him or Garry. He stated that he had not received Rs 20,000 from Garry or gone to meet Ned that day nor did Ned give him a small packet in a plastic, all this was fabricated by the police in his statement.

The other witness called by the defence Mr Nicolas Prea the MNA for Belombre district and member of the National Assembly stated that he knew the accused as he lived next to his parents. He mentioned the personal experience he had had to go through with his son and further stated that he was aware of the incident where the accused had been arrested and beaten up. He had noticed the bruises on the face of the accused and the black eye and had reported the matter to Mr Hive the Commissioner of police for investigation. The police had conducted an investigation and Mr Dubigon from the CID had called witnesses and subsequently reported that nothing was done or committed by the police. Thereafter a few days later the accused had been arrested. Under cross examination he admitted that he knew nothing about the incident in respect of this case.

Having thus carefully considered the evidence before court, it is apparent when one considers the evidence

and submissions of the defence, that the main contention of the defence is that the drugs had been planted on the accused by the police as he had refused to give them the money they demanded. Firstly, although this is indeed a very serious allegation to be made in open court, it is apparent that no steps were taken by the accused or his counsel to report such a matter to the higher authorities concerned. The accused cannot say he was unaware of his rights as according to his own evidence, he had in the very recent past complained against police officer Mr Allen Lucas for assaulting him. In the absence of any complaint to the higher authorities either promptly or even thereafter, there is no merit in the suggestion that the accused was framed as he had refused to give money to the police officers concerned.

The other ground urged by learned counsel was that the police could have stopped to search the vehicle in which the accused was travelling near the bus stop and near the petrol station but did not do so. In such a detection, it is the police who make decisions of where persons should be stopped and searched and not the accused. The evidence of LC Dookely shows that the vehicle was not stopped in town as it was 11.am on a working day and therefore it was not the appropriate time or place to do so, due to the inability to overtake the vehicle and quite obviously to do so at that time and hour would have

resulted in the smooth running of traffic being disrupted in the town limits. Therefore this court sees no hidden or ulterior motive to plant drugs on the accused, in the stopping of the vehicle on the main public road at Beau Vallon, as implied by the defence. Counsel has also suggested that the drugs had been planted as the accused had sued or threatened to sue the police for the first incident of arrest at Belombre but counsel thereafter admitted that no case had been filed and the accused himself states it was not him who was going to sue the police but a friend who had a relationship with his aunty who had witnessed the incident. (vide page 22 of the proceedings of 8th June 2009 1.45pm). Learned counsel for the prosecution in his cross examination of the accused, highlights the fact that at one stage the accused states in evidence Ron Marie wanted to frame him as the accused had threatened to sue him but then says Ron Marie wanted him to give a statement implicating Gary and not himself showing that Inspectors Ron Marie's intention to frame him seemed to have dramatically and quite suddenly changed.(vide page 26 of the proceedings of 8th June 2009).

The other ground raised by learned counsel was that the production which was powder had now become rocks. Learned counsel grossly exaggerated by referring to the fragments and powder as rocks. The fact that particles of

the powder detected, had now adhered together to form fragments is apparent due to the fact that both the detecting officer and the Government Analyst had positively identified the exhibit P3c in open court as the same powder which was detected, analysed and produced in court.

When one considers the evidence of the witness for the defence namely Mr Nicolas Prea it is clear he did not know anything in respect of the facts of this detection. The evidence of the accused himself shows that when they were coming from Providence they had seen the police vehicle coming from Mount Fleuri and it was after this chance meeting at the three fish tails roundabout did the police officers begin to follow them. The accused admits that the police were not following them when they were going to Providence (Vide page 29 of the proceeding of 8th June 2009) nor is it evident that the police had been keeping surveillance over him continuously from the time he left home to go to Providence with Gary, showing that the detection was made while on a patrol as mentioned by officer Dookely which would make preplanning to plant drugs on the very same accused unlikely. Furthermore the quantity and the purity of the drug namely Heroin detected is comparatively high and this makes it even more unlikely that the police planted drugs as an act of revenge or otherwise.

Therefore for the aforementioned reasons this court will proceed to reject the defence of the accused.

The evidence of LC Dookely though subject to intensive cross examination stands uncontradicted and corroborated by the evidence of Dr Jakaria which together would suffice to prove the charge against the accused beyond reasonable doubt. In addition the prosecution has produced the statement of the accused as P4 which was admitted after a *voire dire* inquiry was held into its voluntariness. In the case of ***Rachelle v The Republic [1984] SLR 42*** it was held *inter alia* that in a case where the confession has been retracted, there is a need to look for corroboration. In this instant case too as the said statement has been retracted therefore the material particulars must be corroborated prior to being accepted by court.

The following material facts as stated in his statement P4 are admitted by the accused himself in his evidence. The fact that Garry came to his house at Belombre on the day in question is admitted by him in his own evidence. The fact that he went thereafter with Gary to Providance that day and on returning saw the police officers at Mount Fleuri who began to follow them is also admitted by the accused in his evidence under oath in court. In his statement he states that as the police jeep overtook their vehicle he threw the drugs outside, a fact corroborated by the police officer who saw him throw it out and thereafter the police picked it up a fact also corroborated by the police officer Dookley's evidence. The accused himself states in his evidence he saw the police officer pick up a

small plastic bag, though he soon thereafter attempted to deny it. Therefore these material facts in the retracted statement of the accused stand corroborated by the evidence of the police officers and some facts have even been admitted by the accused himself in his evidence under oath.

Further this court is satisfied that the chain of evidence in respect of the exhibits has been established and the heroin positively identified by the detecting officer and the Government Analyst. The controlled drug taken into custody has been weighed and analysed by the Government Analyst and found to be 10.1 grammes of Heroin which is a controlled drug in terms of the Misuse of Drugs Act. His report confirms same. Further no material contradictions or major inconsistencies are evident in respect of the evidence given by the prosecution witnesses. When one considers the evidence of the prosecution in this instant case, this court is satisfied that the prosecution has proved all the ingredients of the charge beyond reasonable doubt.

The concept of possession connotes two elements, the element of custody or mere possession and the element of knowledge as decided in the case of ***DPP.v Brooks (1974) A.C. 862***. The fact that the accused pulled the rim of his hat down on seeing the police and threw away

the controlled drug when the police overtook and ordered the vehicle to stop, clearly shows the presence of knowledge on the part of the accused that he was in possession

of a controlled drug. Learned counsel attempted to show court that if the accused had really been in possession of the controlled drug he had ample opportunity and sufficient time to throw away the drug as he knew the police were following him from the three fish tails roundabout. However considering the quantity of the controlled drug detected the fact that the drug was Heroin a class A drug and also the high percentage purity of the drug, all factors which enhance its value, it is clear it would have been thrown away, only if it was absolutely necessary to do so, that is only if the police were going to actually stop his vehicle. Therefore learned counsel's contention is unacceptable. For the aforementioned reasons this court is satisfied that the prosecution has proved both the elements of possession and knowledge beyond reasonable doubt.

The quantity of controlled drug detected in the possession of the accused attracts the rebuttable presumption that the accused was trafficking in a controlled drug. The accused has failed to rebut the said presumption. For the aforementioned reasons as the charge against the accused Jerry Hoareau has been proved beyond reasonable doubt, this court will proceed to find the accused guilty as charged and convict him of same.

M. BURHAN

JUDGE

Dated this 22nd day of April 2010