

**IN THE SUPREME COURT OF SEYCHELLES**

REPUBLIC

VS

ACHILLE RADEGONDE

Criminal side no: 07 of 2009

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Mr. Esparon for the Republic

Mr. Hoareau for the Accused

**RULING**

**Burhan, J**

This is a ruling in respect of the voire dire inquiry held regarding the admissibility of the statement given to the police by the accused Achille Radegonde. Learned counsel objected to the statement being admitted on the grounds that it had not been obtained voluntarily.

It is trite law that it is the burden of the prosecution to prove beyond reasonable doubt that the said statement had been obtained voluntarily. In order to do so the prosecution called witnesses Lance Corporal ( LC) Lorna Barbe and Police Constable Chantal Prea, while the accused himself gave evidence under oath at the voire dire inquiry held.

LC Lorna Barbe testified to the fact that, prior to recording the statement of the accused, his constitutional rights and the caution under the judges rules were administered to the accused. She elaborated further and gave details of same in her evidence. The officer who witnessed the recording of the statement corroborated her evidence in this aspect and both officers stated that the accused was not under threat or any oppression at the time his statement was recorded.

The defence contention as borne out by the evidence of the accused was that, the accused was threatened by Superintendent Hermitte prior to his statement being recorded, that he was to confess, otherwise the occupants of the house would be arrested. The accused gave evidence under oath and stated that prior to his statement being recorded, he was produced before Superintendent Hermitte who he knew, as he had conducted investigations into his mother's murder. Mr Hermitte had told him he had received information that he was trafficking and cultivating drugs had asked him who were the others living in the house with him. He had replied his elder brother, his sister in law, their child, his father and his other brother were living with him. Mr Hermitte had then told the accused to say that the plants were his, otherwise he would arrest the others who live in the house. The accused further stated he was going to arrest his brother and sister in law. He stated he felt scared and pressurised as it was his brother who was taking care of the house since his mother died. He further stated he was aware that Mr Hermitte was a high ranking officer and thereafter he was taken into another room and his statement recorded. Under cross examination he reiterated the fact he was asked to confess by Mr Hermitte, otherwise he would arrest the others residing in the house.

Though subject to cross examination the accused evidence did not waiver. Although the prosecution has sought to establish that there was no threat or oppressive conduct on the part of the police officers recording the statement, the accused position is that at the time he gave the statement he was “scared and felt pressured” as just before the recording of the statement, Mr Hermitte a senior officer and Superintendent of police, had told him to say the plants were his, otherwise the others in the house would be arrested.

In the case of ***Otar v the Republic 1987 SLR pg 27*** it was held; “it cannot be said that the Appellant (accused) was not influenced by what he saw and heard about and concerning the couple to such an extent that his free will had sapped and to release them he would have been ready to do anything”.

In this case too the accused has stated, it was his brother and wife, who were taking care of the house after his mother died who were to be arrested, leaving behind their child. It is apparent that in this instant case too, the threat of arrest of both of them, had sapped or weakened the accused free will to such an extent, that in order to release them, he would have been ready to do and say anything.

Learned counsel for the defence, prior to leading the evidence of the accused, suggested to the prosecution witnesses that the accused was first taken to Superintendent Hermitte prior to his statement being recorded, a fact denied by both prosecution witnesses. However Lance Corporal Lorna Barbe

stated, that he was taken to Mr Hermitte after his statement was recorded in the Superintendents office. She further stated, she was not aware he had been taken to the office of the Superintendent prior to the statement being recorded. She denied that it was Superintendent Hermitte who had instructed her to take the accused statement and further stated she could not recall who had given her such instructions.

In the light of this uncertainty in the evidence of the prosecution , the suggestions made by defence counsel to the prosecution witnesses and the strength of the sworn evidence given by the accused, this court concludes that in order to establish beyond reasonable doubt, that the statement of the accused was obtained voluntarily, it was imperative that the prosecution call Superintendent Hermitte to give evidence in this case.

For the aforementioned reasons, this court holds that the prosecution has failed to prove beyond reasonable doubt, that the said statement had been obtained voluntarily and therefore the said statement is not admissible in evidence.

**M. BURHAN**

**JUDGE**

Dated this 1<sup>st</sup> day of February 2010

