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**IN THE SUPREME COURT OF**  
**SEYCHELLES**

THE REPUBLIC  
VS.  
**MAHALINGAM MURUGAN**  
**MOHAYAN GANESAN**

Criminal Side No. 50 of 2006

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Mr Chinnasamy Jayaraj for the Republic  
Mrs. Amesbury for the Accused

**RULING**

**Burhan J**

This is a ruling in respect of a *voire dire* held regarding the admissibility of the statement of the 1<sup>st</sup> accused recorded by the police. Learned counsel for the accused submitted that the said statement was not admissible on the grounds that;

a) It had not been obtained voluntarily.

The statement was not signed by the police officers recording and witnessing the said statement.

b) The statement was not explained to the accused in the language he understands prior to obtaining his signature.

At the inquiry held, the officer who recorded the statement of the accused namely Assistant Superintendent of Police (ASP) Christelle Marie stated

under oath that she had recorded the statement from the 1<sup>st</sup> accused after informing him of his constitutional rights and after administering the necessary cautions. Witness stated that the 1<sup>st</sup> accused had signed the statement after it was read over and explained to him. She stated that the accused mentioned he understood English therefore his statement was recorded in English and thus there was no need to obtain the services of a translator. She further stated the statement was given voluntarily by the accused. She admitted that she had failed to sign the statement recorded by her but stated the statement was in her own handwriting which she could identify. The other police officer who witnessed the recording of the statement namely Jerina Julienne corroborated the fact that the statement was recorded in her presence by ASP Marie. She corroborated the fact that his constitutional rights and the necessary cautions were administered to the accused prior to his statement being recorded. She too stated that the statement was read over and explained to the accused and then his signature obtained. She too admitted that she had failed to sign the said statement.

The 1<sup>st</sup> accused denied he gave a statement to the police and stated further he did not understand what they were saying in English. He stated he was asked a lot of questions which he did not understand and could not

reply. The police had written down something and thereafter he was told he could go after signing it. He had therefore signed it and had been thereafter released. It is clear that the accused in his evidence seeks to retract his confession on the grounds that it was not given voluntarily as he was induced to signing what the officers recorded, as the officers had promised him he would be released after he signed it. . He stated though he signed it he did not know what was written in the statement as it was written in the English language which he did not understand.

The 1<sup>st</sup> accused also stated that the said statement does not contain what he said, as it was not read over or explained to him and was a statement the police wrote themselves in a language he did not understand. It was also brought to the notice of court by learned counsel for the accused and admitted by the prosecution that the police officers recording and witnessing the statement had failed to sign the said statement.

In terms of the Judges Rules 1964 set out in Volume 5 of the Seychelles Law Reports (1970-1971).

Rule IV (f) reads as follows,

“ ..... If the person making the statement cannot read or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct alter or add anything and put his signature or make his mark at the end. The police officer shall then

certify on the statement itself what he has done.”

It is this certification that both police officers stated they failed to sign.

Therefore in terms of the Judges Rules in a situation where the accused “cannot read or refuses to read” the recorded statement, then the certification of the police officer is of special significance and becomes relevant.

In this instant case the basic issue is whether the 1<sup>st</sup> accused understood the proceedings at the police station which were admittedly conducted by the police in the English language.

The 1<sup>st</sup> accused is a foreigner who throughout this trial from the very outset has sought the assistance of a Tamil translator. It is admitted by the prosecution that at the police station he did not have the services of a translator at the time. A slight knowledge of English by the accused as attempted to be shown by the prosecution during cross examination of the accused, will not suffice to record a statement of the accused in English and have him sign it, as this statement could be used against him in a court of law, where the liberty of the accused could be at stake. Even though the prosecution witnesses testified to the fact the cautions were read over and explained to the accused, this too was done in the English Language. The

accused states he was asked lot of questions and he did not know what they were talking about. Considering the above mentioned facts, it is doubtful as to whether the accused was in a position to properly understand the nature and implications of the caution and his constitutional rights which were read to him by the police in the English language and therefore to record a statement without properly explaining to the accused the necessary caution is in itself questionable. The accused explanation that with his little knowledge of English he understood them saying if he signed he could go and therefore in order to be released he signed statement, even though he did not know the contents of it is plausible. Considering all the circumstances of this case, it cannot be concluded beyond reasonable doubt, that the statement of the accused was given voluntarily and such a statement was reduced to writing.. All these facts clearly create a doubt as to whether the statement was in fact given voluntarily by the accused.

It is pertinent to mention at this stage that although failure to observe the Judges Rules need not always be a fatal irregularity, in this instant case in the light of these facts, it is of special significance that the statement after being recorded, should have been certified by the police officer that it been read over and at least explained to the accused. The accused himself under oath categorically

states that nothing was read over and explained to him that day, which in fact is proved by the absence of a contemporaneous valid certification to that effect. The oral evidence of the police officers that it was read over and explained to the accused is not acceptable in the absence of a contemporaneous certification to that effect.

Considering the circumstances peculiar to this case, this court is satisfied that the prosecution has failed to establish beyond reasonable doubt that the statement of the accused had been recorded voluntarily.

**M.N. BURHAN**

JUDGE

Dated this 24<sup>th</sup> September 2010.