IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

PATRICK SOPHA

Criminal Side No. 23 of 2009

Mr. Esparon for the Republic
Ms. Domingue for the Accused

RULING

Gaswaga, J

The prosecution is seeking to admit a statement allegedly made by the accused while under interrogation at the Central Police Station on the 14th of June, 2009. Ms Domingue now objects to the admissibility of the same contending that the statement was not made voluntarily. She states that there was not only failure to caution the accused as required by the Judge's Rules but also failure by the police officer to inform the accused of his constitutional rights. Further objections are based on allegations of threats and physical abuses inflicted on the accused.

Where voluntariness is in issue the courts normally seek guidance from the famous case of **Ajodha vs. The State (1981) 2. ALL. E.R. 193** and hold a trial within a trial (*voir dire*) to establish whether the statement was actually

given voluntarily. The principles in that case were also re-echoed in the case of **Jean Gobine vs. Rep(1983-87) 2. S.C.A.R. 152**. So the burden remains on the prosecution to prove beyond a reasonable doubt that the impugned statement was made voluntarily and is therefore admissible in court. **See Leon vs. Rep 2 SCAR page 188 and R Vs Ketrina Simeon Cr Side No.42 of 2007.**

The prosecution called two witnesses, both police officers while the defence led evidence of the accused on the matter. Sub-Inspector Samir Ghislain (PW1) testified that before the recording of the statement the accused was in a perfectly normal state and jovial mood. That to the surprise of the officers he was even laughing despite the fact of his knowledge that he was a suspect in a murder case. Sub-Inspector Ghislain sat opposite the accused as he recorded the statement. Sergeant Labiche (PW2) who witnessed the statement also sat on the same table and was present all the time from 17.15 hours when the caution was administered and 1716 hours when the recording of the statement started untill 2045 hours when it ended.

It was SI Ghislain's testimony that the accused volunteered to give a statement and requested him to write it out for him.That a caution was administered following the Judges' Rules before obtaining the statement from the accused. His constitutional rights had earlier been explained to him and he opted not to request for the assistance of a lawyer nor exercise his right to remain silent. The statement was long (7 pages) and after it had been read back to accused and asked to correct it or make any additions or alterations, he made none and proceeded to sign it twenty eight (28) times. It was also the evidence of Ghislain that the statement was obtained without any violence or beating, promise, threats or inducement whatsoever.

During cross examination SI Ghislain denied the suggestion by counsel for the defence that the accused was without a shirt and only wore a boxer short when being interrogated and further, that he had showed him the dog bites he suffered during arrest and requested to be taken to hospital. He also denied that the accused asked for food or intimated that he was hungry at any one point in time. That the accused refused to take a break and only asked for water which was supplied to him. SI Ghislain rejected the suggestion by counsel that he was under instructions from the government to take the accused to Bel Eau to be 'dealt' with. He stated that Bel Eau is not a police station. Further suggestions that during the statement writing exercise Superintendant Hermitte came with a file and threatened to arrest the accused's family members while Inspector Ronny Jullienne entered the room and started stepping on the accused were vehemently denied and referred to as a pack of lies by SI Ghislain.

However, SI Ghislain admitted that the accused remained handcuffed during interrogation and that the questions asked were for purposes of clarifying a few aspects otherwise the accused's statement was left to flow with minimal interruptions. SI Ghislain categorically denied having asked the accused specific questions based on the statements of other witnesses and or suspects who were already in custody although he had an idea of the general nature of evidence collected.

Indeed Sergeant Marcus Labiche corroborated the evidence of SI Ghislain with regard to what happened shortly before and during the recording of the statement which he witnessed. In particular he had found the accused already

seated with SI Ghislain who read out the constitutional rights to accused and then administered the caution when the accused stated, in answer to SI Ghislain's question, that he wanted to say something. Sergeant Labiche also refuted allegations of any violence, threats or pressure exerted on the accused by him or SI Ghislain or any other person during the recording of the statement. He had actually stated that the accused was calm and talking normally. Contrary to the accused's claims Sergeant Labiche stated that if the accused had been handcuffed at the back it would have been impossible for him to sign the statement and also take the water which was in a bottle. It was his testimony that had the officers pressed the metallic handcuffs hard they would have left permanent marks on the accused's wrists. In conclusion Sergeant Labiche said that he witnessed when the statement was read back to the accused who did not make any additions, alterations or corrections after being invited to do so and proceeded to sign it voluntarily.

As for the defence the accused stated that on his arrest at around 10:30am on the 14th June, 2009 he was bitten on both legs by dogs. That Agent Naiken of the National Drug Enforcement Agency (NDEA) removed his clothes and handcuffed him before being conveyed to the Central Police Station. That SI Ghislain hit him with a baton, pressed the metallic handcuffs on his wrists as he told him that he had killed a man at Bel Ombre. Further, the accused stated that the police officers had refused to call his lawyer Mr. Basil Hoareau and instead promised to hand him over to the state to be killed. It is his testimony that the police officers refused to call his family members or give him food and water while in the police cells. He also alleges that lunch was served to all the detainees apart from him. That the only water he took was given by a Somali fisherman who was also under detention. In summary the accused said no constitutional rights were read to him, no caution was

administered before he was forced to give a statement and ordered to sign it. During cross-examination the accused had stated that the injuries sustained as a result of the dog bites suffered were not very serious.

This court has judiciously considered the evidence adduced in its entirety. The allegations leveled against the police officers while interrogating the accused thereby putting the confession statement in issue, in my view, are baseless, unsubstantiated and, as described by SI Ghislain, a pack of lies. The accused's testimony is fanciful, highly doubted and amounts to nothing more than an exaggeration. To me it clearly appears like the accused wanted to give such confession statement voluntarily at that time and now he is feeling the 'pinch' of its contents.

I am also satisfied that the Judges' Rules were duly followed in this case and accused cautioned. But even if one were to say that the Judges' Rules were breached the courts have held such breach or failure to observe the said rules not necessarily to render a confession inadmissible. **See R vs. Stewart (1970) 1. A.E.R. 689**. The courts have further held that the Judges' Rules are not rules of law but administrative directions, observance of which the police authorities should enforce upon their subordinates as tending to the fair administration of justice. They are very important for all police officers as they are to be used as guiding beacons during the investigation of crimes or interrogation of suspects. **See R. vs. Ketrina Simeon Criminal Side No. 42 of 2007** and **R vs. Voisin (1918) 1. K. B. 531.** Finally, it is a matter for the trial judge to apply his mind to such factors and principles as the balance between probative value of the statement and potential prejudice, before exercising his own discretion, as to whether it should be admitted or not. **See R vs. Prager (1973) 1. A.E.R 114** and **R vs. Lemasatef (1977) 1. W.L.R.**

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Once again on the basis of the evidence adduced by the prosecution I am satisfied that no threats, inducements or promises were made to the accused before he gave the statement. There is no evidence that he was beaten or denied food or refreshments before or during the writing of the statement. The defence testimony is hereby rejected. Accordingly, **having been satisfied beyond a reasonable doubt that the accused made the statement in question voluntarily** same is hereby admitted in evidence as prayed by the prosecution.

D. GASWAGA

JUDGE

Dated this 9th day of February, 2010.