

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

vs

GEOFFREY ANTAT

Accused

Criminal Side No.47 of 2010

Mr. David Esparon Principal State Counsel

Mr. Basil Hoareau for the Accused

JUDGMENT

Burhan J

The accused in this case Geoffrey Antat has been charged as follows;

Count 1

Statement of Offence

Possession of a controlled drug contrary to section 6(a) of the Misuse of Drugs Act read with section 26(1)(a) of the same act and punishable under section 29(1) of the said Misuse of Drugs Act read with the second schedule of the same act.

The particulars of the offence are that Geoffrey Antat on the 06th July 2010 at Cascade, Mahe was found in the possession of a controlled drug of which was a mixture weighing 4.19grams containing 1.0894 grams of Heroin (Diamorphine).

Basically the case for the prosecution is that on the 6th day of July 2010 on information received, the officers of the NDEA (National Drug Enforcement

Agency) had proceeded to the house of one Augustin Perrine at St Andre flats at Cascade. According to the evidence of NDEA agent Rodrick Raminosson they had circled the said premises and two officers agent Mickey Barbier and him had observed the premises from outside and noticed the accused Geoffrey Antat seated on a sofa with Mr. Augustin Perrine seated on his right hand side. Witness noticed a small plastic bag on a table in front of the accused and in his left hand a brown packet. A forced entry was made into the premises and on entering when the officers had identified themselves as agents of the NDEA, the accused had lifted the table and the contents of the table had fallen on the ground. The accused had then gone to the window which was close to him and attempted to spill the contents of the packet in his hand. Agent Raminisson who was observing from outside the same window was able to hold the hand of the accused and seize the plastic packet from his hand. Agent Siguy Marie who had gone inside had seized the plastic package that had fallen from the table on the ground when the accused had lifted it.

It is to be noted that the plastic packet containing powder seized from the hand of the accused by agent Raminosson was produced as P13 and the Government Analyst report marked P9 identified the powder as a mixture of Diazepam, Paracetamol and Caffeine and that it tested negative for Heroin. The accused is charged for being in possession of exhibit P6 which was a lump of hard brown substance in a transparent plastic which was placed on the table that was according to the prosecution witness lifted by the accused resulting in the said packet falling from the table. It is clear that the prosecution relies on the act of lifting the table containing the substance by the accused as connecting him to possessing the said

substance which according to report P2 is identified as containing 0.84grams of Heroin (Diamorphine) of 22.2% purity.

While the evidence of the prosecution seeks to establish this, it is to be noted that with regard to this very same incident initially two accused were produced. The first accused was Augustine Perrine while the second was Geoffrey Antat. In the application for holding both suspects agent Timothy Hoareau of the NDEA filed an affidavit dated 7th July 2010 setting out the facts of the case, wherein on page 1 of the said application and affidavit it is stated,

“Some of the Agents surrounded the place and the other Agents entered the apartment. Suspect no 1 namely Augustin Perrine was spotted in the in the living room along with some other persons as soon as he spotted the agents he dropped a small plastic packet which was in his hand, same was picked up by one of the agents and it was opened in his presence. Inside there was a brown substance suspected to be a controlled drug namely Heroin, same was seized as an exhibit”.

It is apparent that there is no mention of the accused Geoffrey Antat lifting a table and attempting to spill the contents of the packet containing the Heroin. Thus by learned counsel marking the said application and affidavit of Mr. Timothy Hoareau as D3, it is apparent that two completely different versions of facts have been submitted to court by the prosecution in respect of the taking into custody of the exhibit P6 identified as Heroin. While the evidence at the trial attempts to show that it was the accused Geoffrey Antat who had lifted the table on which P6 was placed at the time the NDEA agents burst into the premises, an affidavit filed by

the prosecution prepared by the NDEA agents themselves shows it was not Geoffrey Antat but Augustine Perrine a former suspect in the case who had dropped P6 which was in his hand on the ground at the time the raid occurred. This court has observed that no attempt has been made by the prosecution in even attempting to explain this glaring and very material discrepancy. Further when one peruses exhibit P5 the envelope containing exhibit P6 (Heroin) officer Siguy Marie has made a contemporaneous note that the said exhibit was secured from “Augustine Perrine”. This further affirms the facts stated in the affidavit of 7th July 2010. Thus it cannot now be said that agent Timothy Hoareau had mistaken his facts in the said application and affidavit D3 as he was not present as further he has given explicit details of Augustine Perrine dropping exhibit P6 which was then taken into custody by officers of the NDEA (Siguy Marie).

While the said application and affidavit is dated 7th July 2010, the Government Analyst report P14 which states that the sachet containing powder recovered from the hand of accused Geoffrey Antat (P13) by agent Raminisson, contained Diazepam and adulterants and in which no controlled drug has been identified, has been issued on the 9th of July 2010. Therefore it is apparent that after the 9th of July 2010 parties would have been aware that the P13 recovered by agent Raminisson from the hand of the accused Geoffrey Antat did not contain a controlled drug. On considering the evidence led in the case and the facts contained in the affidavit D3, it appears to this court that the facts of the case as at 7th July 2010 have changed since the issue of analyst report P14 dated 9th of July 2010 stating that P13 found in the hands of accused Geoffrey Antat did not contain a controlled drug. This to say least is a serious change of material factual circumstances of the case and warrants an explanation on the part of the prosecution which was never forthcoming.

While the prosecution witness Raminosson attempted to show that the exhibit P6 (Heroin) was on the table and that the accused deliberately lifted it when the agents burst into the premises and said they were NDEA agents, witness Siguy Marie stated they first introduced themselves as NDEA agents and then burst into the room and yet another witness agent Servina stated, the accused did not lift the table but when he stood up the table overturned. Thus the evidence attempting to connect the accused with the exhibit P6 in the vital act of lifting the table is not without blemish.

Considering the explicit details of the detection of exhibit P6 set out in the affidavit D3 by agent Timothy Hoareau, one cannot accept the explanation of Siguy Marie that he had written secured from Augustin Perrine as it was found in his house. The prosecution called Augustin Perrine to testify and it is to be borne in mind that he is a witness who has been made an offer in terms of section 61A of the Criminal Procedure Code and his evidence stands totally contradicted by document D3 and therefore unacceptable to court.

When one considers all the aforementioned factors before court, this court is satisfied that there exists even more than a reasonable doubt in the case of the prosecution. The accused is acquitted forthwith.

M. N BURHAN

JUDGE

Dated this 13th day of July 2011