

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC  
VS  
MAXWELL DUVAL**

**Criminal Side No. 49 of 2007**

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Mr. David Esparon Principal State Counsel for the Republic

Mr. Basil Hoareau Attorney at Law for the Accused

**JUDGMENT**

**Burhan J**

The Accused in this case Maxwell Duval has been charged as follows:

Trafficking in a controlled drug contrary to section 5 of the Misuse of Drugs Act read with section 26(1) of same and punishable under section 29(1) of the Misuse of Drugs Act read with the second schedule of same.

The particulars of the offence are that the accused Maxwell Duval on the 24th of August at Belombre was trafficking in a controlled drug by virtue of having been found in possession of 39.7grams of Cannabis Resin which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

The accused denied the said charge. The principal witness for the prosecution Police Constable (PC) Kevin Jean stated that on the 24<sup>th</sup> of August 2007 he and PC

Camille, together with other officers Samson and Sanders while on patrol near the house of the accused had seen the accused come running out of his house. Witness PC Jean had been on a terrace near the house of the accused and when the accused had run out he had noticed a red plastic bag in the hand of the accused. Witness had thereafter followed him. The accused had gone around the house and put something under a rock. The accused had not seen them coming and when he had seen them he had attempted to run. They had brought him back to the spot where the rock was and on lifting it had seen the red plastic bag. In the red plastic bag was a container which contained plastics one containing 24 pieces of a substance and the other containing 10 pieces. Witness suspected it to be controlled drug. They had arrested the accused and searched the house and found nothing.

Witness had placed the exhibit in his locker. He had thereafter handed the exhibit to the Government Analyst on the 27<sup>th</sup> of August 2007 and collected it back on the 28<sup>th</sup> the next day. He stated he received a sealed envelope from the analyst. He identified the seals were in the same state and intact and after opening the exhibit in open court identified the container, plastics and the 24 pieces of substance and the 10 pieces of substance taken into custody by him from the accused and produced all the exhibits taken into custody as Exhibit 2, P2.

Under cross examination he stated the accused had his left hand close to his body and he could see the red plastic bag. He stated the accused was in the verandah when he first saw him and had run to the rock which was at the back of the house. When the accused had gone round the corner of the house he had lost sight of the accused but when he too reached the corner he had seen the accused going to the rock and placing the exhibit under it. He stated he did not check the plastic bag for the finger prints of the accused. He denied they had found the drug on information

and thereafter blamed the accused for it and denied the suggestion the incident did not take place.

PC Samuel Camille stated that on the 24<sup>th</sup> day of August 2007 he was on duty at the Pointe Larue station when they had got information that there were drug transactions taking place in the District of Belombre and he together with other officers including PC Kevin Jean had proceeded to the house of Mr. Duval where they had seen him running out of his house and immediately PC Jean had given chase to him. They had followed him around the house and seen the accused bend down and put a plastic under a rock. He had turned and come towards them and PC Jean had gone towards the rock and found the plastic bag. When he had opened it there had been a container inside which he opened and found another plastic in it containing a dark substance. He described the outer plastic as being red in color, the container being black. Inside the container there were two separate plastic bags containing black substance. The exhibits were kept in the possession of PC Jean and the accused Maxwell Duval arrested.

Under cross examination he stated that when the accused was running he noticed the plastic bag in his hand. He further stated they were unable to arrest the accused the moment they saw him as he was running. He denied the suggestion he was not present on the scene.

Dr. A K. Jakaria the Government Analyst giving evidence under oath stated that on the 27<sup>th</sup> of August 2007 he received the exhibits from PC Jean. He described the exhibits and stated that the exhibits comprised of 10 pieces of solid brown substance and another batch of 24 pieces of solid dark brown substance. He thereafter described to court the tests he had done on each of the substances and

stated he had identified them to be Cannabis Resin. He stated the total net weight of all the pieces was 39.7 grams. He further stated he had received the said exhibit from PC Jean and had analysed the substance on the same day he received them. After completing the tests he had placed the exhibits in a white envelope and sealed and signed it. His report was produced as Exhibit 3, P3. He had placed it in safe custody and handed it over to Kevin Jean on the 28<sup>th</sup> of August 2007.

Under cross examination he stated that he had checked the exhibits handed over to him by PC Jean after he had left and found there to be no discrepancy in the description given in the letter of request. He stated that after analysis he had handed over the sealed white envelope containing the exhibits received by him for analysis and analysed by him back to officer Kevin Jean. He stated the aluminum plates used for the thin layer chromatography test are checked regularly and were working properly and they gave a proper identification of the controlled drug Cannabis Resin. Thereafter the prosecution closed its case.

The accused in defence made an unsworn statement from the dock. He stated in his statement that on the 24<sup>th</sup> of August he was at home when he had seen the police searching his neighbour's house. He had seen a police officer with a gun coming near the river situated close to the house. A lady constable had come to his house near the steps and the police officer with a gun had also come up with a bag in his hand and handcuffed him and then the officers had searched his house. They had told him "Let's go." It was only when he came to court that he had seen the drugs with them. They had detained him at the Beau Vallon police station and then the Central police station. They had asked him for whom the drug was for, he had replied he do not know because he had never seen it before. Thereafter the accused called his wife to testify on his behalf. She stated she had lived with her husband,

the accused, for a period of 25 years. And both of them and their daughter was living in the house at the time of the incident. They were in the house when the police officers had entered and handcuffed her husband and searched her husband's room. She stated other than the gun they were not having anything else in their hands.

Thereafter both the learned prosecution and the defence counsel made oral submissions to court.

I have considered the defence case and have noted that the main contention of the accused as borne out by his defence and the suggestions made by counsel was that the police officers had found the controlled elsewhere and concocted the evidence to frame him. In his statement from the dock he states he saw the police officer with a gun have a parcel in his hand and he had come in and arrested him. However his wife in her evidence says that she had not seen anything in the hands of either of the police officers other than a gun with one officer. Therefore the defence of the accused that the police officers had found a parcel containing drugs and framed him is not supported and in fact contradicted on this material particular by the evidence of his wife who states, other than one having a gun both police officers had nothing on them. (Vide proceedings of the 28<sup>th</sup> of May 2010 1.45 p.m. pages 6 & 7).

Further the mere fact that the prosecution counsel has not suggested to witness for the defence that he or she was lying does not mean the evidence of the prosecution should be completely disregarded and the evidence of the defence should be totally accepted. In fact the glaring contradiction in their evidence in respect of a parcel being in the hand of the police officer is apparent on a reading of the evidence of

the defence. Further the fact that the exhibits were not finger printed and no finger print evidence was tendered in this case does not affect the case for the prosecution as there is clear eyewitness accounts of the said detection. I therefore proceed to reject the defence put forward by the accused.

When one considers the evidence of the prosecution, PC Kevin Jeans evidence clearly shows that the accused was seen running to the back of his house and placing a red plastic under a rock. On checking the said red plastic they discovered the Cannabis Resin which was produced as exhibits in the case. The material facts regarding the detection are corroborated by the evidence of PC Camille. Both prosecution witnesses have identified the accused as the person having the controlled drug in his possession. No material contradictions or major inconsistencies arose in respect of the prosecution's evidence in regard to the detection, even though both police officers were subject to rigorous cross examination.

Dr. Jakaria's evidence and report confirms the fact that the substance taken into custody by PC Kevin Jean was Cannabis Resin. This court therefore proceeds to accept the corroborated evidence of the prosecution and is satisfied that the prosecution has proved beyond reasonable doubt that the controlled drug was in the possession of the accused.

The concept of possession connotes two elements, the element of custody or mere possession and the element of knowledge as held in the case of ***DPP. v Brooks (1974) A.C. 862***

With regard to the element of knowledge the accused was seen hiding the red plastic containing the Cannabis Resin under a rock and thereafter on seeing the police officers had attempted to flee. These two acts of the accused clearly establish he had knowledge of its contents, that it contained the controlled drug Cannabis Resin.

For the aforementioned reasons court is satisfied that the prosecution has established the elements of possession and knowledge beyond reasonable doubt.

Dr Jakaria's evidence clearly establishes the fact that the substance taken into custody from the accused was Cannabis Resin, a controlled drug. Witness Jean identified the Cannabis Resin in open court as that taken in to custody by him from the accused and given for analysis. The Government Analyst Dr Jakaria identified the exhibit as that received by him from PC Jean for analysis and analysed by him and identified as Cannabis Resin. His report confirms this fact and also specifies that the quantity taken into custody as 39.7 grams. This court is satisfied that the chain of evidence in respect of the controlled drug taken into custody, analysed and produced in court was established beyond reasonable doubt by the evidence of the prosecution. The quantity detected in the possession of the accused attracts the rebuttable presumption that the accused was trafficking in the controlled drug. The accused has failed to rebut the said presumption.

For the aforementioned reasons this court is satisfied that the prosecution has proved all the necessary elements of the charge against the accused beyond reasonable doubt. Therefore this court finds the accused guilty as charged and proceeds to convict him of same.

**M.N BURHAN**

**JUDGE**

**Dated 16<sup>th</sup> day of August 2011**