

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 68/2008**

**[2013] SCSC 108**

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**THE REPUBLIC**

versus

**MICHAEL KING**

First Accused

**BARBARA LABROSSE**

Second Accused

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Heard: 11 and 13 August 2010, 27 October 2010, 3 and 4 February 2011, 3 and 5 April 2012  
Counsel: Mr. Hemantha Kumar, Assistant Principal State Counsel for the Republic  
Mr. Elvis Chetty for the first accused  
Mr. Nicol Gabriel for the second accused  
Delivered: 29 October 2013

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**JUDGMENT**

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**Burhan J**

[1] Both accused in this case have been charged as follows;

[2] Statement of offence;

*Trafficking in a controlled drug contrary to Section 5 as read with Section 14 (d) and 26 (1) (a) of the Misuse of Drugs Act 1990 as amended by Act 14 of 1994 and also read with s.23 of the Penal Code and punishable under Section 29 and the Second Schedule referred thereto in the Misuse of Drugs Act 1990 as amended by Act 14 of 1994.*

*The particulars of offence are that Michael King and Barbara Labrosse on 7<sup>th</sup> August 2008 at Roche Caiman, were found in possession of a controlled drug, namely 31.4 grammes Cannabis, which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.*

[3] Both accused denied the charges and the prosecutions principal witness Ron Marie in his testimony stated that he had worked earlier in the police force for a period of 17 years. Witness stated that while he was on duty on the 7<sup>th</sup> of August 2008 and in charge of the drug centre called ADAMS on information received that there was a drug transaction taking place, they had gone to the house of Michael King at Roche Caiman.

[4] Witness stated he was accompanied by Lance Corporal Camille and Berard Hoareau. The officers had been to the house on earlier occasions to search it and therefore knew its location and after surrounding the house, he had entered through the front door with Lance Corporal Camille. He had seen Mr. King sitting on a small sofa with a red plastic bag in his hand containing herbal material. He identified him as the 1<sup>st</sup> accused. On seeing him the accused had thrown the plastic on the table and witness had gone and taken possession of the red plastic. He had seized the bag and told the 1<sup>st</sup> accused he was arresting him. A lady he identified as the 2<sup>nd</sup> accused had come out of a room and she had told them not to arrest the 1<sup>st</sup> accused as the controlled drug they had seen with him was for her.

[5] Both were arrested and taken to the Mont Fleuri police station together with the exhibits and a case registered. He had done the formalities with the exhibit and thereafter taken both accused to the Central police station and the exhibits were placed in his locker at the ADAMS base. Thereafter he had taken the exhibit for analysis on the 8<sup>th</sup> of August 2008

to Dr. Jakaria and collected it back with the report after analysis 10 days later and handed it over to the exhibit officer Mr. Confiance. Thereafter on the 6<sup>th</sup> of August 2010 accompanied by police officer Chantal Prea as he was no longer in the police force, he had taken the exhibit once again for reanalysis to Mr. Bouzin who had reanalyzed the said exhibit and handed it back to him with the report on the 9<sup>th</sup> of August 2010. Witness identified the exhibits in open court P8 as the one found in the possession of the 1<sup>st</sup> accused.

[6] He further stated under cross examination that when he entered the house of the accused the day of the raid, the door had been open and that one Lorna Labrosse the mother of the 2<sup>nd</sup> accused was in the house but she had not been arrested as witness had seen the controlled drug with the 1<sup>st</sup> accused. He further stated he had not been able to collect the exhibits earlier from the Government Analyst Dr. Jakaria, as they had to wait for his call to inform them that the analysis was complete and the exhibit was ready for collection.

[7] The prosecution next called Corporal Chantal Prea who corroborated the evidence of Ron Marie in respect of the handing over of the exhibits for reanalysis to Mr. Bouzin. After reanalysis the exhibits had been handed over to Ron Marie who had handed the exhibit back to her as she was the exhibit officer. She had brought the exhibits to court for the case which were in the sealed bag.

[8] Witness Samuel Camille corroborated the evidence of witness Ron Marie in that when he entered Michael King was in the living room in front of the sofa and Barbara Labrosse had come in from the bedroom and the piece of red plastic was on the table. He too stated that the he saw the controlled drug in the hand of the 1<sup>st</sup> accused prior to it being placed on the table.

[9] The evidence of Mr. Bouzin is that when the exhibits were brought to him for reanalysis, they were in a properly sealed white envelope which had not been tampered with. It was sealed by cello tape and bore the name of Dr. Jakaria. He further stated the exhibit had earlier been analysed by Dr. Jakaria who had left the jurisdiction of Seychelles and witness produced the report of Dr. Jakaria after identifying his signature on the report. Thereafter he had again proceeded to analyse the herbal material and described all the tests he had carried out and stated that the herbal material was identified by him as

Cannabis. He produced his report as P2. The evidence of Mr. Bouzin confirms the fact that the seals placed by him after analysis were intact at the time he identified the exhibit in open court. He also stated that at the time he received the exhibit for reanalysis the seals placed by Dr. Jakaria were intact. I see no reason to disbelieve this witness.

- [10] Under cross examination he explained the discrepancies in weight in P1 and P2 was due to the fact that part of it would have been used up during the analysis and due to the herbal material drying over a period of time. Witness further stated that he had after analysis sealed the exhibits in an evidence bag and handed it over to officer Ron Marie. He identified the evidence bag P3 in open court as the bag he had put the exhibits in and sealed. He stated the seals placed by him were still intact and the evidence bag had not been tampered with. He identified the red plastic and the herbal material that was analysed by him. He further stated that it was not necessary to determine the percentage of Cannabinol and therefore he did not conduct a test to determine its percentage as in cases involving possession of Cannabis herbal material a qualitative tests identifying the herbal material as Cannabis would suffice.
- [11] Thereafter the prosecution produced the statement of the 2<sup>nd</sup> accused Barbara Labrosse as P9 which was declared admissible after a voir dire and the statement of the 1<sup>st</sup> accused as P10.
- [12] The 1<sup>st</sup> accused in defence chose his right to be silent while the 2<sup>nd</sup> accused made an unsworn statement from the dock. It is to be borne in mind no adverse inference should be drawn from the fact the 1<sup>st</sup> accused chose to remain silent in his defence.
- [13] Having thus considered the evidence of the prosecution it is apparent that witness Ron Marie had at the time of the raid seen the 1<sup>st</sup> accused in possession of a red plastic containing herbal material which he had thrown on a table which was in front of him on seeing witness Ron Marie enter suddenly through the door. The fact that the herbal material was in the hand of the accused prior to being thrown or placed on the table is corroborated by the evidence of witness Lance Corporal Samuel Camille. The evidence of the Government Analyst Mr. Bouzin is that the said herbal material brought to him for reanalysis weighed 31.4 grams and was identified by him after analysis to be Cannabis. The evidence of Mr. Bouzin and his report confirm this fact. His evidence also confirms

the fact that the said herbal material had previously been analysed by Dr. Jakaria who had come to the same finding. Both reports were marked confirming same.

- [14] The evidence in respect of the chain of custody in respect of the taking into custody of the exhibits, the custody, the analysis by both analysts and the subsequent production of the exhibit in open court and its identification in open court is established by the evidence of witness Ron Marie, Sergeant Seward and Chantal Prea and the evidence of the Government Analyst. Mr. Bouzin evidence clearly establishes the fact the seals placed by Dr. Jakaria were intact at the time he received the exhibit for reanalysis and at the time he saw the exhibit in open court during trial the seals placed by him on the evidence bag were intact. This clearly indicates that there was no tampering with the exhibit prior to reanalysis and production in court. This court is therefore satisfied beyond reasonable doubt that the chain of custody of the exhibits has been established by the prosecution beyond reasonable doubt.
- [15] It is clear from the evidence of witness Ron Marie that after taking the exhibit into custody, he had placed in it an envelope, written the CB number and placed it in his locker after sealing the envelope. Therefore it is apparent that the herbal material taken into custody wrapped in a red plastic could not have got mixed up with any other exhibits in the locker. The suggestion by the defence that the exhibits could have got mixed up therefore bears no merit.
- [16] The few contradictions between the evidence of witness Ron Marie and witness Samuel Camille as to whether the exhibit was thrown or placed on the table by the accused is not a serious or material contradiction in the view of this court as it is apparent he entered after and behind witness Ron Marie.
- [17] Further even though the statement of the 1<sup>st</sup> accused was marked as P10 in which he states he was just visiting the 2<sup>nd</sup> accused at the time the police raided and he was watching a video on health and safety at that time, it is apparent from the evidence before court that the house was where his girlfriend and child lived and the fact he was only visiting is not borne out even in the statement of the 2<sup>nd</sup> accused his own girlfriend or her unsworn statement from the dock.

- [18] For the aforementioned reasons I will proceed to accept the corroborated evidence of the prosecution against the 1<sup>st</sup> accused and am satisfied that the prosecution has proved beyond reasonable doubt that the herbal material identified as Cannabis in the red plastic weighing 31.4 grams was in the possession of the 1<sup>st</sup> accused prior to him throwing it on the table.
- [19] 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 had on seeing the police entering attempted to get rid of the red plastic in his possession. This clearly establishes the fact that the accused had knowledge of the fact he was in possession of a controlled drug.
- [20] For the aforementioned reasons I am satisfied that the prosecution has established the elements of possession and knowledge against the 1<sup>st</sup> accused beyond reasonable doubt. The quantity of Cannabis herbal material detected in the possession of the accused is 31.4 grams which attracts the rebuttable presumption that the 1<sup>st</sup> accused was trafficking in the controlled drug. The 1<sup>st</sup> accused has failed to rebut the said presumption.
- [21] For all the aforementioned reasons this court is satisfied that the prosecution has proved all the necessary elements of the charge against the 1<sup>st</sup> accused beyond reasonable doubt. Therefore this court finds the 1<sup>st</sup> accused guilty as charged and proceeds to convict him.
- [22] In regard to the evidence brought against the 2<sup>nd</sup> accused it is clear that the prosecution relies on the evidence of her spontaneous statement she made at the time of detection and her statement under caution P9. In her statement under caution she has taken full responsibility of the fact that the herbal material identified as Cannabis was for her consumption. She has however retracted her statement. It is trite law that as the 2<sup>nd</sup> accused has retracted her statement under caution though declared admissible after voir dire, the material facts contained in the statement pointing to the guilt of the 2<sup>nd</sup> accused must be corroborated by some independent evidence.
- [23] It is clear from the evidence of Ron Marie that as the herbal material was discovered on the table the 2<sup>nd</sup> accused had come out of her room and spontaneously claimed the drug

was for her. Lance Corporal Samuel Camille too stated under cross examination she stated so. I therefore proceed to accept the statement to the extent that she was a user of the quantity of controlled drug which according to the evidence of the prosecution, the police had found in the possession of the 1<sup>st</sup> accused by the detecting officers.

[24] For the aforementioned reasons I am satisfied beyond reasonable doubt that both the accused had the common intention to possess the said controlled drug which was in weight 31.4 grams. Although the first accused has failed to rebut the said presumption of trafficking, considering the spontaneous statement of the 2<sup>nd</sup> accused as admitted by the prosecution witnesses and the facts stated by her in her statement under caution, I am satisfied that the 2<sup>nd</sup> accused has successfully rebutted the presumption of trafficking in the controlled drug found in the possession of the 1<sup>st</sup> accused. I am therefore satisfied that the prosecution has proved beyond reasonable doubt only the charge of possession with common intention of a quantity of 31.4 grams of controlled drug namely Cannabis by the 2<sup>nd</sup> accused. I accordingly proceed to find the 2<sup>nd</sup> accused guilty of same and convict her.

Signed, dated and delivered at Ile du Port on 29 October 2013

M Burhan  
**Judge of the Supreme Court**