

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 90/2008

[2013] SCSC

THE REPUBLIC

versus

BRIGITTE MANCIENNE

MARC WOODCOCK

Accused

Heard: 29 October 2009, 30 October 2009, 16 November 2009, 20 January 2010,
8 May 2013

Counsel:

Mr. H. Kumar , Assistant Principal State Counsel for the Republic
Mr. T. Juliette Attorney at Law for the accused

Delivered: 10 December 2013

JUDGMENT

Burhan J

[1] The aforementioned two accused in this case have been charged as follows;

Count 1

Statement of offence

Conspiracy to commit the offence of Trafficking in a Controlled Drug, contrary to Section 28(a) and punishable under Section 28 of the Misuse of Drugs Act.

The particulars of the offence are that Brigitte Mancienne, in November 2007, at the Berjaya Hotel Car Park at Beau Vallon agreed with one Mohammed Taufique to pursue a course of conduct which, if pursued, involved the commission of the offence of trafficking in a controlled drug, by way of paying the said Mohammed Taufique 9000 Euros to obtain heroin, stored in 22 bullets (each bullet containing 12 grams of heroin), from him.

Count 2

Statement of offence

Conspiracy to commit the offence of trafficking in a Controlled Drug, contrary to Section 28(b) and punishable under Section 28 of the Misuse of Drugs Act.

The particulars of offence are that Brigitte Mancienne, on the 27th day of May 2008, at a place unknown agreed with one Mohammed Taufique to pursue a course of conduct which, if pursued, involved the commission of the offence of trafficking in a controlled drug, by way of arranging with one Mohammed Taufique to meet and obtain from the said Mohammed Taufique, heroin.

Count 3

Statement of Offence Conspiracy to commit the offence of Trafficking in a Controlled Drug, contrary to Section 28(a) and punishable under Section 28 of the Misuse of Drugs Act.

The particulars of offence Brigitte Mancienne and Marc Woodcock, on the 5th day of February 2008, at the Sunrise Hotel, Mont Fleuri agreed with one Mohammed Taufique to pursue a course of conduct which, if pursued, involved the commission of the offence of trafficking in a controlled drug, by way of paying the said Mohammed Taufique 11,000 Euros to obtain heroin, stored in 27 bullets, from him.

Count 4

Statement of Offence

Conspiracy to commit the offence of trafficking in a Controlled Drug, contrary to Section 28(a) and punishable under Section 28 of the Misuse of Drugs Act.

The particulars of offence are that Brigitte Mancienne and Marc Woodcock, on the 18th of March 2008, at the Villa Des Roses Guest House agreed with one Mohammed Taufique to pursue a course of conduct which, if pursued, involved the commission of the offence of trafficking in a Controlled Drug, by way of paying the said Mohammed Taufique 11,000 Euros to obtain heroin, stored in 27 bullets from him.

- [2] Both accused denied the charges. The case proceed to trial against both the accused but during the trial the 1st accused Brigitte Mancienne became deceased and the case thereafter proceeded only against the 2nd accused. This judgment pertains to the 2nd accused Marc Woodcock.
- [3] The prosecution relied mainly on the evidence of accomplice Mohamed Taufique a Pakistani national who was made a witness for the prosecution under section 61 A (2) of the Criminal Procedure Code Cap 54 after he was made an offer under section 61 A (1) of the said Code.
- [4] In his evidence he stated that he was involved in drug trafficking with his two friends Tika a Nigerian who lives in Pakistan and a Pakistani national called Mallik. He stated in his evidence that their contact in the Seychelles was Brigitte Mancienne the 1st accused.
- [5] On the 27th of November 2007 he had brought 32 bullets of controlled drug heroin with him each bullet containing 12 grams. He had checked in at a guest house near the car park at Berjaya hotel. He had called the 1st accused Brigitte Mancienne on instructions he had received and she had come to the car park with her boy friend "Ti men". They had gone to the house of "Tento" the driver of the jeep they came in who lived at Beau Bell behind "Tequila Boom". She had sampled one of the bullets of heroin and then told him

she would buy the others for 9000 dollars. She had paid 1000 US for the sample and informed him she would come back and pay for the rest. She had come back later with her boyfriend and three other women and given the balance money and collected the balance 21 bullets. He had finished the deal and left the Seychelles.

- [6] He further stated that again on the 5th of February 2008 he had come to the Seychelles to do another drug deal with the 1st accused. He stated that 27 bullets of controlled drug heroin had been brought into the Seychelles by one Pakistani by the name of Jabe Baig. Each bullet contained 12 grams. He had contacted Brigitte and told her that the person who had brought the drug was with him and that there were 27 bullets of heroin each bullet weighing 12 grams. He had stated he had no Seychelles rupees to buy food to eat and she had agreed to bring the money before noon. He stated that thereafter he had contacted the same pirate taxi driver “Tento” and asked him if he could come before noon that he would give him money to buy his food. The taxi driver “Tento” had arrived and he had asked him to wait for Brigitte Mancienne to arrive as he had no Seychelles money.
- [7] He and the taxi driver “Tento” had been talking when Brigitte had come with her new boyfriend Marc Woodcock. He had requested that “Tento” go outside while he finished his business with her. Witness clearly identified the 2nd accused as Marc Woodcock and as the individual who accompanied her as her new boyfriend. He had given 2 bullets from the 27 for her to check. He had thereafter cashed 500 US dollars with her and received SR 6000. She agreed to purchase the 27 bullets for 11000 Euros and had tried to pay an advance in dollars but he had refused and wanted the money in Euros.
- [8] While they were discussing the taxi driver “Tento” had come into the room and witness had given him money for him to purchase his food. Brigitte had taken the US dollars back and left and agreed to come at night and take the drugs away after making payment for same in Euros. At around 11.00 p.m. he had contacted her and she had said she was on her way. She had arrived once again with Marc Woodcock the 2nd accused. He had given the 27 bullets to her. While the 1st accused had checked the drugs, the 2nd accused Marc Woodcock had given a plastic bag with 11000 Euros. Mr. Woodcock had checked the drugs too. After that deal witness had left the country 3 days later.

- [9] Witness further stated that again on the 18th of March 2008 he had met Brigitte and Marc Woodcock. This time too the drugs 27 bullets of heroin had been sent by Mallik through one Abdul who was staying at the Beau Vallon bungalows. They had gone and while the 1st and 2nd accused had been in the vehicle he had gone and brought the drugs and come and handed it over to Marc Woodcock. He had checked the drugs and handed over a plastic which had 11000 Euros. Brigitte too had been in the car. Thereafter he had come back again to the Seychelles in April for 6 days but not for drug business.
- [10] Thereafter witness stated he had come back again on the 18th of May 2008. Mallik had phoned him and informed him that that one Raja David was arriving on Emirates on the 27th day of May 2008. He had booked a room for him in the Villa des Roses where he was staying. He had sent some persons to pick up Rajah David at the airport and had as usual informed Brigitte that Rajah was bringing the drugs to have the money ready. Thereafter the NDEA had arrived and arrested him.
- [11] Witness Daniella Adeline admitted she knew Mohammed Taufique by his other name Baba. They had lived as boyfriend and girlfriend for a period of about 9 months. She stated that she had met him when he was staying at the Coral Strand hotel in November 2007. She stated she had met him when he visited Seychelles in other places where he stayed namely Beau Vallon bungalows, Sunrise guest house and Villa des Roses. Brigitte had brought 11000 Euros in April and given her. She had initially said the money was for Taufique but later had said it was hers and sent her boyfriend who witness identified as the 2nd accused Marc Woodcock to collect it.
- [12] Witness stated she had seen Brigitte Mancienne and Marc Woodcock when she used to visit her boyfriend Taufique twice. Once she had seen them leaving from the Sunrise guest house and on another occasion she had seen them talking in the Sunrise guest house. She also stated that Taufique had stayed at the Villa des Roses Bea Vallon. Witness could not recall if she was at the Sunrise hotel on the 5th of February or that she was at Villa des Roses on the 18th of March 2008. She further stated she did not know what her boyfriend Taufique was up to with these two persons. Under cross examination she stated she was unaware her boyfriend was a drug trafficker. She stated she could not

recall the date but she had seen the 2nd accused twice at Sunrise guest house but never at Villa des Roses.

- [13] The other witness Jules Rosalie stated that he had been residing at Beau Belle for the past 11 years. He stated he was a pirate taxi driver in 2007 and one Brigitte and Timenn had come to him and asked him to take them to Beau Vallon. At Beau Vallon they had disembarked and come back together with a man called Baba a Pakistani national. They had all come to his place at Beau Belle and he had seen the Pakistani man give an envelope. After that he had brought the Pakistani man back to the Beau Vallon Bay hotel and then he had taken the other two to the Marine Charter. He admitted he used to buy food for the Pakistani from the 'Makesh' take away. He also confirmed the fact that Taufique did stay at Sunrise guest house. He stated there was a time in 2008 when he had taken food to the Pakistani at Sunrise hotel and met Brigitte and a man called Woodcock or 'Solo'. He said he had seen two bullets of something wrapped in cling film on a table but when he had brought the food and come back the two bullets were not there and neither were Brigitte and Solo. He said the man he saw as Woodcock was a Rasta man but was unable to recognize him in court.
- [14] Thereafter the prosecution closed its case. The accused chose his right to remain silent and both parties thereafter tendered submissions to court.
- [15] When one considers the evidence in this case as the 1st accused is deceased and the charges thereafter withdrawn against her counts 1 and 2 have no relevance as there is no connection or reference to the 2nd accused Marc Woodcock. The charges that are framed concerning the 2nd accused Marc Woodcock are counts 3 and 4.
- [16] When one considers the evidence of the accomplice Mohammed Taufique it is clear that on the 5th of February 2008 he had come to Seychelles to do another controlled drug deal with the 1st accused Brigitte Mancienne. He had contacted her and said he was residing at the Sunrise hotel. It is apparent from his evidence that the deal was in respect of 27 bullets of controlled drug heroin that had been brought into the Seychelles by one Pakistani by the name of Jabe Baig. Each bullet contained 12 grams. He had contacted Brigitte Mancienne the 1st accused who he had done similar deals with earlier and informed her that the person who had brought the drug was with him. He had stated he

had no Seychelles rupees to buy food to eat and she had agreed to bring the money before noon. He stated that thereafter he had contacted his pirate taxi driver and asked him if he could come before noon that he would give him money to buy his food. The taxi driver “Tento” had arrived and he had waited for Brigitte Mancienne to arrive as he had no Seychelles money. They had been talking when Brigitte had come with her new boyfriend Marc Woodcock. Witness identified both the accused including the 2nd accused as Marc Woodcock.

[17] It is apparent when one considers the evidence of Jules Rosalie the pirate taxi driver that he was the taxi driver who had transported Brigitte Mancienne and her boyfriend Timen in his pirate taxi in the drug transaction the accomplice Taufique refers to that took place on the 27th of November 2007 and thereafter taken them to his house at Beau Belle behind Tequila Boom. It is also apparent the he was the taxi driver who had gone to meet the accomplice witness Taufique at the Sunrise hotel to buy his food on the 5th of February 2008 as in his evidence taxi driver Jules Rosali states in 2008 he had taken food to the Pakistani Baba at Sunrise hotel where he had met Brigitte Mancienne again and her boyfriend a man called Woodcock or “solo” with her. Witness Jules also stated he had seen two bullets of something wrapped in cling film on a table but when he had brought the food and come back the two bullets in cling film were not there. This corroborates the evidence of the accomplice that when both the 1st accused and the 2nd accused Marc Woodcock had come to meet him at the Sunrise hotel on the 5th of February 2008, he had given two bullets from the 27 bullets of heroin for Brigitte to check. It also corroborates the evidence of the accomplice Taufique that when he was discussing the deal, the taxi driver “Tento” had come into the room and he had given money for him to purchase his food.

[18] It is clear from the evidence of the accomplice Taufique that at around 11.00 p.m. that same night both accused had come to complete the drug transaction. While the 1st accused had checked the drugs, the 2nd accused Marc Woodcock had given a plastic bag with 11000 Euros. Mr. Woodcock according to witness had checked the drugs too. It is clear from the evidence of witness Taufique that not only Brigitte but the 2nd accused Marc Woodcock was playing a key role in the conspiracy as he was clearly identified by both witness Taufique and Daniella and named by witness Jules.. Witness Jules even

though he named the 2nd accused, it appears was unable to identify the 2nd accused as the 2nd accused the time he first met him 5 years ago had been a Rasta but now had short hair and was clean shaved. It is clear as witness Daniella and Jules were giving evidence almost five years later they were unable to remember intricate details of each and every incident which in the view of this court is normal.

- [19] I have considered the evidence of the accomplice. It is apparent from his evidence that there was an agreement between him and the 1st accused and her boyfriend the 2nd accused in relation to the trafficking of controlled drug namely heroin. It is apparent that either Taufique or a person known to him would bring the drug into the country and there was an agreement between him and Brigitte Mancienne for her to purchase the controlled drug namely heroin brought into the country by him and the 2nd accused also played an important role in the said conspiracy to traffick the said controlled drug. It is apparent in his earlier statements to the police he had attempted to mislead them by mentioning the name of one Georges.
- [20] The law in respect of the evidence of an accomplice has been settled in the cases of ***Raymond Lucas v the Republic SCA 17/09 and Dominique Dugasse & Ors v the Republic*** which dealt with the fact as to whether a corroboration warning should be made by a judge in all cases involving the evidence of an accomplice.
- [21] The Seychelles Court of Appeal in the case of ***Raymond Lucas v Rep SCA No 17 of 2009*** held at paragraph 28 of the said judgment.
- [22] *“it is not obligatory on the courts to give a corroboration warning in cases involving sexual offences and we leave it at the discretion of judges to look for corroboration when there is an evidential basis as stated earlier.”*
- [23] A similar view was taken in the *Dugasse* case (supra) which was a case dealing with the importation of controlled drugs. In this instant case however, the evidence of the accomplice Taufique stands corroborated by that of Jules Rosalie as set out above on material facts. I am satisfied therefore that the accomplice has not sought to tell untruths either to “save his skin” or as he had a grudge to settle with the accused. Further this court is satisfied that even though subject to intense cross examination, he was not shown

to be unreliable or have deliberately lied. It appears that despite giving evidence of a several incidents over a period of time in respect of several visits to the Seychelles, the evidence of the accomplice was clear and comprehensive in respect of each and every transaction he had with both the accused.

[24] When one considers the detailed evidence of the accomplice in this case, it cannot be said that the witness was lying or his evidence was unreliable or he had made a false complaint against the accused. Thus, as held in the aforementioned cases there exists no evidential basis for the need to look for corroboration or for the corroboration warning even though in this instant case factually certain aspects of the evidence of the accomplice stand corroborated. Considering these facts, this court is of the view that the evidence of the accomplice is acceptable to court as there is no doubt in the mind of court that the accomplice was telling the truth. On considering the whole of the evidence before court, this court is satisfied that the evidence of the accomplice Taufique is acceptable to court. For the aforementioned reasons I am satisfied that the evidence of the prosecution can be accepted.

[25] It could be clearly inferred from the evidence of the accomplice Taufique and the other witnesses and it is clearly established, that both the accused in this case when they entered into an agreement each of them intended to play some part in the agreed course of conduct in furtherance of the criminal purpose which the agreed course was intended to achieve *Vide Lord Bridge in R v Anderson 1986.A.C. 27.*

[26] In the case of *R v Anderson* it was held;

“..... it would be sufficient for an alleged conspirator who had full knowledge of the plan to have agreed to play a minor role by way of assistance.”

[27] From the evidence before court, this court is satisfied that the 2nd accused played his role in the agreed course of conduct in respect of the purchase of the controlled drug heroin by accompanying his girl friend the 1st accused Brigitte Mancienne and by making the payment and collecting and checking the contents of the controlled drug handed over.

- [28] It is the contention of learned counsel for the accused that as the offence of trafficking has not been established and as the exhibits namely the bullets of heroin were not produced in court the charges cannot exist. It is to be borne in mind that the essence of the conspiracy is the agreement. When two or more agree to carry out their criminal scheme into effect, the very plot is the criminal act. Nothing need be done in pursuit of the agreement; repentance, lack of opportunity and failure are all immaterial. *“Overt acts which are proved against some defendants may be looked at as against all of them”* **Vide Archbold 2012 33-14.** *“... If a conspiracy is already formed and a person joins in afterwards, he is equally guilty with the original conspirators.”* **Vide Archbold 2012 33-25.**
- [29] On consideration of the evidence of the prosecution I am therefore satisfied that all the elements as contained in the charge in count three have been proved beyond reasonable doubt by the prosecution against the 2nd accused.
- [30] When one considers the evidence in this case in respect of count 4 it is apparent that the charge does not conform to the evidence as the evidence does not sustain the facts that a controlled drug deal occurred at Villa des Roses on the 18th of March 2008 as set out in the charge sheet. Therefore this court is of the view that the prosecution has failed to prove the particulars of the offence as set out in count 4 of the charge beyond reasonable doubt.
- [31] For the aforementioned reasons this court proceeds to acquit the 2nd accused of the charge contained in count 4 and proceeds to find the 2nd accused Marc Woodcock guilty of the charge contained in count three of the charge sheet and proceeds to convict him of same.

Signed, dated and delivered at Ile du Port on 10 December 2013

M Burhan
Judge of the Supreme Court