

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CA 55/2012**

**Appeal from Magistrates Court Decision 665/2006**

**[2014 ] SCSC**

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**JULIO GODLEY**

Appellant

versus

**THE REPUBLIC**

Respondent

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Heard: 13<sup>th</sup> November 2012  
Counsel: Mr France Bonte for appellant  
Mr Rene Durup for respondent  
Delivered: 5 May 2014

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**JUDGMENT**

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McKee J

- [1] The Appellant, by Notice of Appeal dated 20<sup>th</sup> November 2012, appealed against Sentence only.
- [2] By amended Notice of Appeal dated 5<sup>th</sup> December 2012, following legal advice, the Appellant appealed against Conviction and Sentence.

- [3] The Appellant was charged with the offence of Obtaining Money by false pretences contrary to section 297 of the penal code.
- [4] The particulars of the offence were that the Appellant, Julio Godley, on the 17<sup>th</sup> day of January 2006 at Victoria obtained Rs 50,000 from Vital Hoareau by false pretence.
- [5] The offence occurred 17<sup>th</sup> January 2006. The date of the first appearance in court was 20<sup>th</sup> February 2007. There was a time gap of some 13 months. Plea was taken on the 1<sup>st</sup> August 2007 and trial was set for 29<sup>th</sup> September 2008. The trial finally commenced on 25<sup>th</sup> July 2012. During the period between 20<sup>th</sup> February 2007 and 25<sup>th</sup> July 2012 there were long adjournments perhaps due to long lists in the magistrates' court diaries although some delays occurred as a result of the absence of the Appellant on due dates.
- [6] Matters came to a head on 25<sup>th</sup> July 2012 when the Magistrate elected to proceed to trial. The Appellant had appeared unrepresented and was given a short time to allow him to find counsel; he was unsuccessful. As a result the Appellant represented himself. On that date the Appellant may have expected yet another continuation but this did not happen. There is always such a risk faced by a defendant when he takes the chance to appear unprepared for trial. A magistrates' court is a court of first jurisdiction, very busy, and it is incumbent on a magistrate to dispose of cases in an expeditious manner while always keeping in view the rights of a defendant. In my view the magistrate looked at the overall circumstances of this case, the delay and elected to proceed. I cannot find fault with this decision.
- [7] The trial commenced and the Magistrate, the Appellant having entered a plea of not guilty, followed section 182 paragraph 1 of the Criminal Procedure Code and proceeded first to hear the evidence of the complainant, Vital Hoareau. This evidence is recorded in the Notes of Proceedings. The Magistrate was then guided by section 182 paragraph 3 of the Code and section 19[2][e] of the Constitution and asked the Appellant if he had any questions to ask this witness. The Appellant stated that he had no questions to ask Mr Hoareau and the Magistrate duly recorded this answer. It is up to a defendant to elect whether he wishes to ask questions. He cannot expect to receive legal advice from the court. The prosecutor went on to call the second witness, Frank Young. I can infer that

the Magistrate asked the Appellant whether he had any questions to ask this witness since the Record shows that the Appellant cross-examined this witness. Thereafter the prosecution closed its case.

**[8]** The Magistrate adjourned to consider whether there was a case to answer. It is suggested that the magistrate may have “entered the arena” by so doing. I disagree. The magistrate understandably felt that the Appellant, without specific legal knowledge, may not have understood the concept of making a ‘no case to answer’ submission, and rightly, in my view, made an assessment of the evidence at this point in the proceedings and ruled that there was a case to answer. She set out her findings in a written Ruling in some detail. I cannot fault that approach. It is in accordance with the first part of section 184[1] of the Code.

**[9]** The Magistrate moved to the case for the defendant, now the Appellant. A magistrate is often without assistance in recording evidence and establishes his own means of shorthand to record the progress of a trial. In this case the Magistrate has recorded that the election was explained to the Appellant by use of the words “Election put to the accused, remain silent, evidence on oath, statement from the dock, and/or call witnesses” on the Record. I can infer that the Appellant understood the election since it is recorded that he wished time to think the matter over. This was granted. On his return to court the Appellant stated that he had nothing to say and had no witnesses to call. The Magistrate had complied with section 184 of the Code. He need not take the matter further. At this juncture the duty of the court is to see that an accused person understands the alternatives open to him and then let him make his own choice to which course he will take [Lewis Payet v R, Seychelles Court of Appeal Reports 1965-1976 at page 57] The Defence case was closed and the matter adjourned for judgment. There is no record that either the prosecutor or the Appellant was invited to make a closing statement. In my opinion, having read the findings no injustice arose from this.

**[10]** The Magistrate adjourned for a period of some six weeks to consider the evidence and gave a full written judgment with reasons for conviction of the Appellant. The Magistrate asked the Appellant whether he had anything to say on his own behalf. He merely

questioned the meaning of mitigation, intimated that he would speak with his lawyer and gave a preliminary indication that he intended to appeal.

[11] The Magistrate stated in the findings that the evidence of the two prosecution witnesses was accepted as credible and based on this make the finding of guilt. On the evidence available before the court it was difficult to come to any conclusion other than that the Appellant obtained the sum of Rs 50,000 by means of a false pretence.

[12] Accordingly the appeal against conviction is dismissed.

[13] Appeal against Sentence.

[14] The Appellant was sentenced to 8 months imprisonment. The Magistrate also made an order of compensation in favour of the complainant, Vital Hoareau, for Rs50,000/-.Despite the fact that the Appellant was a first offender the Magistrate found that an immediate term of imprisonment was appropriate. I am satisfied that this part of the whole sentence is not wrong in principle or manifestly excessive.

[15] The Magistrate also made a compensation order for RS 50,000 but gave no reason for the award. Defence Counsel also commented on this in his submission. I can only infer that this amount was selected by the Magistrate since it corresponded with the sum of money originally handed over by the complainant to the Appellant. Defence Counsel also submitted that the prosecution had not suggested to the court that a compensation order could be appropriate. In considering this aspect of the total sentence I have looked to the notes of evidence. The court heard the evidence of two civilian witnesses and thereafter the prosecution closed its case. No police officers gave evidence despite the Record showing that the incident was reported shortly after the offence took place. As I understand the evidence of Hoareau after he tracked down the Appellant who was in possession of the car at the time, he seized the keys of the car, thus immobilizing the car, went to the police station and returned to the scene with police officers, where the Appellant had remained with the car. At that time it was Hoareau's evidence that the Appellant was not in possession of the Rs 50,000.

**[16]** Thereafter the evidence is silent on what next occurred in respect of the car, the registration documents and the sum of Rs 50,000. We do not know what action, if any, was taken by police officers. For instance, it is not known whether police officers attempted to persuade the parties to come to some settlement of the matter. The prosecutor chose not to lead any evidence on this aspect of the case. It is also to be noted that there was a period of some thirteen months between the date of the offence and the date when the matter first called before the court. I do not know if this has a bearing on the matter. In my view the outcome of the investigation and a resolution, if any, of the civil aspect of the sale cannot be gleaned from the evidence. The evidence in this respect is in an unsatisfactory state. In view of the uncertainty as to the full facts it is my view that it is unsafe to make a compensation order.

**[17]** In the result I allow the appeal against sentence to this extent. The sentence of 8 months imprisonment is confirmed but the order for compensation is set aside. Accordingly the total sentence is solely 8 months imprisonment.

Signed, dated and delivered at Ile du Port on 5 May 2014.

C McKee  
Judge of the Supreme Court