

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 85/2011

[2014] SCSC

THE REPUBLIC

versus

DANIEL ROSE

First Accused

MICHEL HORTENCE

Second Accused

Heard: 24 January 2013, 26 March 2013, 12 April 2013, 29 July 2013, 19 August 2013, 2 October 2013,

Counsel: Mr. Ananth, Assistant Principal State Counsel for the Republic
Mr. Anthony Juliette Attorney at Law for the first accused
Mr. Elvis Chetty Attorney at Law for the second accused

Delivered: 28 January 2014

JUDGMENT

Burhan J

[1] The accused Daniel Rose and Michael Hortence have been charged as follows;

Count 1

The statement of the offence

Possession of a controlled drug namely Cocaine, contrary to Section 6 (a) read with Section 26 (1) (a) of the Misuse of Drugs Act CAP 133 punishable under Section 29 (1) of the Misuse of Drugs Act CAP 133 and the Second Schedule referred thereto in the said Act.

The particulars of the offence are that Daniel Antoine Rose of Majoie on 6th December 2011 at Beaufond Lane, Mont Fleuri was found in possession of controlled drug namely 1.8 grams of Cocaine.

Count 2

Statement of the offence.

Possession of a controlled drug namely Cannabis Herbal Materials, contrary to Section 6 (a) read with Section 26 (1) (a) of the Misuse of Drugs Act CAP 133 punishable under Section 29 (1) of the Misuse of Drugs Act CAP 133 and the Second Schedule referred thereto in the said Act.

The particulars of the offence are that Daniel Antoine Rose of Majoie on 6th December 2011 at Beaufond Lane, Mont Fleuri was found in possession of controlled drug namely 0.8 grams of Cannabis Herbal materials.

Count 3

Statement of offence

Trafficking in a controlled drug namely Cocaine, contrary to Section 2 read with Section 5 and Section 26 (1) (a) of the Misuse of Drugs Act CAP 133 punishable under Section 29 (1) of the Misuse of Drugs Act CAP 133 and the Second Schedule referred thereto in the said Act.

The particulars of the offence are that Michel Hortence of Union Vale on 6th December 2011 at Mont Signal, Mahe was trafficking in a controlled drug by offering to sell or deliver to Brendan Burke of 34.9 grams of Cocaine and the later being a controlled drug.

Count 4

Statement of offence

Trafficking in a controlled drug namely mixture of Monoacetylmorphine and Morphine, contrary to Section 5 read with the First Schedule referred under Section 2 and Section 26 (1) (a) of the Misuse of Drugs Act CAP 133 punishable under Section 29 (1) of the Misuse of Drugs Act CAP 133 and the Second Schedule referred thereto in the said Act.

The particulars of the offence are that Michel Hortence of Union Vale, Mahe on 7th December 2011 at Union Vale, Mahe was found in possession of a controlled drug namely 35.5 grams of mixture of Monoacetylmorphine and Morphine which gives rise to the rebuttable presumption of having possessed the said controlled drugs for the purpose of trafficking.

- [2] During trial the 2nd accused Michel Hortence pleaded guilty to counts 3 and 4 and was sentenced on the 19th day of August 2013. This court will therefore proceed to analyse the evidence in respect of the 1st accused Daniel Rose.
- [3] The 1st accused Daniel Rose denied the charges and the prosecution principal witness Julian Sanders gave evidence stating that on the 6th of December 2011, he was on duty with team leader agent Siguy Marie and several other agents and were on patrol at Beaufond Lane secondary road Mont Fleuri, when he had seen a young man coming down the road near the residence of Mrs. Fayon. When they had got down from the jeep he had begun to run in the mountain direction.
- [4] Witness identified the 1st accused Daniel Rose as the person who ran. While he was running he had thrown a white container which had fallen under a palm tree. The agents had given chase and agent Joseph was able to catch him and handcuff him. Witness agent Sanders had retrieved the container and on opening it noticed there was a wrapping in a yellow plastic containing powder which witness suspected to be drugs. There was also a piece of cling film wrapping herbal material which was suspected to be Cannabis. The 1st accused had been arrested and the procedures followed. A body search was conducted by agent Joseph and nothing illegal was found. The 1st accused was taken to the NDEA station and a case registered.

- [5] Agent Sanders further stated the exhibit he had taken into custody was kept in his possession and sealed and kept in his locker. On the 7th of December 2011 he had personally taken the exhibits to the Government Analyst together with a request letter. He had thereafter gone on the 12th of December 2011 to collect the exhibits. The exhibits were returned sealed in a police evidence bag which witness identified as P5. Witness identified in open court the exhibits taken into custody by him that day as P7, P8 (a) (b) (c) and P9 (a) (b). He also identified the report received by him from the Government Analyst as P2. He stated thereafter he had handed over the sealed exhibits for safe keeping to agent Malvina.
- [6] Under cross examination he denied that one person had typed a story and he had signed it. He stated that he had not written his statement but put down the facts roughly on a paper and then Sergeant Azemia had typed what he stated. He stated that no finger prints were taken from the exhibit recovered.
- [7] Agent Kenneth Joseph called by the prosecution corroborated the evidence given by agent Sanders in regard to the detection and arrest of the 1st accused Daniel Rose. Witness Joseph described and he too identified the exhibits taken into custody that day from the accused Daniel Rose. Under cross examination he admitted the accused had co operated with them after his arrest. He admitted that as a result of his co operation they were able to arrest the 2nd accused who had been apprehended with a substantial quantity of drugs. The next witness Bella Azemia produced the statement under caution of the 1st accused Daniel Rose as P17. The defence did not object to its admissibility as evidence in the case. Thereafter the prosecution closed its case.
- [8] The accused chose to remain silent in defence and did not call any witnesses. In terms of Article 19 (2) (h) no adverse inference should be drawn from same. Both parties made submissions thereafter.
- [9] When one considers the evidence in this case the evidence of prosecution witness agent Julien Sanders in respect of the detection of the controlled drug stands corroborated by

the evidence of agent Kenneth Joseph. Though subject to cross examination there were absolutely no contradictions of a serious nature.

[10] The evidence of the Government Analyst Jimmy Bouzin is that he received the exhibits in a sealed state from agent Sanders on the 7th of December 2011. He had opened the sealed envelope to verify the exhibits and observed it contained a small white plastic container with a cap enclosing an off white substance wrapped in yellow plastic and also contained some herbal material wrapped in cling film. He had performed the analysis and identified the white substance as Cocaine. He stated the net weight was 2.9 grams and and purity 65% therefore the total cocaine content was 1.8 grams. The herbal material was identified as Cannabis weighing 0.8 grams. He had drawn up his report and handed over the exhibits back to agent Sanders on the 12th of December 2011 after placing the exhibits in a sealed evidence bag.

[11] Witness identified the white substance P8(c) and the herbal material P9(b) as that analysed by him and received from agent Sanders. Agent Sanders identified the same as being that which had been with the accused before he had thrown it and that taken into custody by him from the accused and handed over to the analyst for analysis. After analysis the exhibits had been placed in an evidence bag P5 sealed and handed over to agent Sanders. The analyst stated in open court the seals placed on the police evidence bag P5 were still intact showing that the exhibits had not been tampered with after analysis. When one considers the aforementioned evidence this court is satisfied that the chain of custody of the exhibits from the time of detection, taking into custody, analysis and production in court has been established beyond reasonable doubt.

[12] The evidence of the Government Analyst establishes the fact the white substance was identified to be Cocaine of pure content 1.8 grams and the herbal material Cannabis of weight 0.8grams. This is affirmed by his report produced as P2. The aforementioned evidence has not been challenged by the defence and therefore this court will proceed to accept same.

[13] The accused in his statement under caution admits he was in possession of the controlled drugs namely Cocaine and Cannabis. The prosecution produced the statement as P 17. There were no objections to its voluntariness.

- [14] Considering the aforementioned factors as the prosecution evidence stands corroborated and there are no material contradictions this court will proceed to accept same. The defence contention that agent Sanders made up a story bears no merit in the light of the corroborated and uncontradicted evidence of the prosecution and is not substantiated in any way. The defence therefore stands rejected. When an accused is arrested and identified in committing a crime there is no necessity to prove the case on finger print evidence as eyewitness testimony would suffice.
- [15] 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 agents approaching, thrown the white container containing the controlled drug and run away. This clearly establishes the fact that the accused had knowledge that he was in possession of a controlled drug.
- [16] Therefore on consideration of all the aforementioned facts, this court is satisfied that the prosecution has proved all the essential elements of the charges contained in count 1 and in count 2 beyond reasonable doubt. This court proceeds to find the accused guilty as charged in counts 1 and 2 and proceeds to convict him on both counts.

Signed, dated and delivered at Ile du Port on 28 January 2014

M Burhan
Judge of the Supreme Court