

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 67/2013**

**[2015] SCSC 2**

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**THE REPUBLIC**

versus

**TREVOR ZIALOR**

Accused

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Heard: 18.11.2014.

Counsel: Mrs. Lansinglu Rongmei, Assistant Principal State Counsel for the Republic  
Mr. John Renaud Attorney at Law for the accused

Delivered: 12 January 2015

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**RULING**

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**Burhan J**

[1] This is an application made by learned counsel for the defence seeking the recall of witness WPC Bessie Labonte to produce the statements taken from the complainant/victim by the police.

[2] Learned counsel for the prosecution objected to the application on the grounds that the affidavit was not in order as it was signed by learned counsel for the defence and not the accused. Be that as it may in a criminal case an application of this nature under section 126 of the Criminal Procedure Code CAP 54 could be made on behalf of an accused orally even without being supported by an affidavit.

[3] Section 126 of the Criminal Procedure Code reads as follows-

*“Any court may at any stage of any inquiry, trial or other proceeding under this Code summon or call any person as a witness, or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case:*

*Provided that the prosecutor or the advocate for the prosecution or the defendant or his advocate, shall have the right to cross-examine any such person, and the court shall adjourn the case for such time (if any) as it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.”*

[4] It is to be noted that learned counsel for the defence, admits in his submissions that he had received the aforementioned statements prior to the trial commencing together with the other documents. At the time of cross examining the victim, he had the statements in his possession and ample opportunity was provided for him to make use of the victim’s statement or statements to the police, to mark any contradictions or omissions. The prosecution cannot produce the written statement of the victim as it is not substantive evidence and is precluded from making use of the statement to corroborate or support the oral testimony of a witness.

[5] Learned counsel for the defence, seeks to recall a witness already called by the prosecution as a witness for the defence. The purpose for recalling the witness as mentioned in his application is to produce the statements of the victim in this case. It is to be borne in mind that already an opportunity has been given to learned counsel for the defence. The prosecution however does not contest the fact that the victim in this case did

make a statement/statements to the police. It appears the defence now somewhat belatedly feels it would be appropriate for the defence that the said statements should be formerly produced as an exhibit.

[6] Learned counsel for the defence could at this stage if he so desires and feels it is in the best interest of his client, produce the said statements as exhibits as learned counsel for the prosecution admits the making of the said statements but however it is the view of this court it would be more appropriate to call the officer who recorded the statement and each statement marked through the officer, to formally prove the making of the said statement by the witness (victim).

[7] Therefore in terms of section 126 of the Criminal Procedure Code, in the interests of justice in order to arrive at a just decision in this case and to ensure that no prejudice is caused against the accused, the application by learned counsel for the defence to recall witness WPC Bessie Labonte for the purpose of producing the statements or statement of the victim is granted.

Signed, dated and delivered at Ile du Port on 12 January 2015

M Burhan  
**Judge of the Supreme Court**