

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Appeal: CA 9/2014**

**[2016] SCSC 160**

---

**ALLAIN BARRY SOPHOLA**

versus

**THE REPUBLIC**

---

Heard: 17<sup>th</sup> November 2015  
Counsel: Mr. Julie for the Appellant  
Mr. Vipin for the Republic

Delivered: 4<sup>th</sup> February 2016

---

**RULING**

---

Akiiki-Kiiza J

- [1] This is an application by way of notice of motion taken out under Section 319 (1) of the Criminal Procedure Code seeking this court's order to admit further evidence and call 4 witnesses whom it is alleged they should have been called by the prosecution.
- [2] The application is supported by an affidavit sworn by his learned Counsel, Mr. Bryan Julie. He cited the case by **CAMILLE VS THE REPUBLIC (1978) SLR 3** in support.

That case states that the prosecution has a duty to lay before the Court all relevant and material facts, even if these go against the case for the prosecution. However it is also a principle that the prosecution need not call a witness whom it believes to be untruthful but must nevertheless make his statement available to the defence.

[3] Section 319 (1) of the Criminal Procedure Code enacts as follows:

*“ In dealing with an appeal from the Magistrates Court, the Supreme Court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by the Magistrate’s Court”*

[4] In this case learned Counsel’s affidavit, in support we find the following:

*Paragraph 3: I aver that seriousness miscarriage of Justice has occurred in respect of my client namely Allen Barry Sophola in case CR 170 / 2008.*

*Paragraph 4: The prosecution failed or refused to produce credible evidence.*

*Paragraph 5: The main complaint in said case lied to the Court when she testified she did not know my client before they met.*

*Paragraph 6: My client has had sexual relationship with the complainant for more than one year before the incident.*

*Paragraph 7: The complainant’s lady friend who was with her that night and who would have been key witness was not called by the prosecution.*

*Paragraph 8: The driver of the Taxi pirat who drove the accused and the complainant from the taxi stand to Roche Caiman was not called by the prosecution.*

*Paragraph 9: The driver ( named Benjee Jock in the proceedings) who took the complainant to the Police Station should have been called as a witness.*

[5] The learned Counsel also wanted the dress worn by the victim that might have been produced as an exhibit, which they did not do.

- [6]** A careful perusal of the lower Court's record indicates that the applicant had able legal Counsel from the time the hearing of his case started up to the end. He was represented by Mr. Nicole Gabriel, who is one of the most distinguished Criminal Lawyers in Seychelles. He cross examined all the prosecution witnesses including the complainant. The complainant maintained that she never knew the applicant before, though she had danced with him that evening. She maintained further that he had attempted to have sex with her and when she resisted, he assaulted her, damaged her property and stole some of it. Hence the charges with which he was tried and convicted of.
- [7]** It is not apparent on the face of the lower Court record, that the prosecution needed to produce the people whom the appellant named as additional witness to prove their case. Apparently the witness they called had satisfied the learned trial Magistrate and he found the applicant guilty as charged and convicted him on their evidence. There is no proof apparent on the record showing that the prosecution deliberately left some witnesses out so as to deny the applicant justice by suppressing the evidence favourable to him which they would have given.
- [8]** At the close of the case for the prosecution, the applicant chose to make a dock statement and not call any witnesses to support his case. This he was entitled to do and it was within his constitutional rights. In his dock statement he said that he had met a woman whom he had sex with. This means that he had met the woman (complainant) for the first time, as it was not clear whether he knew her name or not. Given the fact that he had sound legal representation in the person of Mr. Nichole Gabriel, he (Mr. Gabriel) must have had been of a view that it was not necessary to get further testimony from any other witness.
- [9]** It is also apparent from the evidence on the Lower Court record that the offences were committed at night and in an isolated place. The only witnesses at the scene were the victim and the applicant.
- [10]** Given the circumstances surrounding the case, I don't think this is a proper case where this Court can order for the adducing of further additional evidence.

[11] The application fails accordingly .

Court: Case is adjourn for hearing on **the 23<sup>rd</sup> May 2016 at 9 am.**

Signed, dated and delivered at Ile du Port on 4<sup>th</sup> February 2016.

Akiiki-Kiiza J  
Judge of the Supreme Court