

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 72/2014

[2016] SCSC274

THE REPUBLIC

versus

ANDY MOREL

Accused

Heard: 10 March 2016

Counsel: Mr. Ananth Subramanian, Assistant Principal State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the accused

Delivered: 12th April 2016

RULING

Burhan J

[1] This is a ruling in respect of a *voire dire* held regarding the admissibility of the statement of the accused recorded by the police. Learned counsel for the accused objected to the production of the said statement as an exhibit, on the grounds that the statement was not admissible as it was not a voluntary statement given by the accused.

[2] The main grounds urged by learned counsel were that the accused had not voluntarily given his statement as he had been under duress at the time of giving his statement. It is trite law that the burden is on the prosecution to prove beyond reasonable doubt that the said statement had been given voluntarily.

- [3] The prosecution in order to establish that the statement was taken voluntarily, called Mr. Maxime Payet, the officer who had recorded the statement of the accused and Corporal Dynese Larue, the officer who had witnessed the taking of the said statement.
- [4] Mr. Maxime Payet stated that he had recorded the statement of the accused on the 18th of May 2014. Prior to recording the statement, he had explained to the accused his constitutional rights and cautioned him of his right to remain silent and asked the accused whether he was willing to give a statement and the accused had voluntarily agreed to give one. He stated he had commenced recording the statement at 13.09 hrs and ended at 13.23 hrs. He further stated the accused had thereafter been released on bail and had come back the next day and voluntarily given another statement on the 19th of May 2014 which commenced at 11.15 a.m. and ended in the morning at 11.17 a.m.
- [5] Under cross examination, Mr. Maxime Payet admitted that the accident according to reports had occurred on the 18th of May 2014 at 3.45 a.m. He reiterated the fact that the accused had volunteered to give a statement and he had taken the precautions of explaining the constitutional rights to the accused and advising him of his right to remain silent. He stated that at the time of taking the statement of the accused, the accused was mentally fit and in a normal state. He denied “putting words” into the mouth of the accused or getting him to state he was responsible for the accident. In regard to the report of Police officer Cadeau, witness stated it was a report prepared two months after the taking of the statement under caution.
- [6] He stated at the time the statement was taken, the accused was in a right state of mind and was willing to give a statement. He further stated that the accused had not thereafter made any complaint in regard to the taking of his statement and after the recording of the statement, the accused had stated the statement is correct and willingly signed the statement, after it had been read over and explained to him.
- [7] Witness Dynese Larue corroborated the evidence of officer Maxime Payet in regard to the constitutional rights being explained to the accused, the caution being administered and the accused signing the statement after it was read over and explained to him. She too stated the accused was released after his statement was recorded. She admitted the

accused had been tested according to documents P3 and P4 for alcohol at 6.20 a.m. that day. Thereafter the prosecution closed its evidence.

- [8] The accused chose his right to remain silent.
- [9] Having considered the evidence before court, I observe that the accused despite having the assistance of an Attorney at Law has not made a contemporaneous complaint to the higher authorities concerning the recording of his statement, in that he had been subject to duress into giving the statement or even that he was not in his proper senses at the time the statement was recorded.
- [10] It is not borne out from the evidence of both police officers called by the prosecution that the accused was under threat or duress or inducement, either before during or after the recording of the said statement. It could only be gathered from their evidence that the accused had given his statement voluntarily. Although both officers were subject to cross examination, no material contradictions arose in respect of the evidence given by these two officers.
- [11] As no contemporaneous complaint has been made by the accused against these two officers in respect of the recording of the said statement and as no material contradictions are observed in the evidence of the prosecution witnesses, I proceed to accept the evidence of the prosecution.
- [12] I am satisfied on considering the sworn testimony of both officers, that even though it is alleged that the accused was under the influence of liquor at the time of the accident, at the time of the recording of his statement which was several hours later, he had sufficient knowledge of the fact the police officers intended recording a statement from him and he had voluntarily consented to give one.
- [13] I am satisfied therefore that the accused though admittedly had been subject to a breathalyser test several hours earlier, at the time the statement was recorded, had the capacity both mentally and physically to know what he was doing and stating, and had done so voluntarily and in the absence of any inducement, promise, threat or oppression.

[14] I therefore hold that the prosecution has proved beyond reasonable doubt that the statement of the accused had been given voluntarily and therefore the statement is admissible as evidence in the case.

Signed, dated and delivered at Ile du Port on 12th April 2016

M Burhan
Judge of the Supreme Court