

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO52/2013

[2016] SCSC457

THE REPUBLIC

versus

FRANCOIS SOUFFE

GEORGES JULIENNE

DAVY HARIE FRANCIS

CASEY BRIAN SOPHOLA

MANROE RALPH CESAR

Accuseds

Heard: 2 March 2016
Counsel: D. Esparon, Principal State Counsel for the Republic
E. Chetty for the 1st and 2nd accuseds
A. Amesbury for the 3rd accused
N. Gabriel for the 4th and 5th accuseds
Delivered: 23 June 2016

RULING

Dodin J

- [1] This is a ruling on submissions of No Case To Answer by the 4th and 5th accused persons Casey Brian Sophola and Manroe Ralph Cesar. The first three accused persons, Francois Souffe, Georges Julienne and Davy Harie Francis after first having notified the Court of their intention to make submissions of no case to answer, subsequently decided not to proceed with their submissions.
- [2] Learned counsel for the 4th and 5th submitted at the end of the case for the prosecution that no evidence has been led to implicate the 4th and 5th accused persons in the offences with which they have been charged. In the case of the 4th accused, he was arrested in Seychelles and was not on the vessel Amara when the vessel was intercepted at sea on the 22nd August, 2013. The evidence adduced showed that the 4th accused had no knowledge of what the 1st, 2nd and 3rd accused persons were going to do as he got on the boat to go on a fishing trip. When he was eventually informed of the trip to Madagascar, there was no way for the 4th accused to get off the Amara until the vessel encountered engine problems and another vessel offered assistance. Immediately the 4th accused left the Amara and returned to Mahe on board the Singapore cargo vessel Ponante on the 18th August 2013.
- [3] Learned counsel submitted that the 4th accused was not on the Amara on the 22nd August, 2013 as the particulars of the offences against him state and therefore he could not have committed the offences as charged.
- [4] Learned counsel submitted that with respect to the 5th accused who was 16 years old at the time, there is no evidence that he did anything to assist any of the other accused persons to commit any offence. The evidence showed that he was a minor under the control of his mother and that he had been invited by his stepfather to go on what he believed was a fishing trip. He did not at anytime participate in loading or handling any of the exhibits found on the vessel Amara or in the water. The evidence of the prosecution clearly showed that the 5th accused had at all time remained seated on his own, he did not agree to do anything and in fact did not do anything that can be said to constitute any element of the offences charged.
- [5] Learned counsel concluded that from the evidence adduced there is no possibility for any Court or tribunal to convict the 4th and 5th accused persons as the evidence against them is so flimsy to none existent and has not even established a prima facie case against either

accused person. Learned counsel referred the Court to the case of *R v Galbraith [1981] 1 WLR 1039* in support of his submission and moved the Court to find that the 4th and 5th accused persons have no case to answer.

- [6] Learned counsel for the Republic submitted that he admitted that the 4th accused was not on the Amara when it was intercepted on the 22nd August, 2013 and that although his own statement is mostly exculpatory, the 4th accused never retracted what he overheard in the conversation between the 1st and 2nd accused persons; that is, that they were going to conduct an illegal transaction before the vessel Amara reached Bird Island and that he assisted to load the vessel in Madagascar. Therefore he had knowledge of the illegal transaction which was going to be performed which is sufficient to establish a prima facie case against him.
- [7] With respect to 5th accused learned counsel conceded that the offences of conspiracy against him have not been established but maintained that the 5th accused in his statement stated that in Madagascar he assisted to store some of the drugs on board the boat and that the owner of the boat also offered him a job on the boat which established the element of knowledge that forms the basis of the offence of trafficking.
- [8] Learned counsel however conceded that when the vessel was intercepted in Seychelles waters, the 5th accused was not observed doing anything to assist the other persons on the vessel but maintained that since the evidence showed that he had knowledge when in Madagascar that the vessel was carrying illegal drugs, the Court can infer that he had knowledge of the offence of trafficking and hence rule that a prima facie case has been established against the 5th accused.
- [9] Learned counsel hence moved the Court to find that a prima facie case has been established against both 4th and 5th accused persons and to dismiss their submissions of no case to answer.
- [10] In determining whether an accused person has a case to answer the Court must make an assessment of all the evidence adduced by the prosecution and make a determination on two issues. First whether all the elements of the offence have been established by the prosecution which establish a prima facie case against an accused. Where the

prosecution's evidence fails to address any particular element of the offence at all, no conviction could possibly be reached and the Court should allow the application of no case to succeed. Where there is some evidence to show that the accused committed or must have committed the offence but for some reason such evidence seems unconvincing, the matter is better left for the end of the trial where the evidence would be weighed and the Court would reach a verdict after assessing the witnesses' credibility together with all available evidence.

[11] Secondly where the available evidence has been so compromised by the defence or by serious inconsistencies in the prosecution's testimonies, the Court must determine whether the evidence adduced taken as its highest would not properly secure a conviction. If the Court determines that in such a circumstance a conviction could not be secured, the submission of no case to answer would also succeed.

[12] In the case of R v Galbraith [1981] 1 WLR 1039 Lord Lane C.J. stated thus on the issue:

“How then should a judge approach a submission of 'no case'?
If there has been no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury ... There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

See also the cases of Green v. R [1972] No 6, R v. Stiven [1971] No 9 and R v. Olsen [1973] No 5.

[13] Although in a criminal trial, the standard that must be met by the prosecution's evidence is proof beyond reasonable doubt that the accused person committed the offence charged,

when an accused seeks an acquittal on account of having no case to answer, the standard of evidence to be assessed by the Court is not proof beyond reasonable doubt but whether the prosecution has established a prima facie case against the accused person.

[14] In this case the 4th and 5th accused persons are charged jointly with the 1st, 2nd and 3rd accused persons of 2 counts of doing an act preparatory to the importation of controlled drugs, namely 37kg 280.4grams of cannabis herbal material and 990grams of cannabis resin into Seychelles on board the vessel Amara on or around the 22nd August, 2013. They are also charged jointly with the 1st, 2nd and 3rd accused persons with 2 counts of trafficking in 37kg 280.4grams of cannabis herbal material and 2 counts of trafficking in 990grams of cannabis resin on or around the 22nd August 2013 on board the vessel Amara South of Providence island, at position EEZ 07°21S-049°07E. The 2 accused persons have also been charged with conspiracy to commit the offence of importation of controlled drugs namely 37kg 280.4grams of cannabis herbal material and 990grams of cannabis resin on or around the 22nd August, 2013 on board the vessel Amara, and a further 2 counts of conspiracy to commit the offence of trafficking of controlled drugs namely 37kg 280.4grams of cannabis herbal material and 990grams of cannabis resin on or around the 22nd August, 2013 on board the vessel Amara.

[15] The evidence adduced by the prosecution witnesses, namely Lyndon Jose Clement Lablache, Roy Gonthier, Brian Toussaint, Samir Ghislain, Alexander Moumou and Richard Bacco were clear that none of them witnessed the 5th accused person doing anything which can be construed as assisting the 1st 2nd or 3rd accused persons when they approached and boarded the vessel Amara on the 22nd August, 2013. The 5th accused was sitting on the vessel and did not participate in any acts which they witnessed the other 3 accused persons doing. None of the witnesses also saw the 4th accused on board the vessel Amara and it is admitted fact that the 4th accused had returned to Mahe on the Singapore vessel Ponante by the 18th August 2013. The 4th accused then co-operated with the NDEA which allowed the NDEA to conduct the operation against the Amara for which the accused persons have been charged.

[16] Indeed learned counsel for the Republic was at a loss to explain how the 4th and 5th accused persons could have dissociated themselves from the other accused persons once

they became aware of the transaction that the vessel Amara was embarking on as they were already far away from Mahe and they had no control over the vessel Amara. Learned counsel ventured that they could have got off in Madagascar although the Court observed that they did not have any document which would have allowed them to go ashore in Madagascar legally.

[17] It is obvious that the only averments being relied on by the prosecution against the 4th and 5th accused persons are the brief mentions in their respective statement under caution that in Madagascar they helped the first 3 accused persons to store the contraband on board the vessel Amara and that the 4th accused was made aware near the island of Bird Island that the vessel was not going on a fishing trip but was instead going to Madagascar. It is clear that at this stage even if the 4th accused had obtained the knowledge that the vessel had embarked on an illegal venture, he had no opportunity to dissociate himself from the vessel and the other crew members as there was no possibility of him getting ashore safely by himself. In other words an enforced knowledge under clear duress cannot amount to consent or agreement. In fact the evidence showed that the 4th accused got off the vessel Amara as soon as he could guarantee himself safe passage to Mahe.

[18] I am therefore satisfied that the evidence adduced has not established a prima facie case against the 4th accused on any of the charges against him. Therefore, the submission of no case to answer succeeds and I therefore find that the 4th accused has no case to answer on any of the charges against him. I acquit him of all the 10 counts accordingly.

[19] With regards to the 5th accused, I am also satisfied that he was a minor who had gone on board the Amara with only the knowledge that he was about to engage on a fishing trip under the authority of his stepfather. As such it is clearly understandable that he was not in the same position of the 4th accused to get off the vessel Amara at the first opportunity and that in any event he did not take part in any illegal act in Seychelles territory. Also although in his statement he mentioned about being offered a job on the vessel, clearly he did not agree to such an offer which is clear indication that he was not in agreement with the transaction that was taking place at the time.

[20] I therefore find that the prosecution has not established a prima facie case against the 5th accused on all the charges against him and therefore the submission of no case to answer

succeeds. I therefore find that the 5th accused does not have a case to answer on all counts and I acquit him of all counts accordingly.

Signed, dated and delivered at Ile du Port on 23 June 2016

G Dodin
Judge of the Supreme Court