

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 82/2015

[2016] SCSC 525

THE REPUBLIC

versus

ERNEST WILLIAM

Accused

Heard: 8 June 2016 and 11 July 2016
Counsel: Mr. Ananth Subramanian, Assistant Principal State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the accused

Delivered: 21 July 2016

RULING

Burhan J

- [1] I have considered the submissions made by learned counsel for the accused at the close of the prosecution case, in regard to his contention that the accused has no case to answer. I have also considered the submissions of learned counsel for the prosecution in reply to same.
- [2] The accused has been charged as follows:

Count 1

Trafficking in a controlled drug contrary to Section 5 of the Misuse of Drugs Acts read with Sections 14 (c) (ii) and Section 26 (1) (a) of the said Act and punishable under Section 29 read with Second Schedule of the Misuse of Drugs Act. The controlled drug being Heroin (Diamorphine) weighing 2.68 grams containing 1.28 grams of pure Heroin.

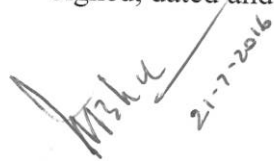
- [3] In the case of *R vs. Stiven 1971 SLR 137*, it was held what court has to consider at the stage of no case to answer is whether:
- a) *there is no evidence to prove the essential elements of the offence charged.*
 - b) *whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.*
- [4] *Archbold in Criminal Pleadings Evidence and Practice 2012 Edition 4-363* sets out the principle in a no case to answer application.
- “A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict”*
- [5] The main contentions of learned counsel on behalf of the accused is that:
- a. the weight of the drugs at the time of detection and at the time of analysis was different. The weight given by the analyst 2.68 grams was different to that of the detecting officer Agent Robert Padayachy who stated that the weight of the controlled drug taken into custody by him was 2.96 grams. While witness Alexander Moumou who was called to corroborate the evidence of agent Padayachy testified that the weight of controlled drug was around 2 grams.
 - b. the controlled drug had been planted on the accused

- [6] I have considered the evidence before Court and observed that the evidence of agent Padayachy in respect of the weight of the drugs is an approximate weight given by him when he weighed the substance. He himself states this is an approximate weight. It should be borne in mind, the weight the Court takes into consideration is that given by the Government Analyst and not that of the detecting officers.
- [7] Therefore, it is immaterial if there are slight differences in the weights given by the detecting officers as these are approximate weights and therefore, the weight that would be accepted by Court is the weight of the controlled drug as given by the Government Analyst. The discrepancies in the weights among witnesses are contradictions not of a material nature as the evidence of the expert witness the Government Analyst, clearly indicates and establishes that the weight of the controlled drug taken into custody was 2.68 grams containing 1.28 grams of pure Heroin.
- [8] It is to be observed that there are no contradictions or uncertainty in the evidence of the Government Analyst regarding the quantity of controlled drug and the analyst explains that at the time the substance was brought to him, he had weighed it prior to analysis and recorded the weight as 2.68 grams. He further explained that thereafter he had taken a sample for analysis and therefore the weight at present would be less.
- [9] In regard to learned counsel's contention that the drug was planted on the accused, at present there is no evidence to support same, other than a mere suggestion by learned counsel for the accused. The evidence of the prosecution is that they found the controlled drug in a wardrobe, in a room belonging to the accused Ernest William, amongst his clothes. The evidence of agent Padayachy was corroborated by the evidence of witness Alexander Moumou. The prosecution witnesses denied the suggestion that the controlled drug was planted on the accused by them.
- [10] As there is no evidence at present, to come to the conclusion that the drugs were planted on the accused, the allegation made by learned counsel that the controlled drug was planted, bears no merit as it is not supported by the evidence or any admission by the prosecution witnesses.

[11] Further, it cannot be said that the evidence of the witnesses for the prosecution has been so discredited by cross examination that it is so manifestly unreliable that no reasonable tribunal could safely convict on it. On consideration of the entirety of the evidence of the prosecution, it cannot be said that the prosecution has failed to prove an essential element of the offence.

[12] Therefore this Court is satisfied that a prima facie case exists against the accused and proceeds to call for a defence from the accused in respect of the charge framed against him.

Signed, dated and delivered at Ile du Port on 21 July 2016

A handwritten signature in black ink, appearing to be 'M Burhan', is written diagonally. To its right, the date '21-7-2016' is also written diagonally.

M Burhan
Judge of the Supreme Court