

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 13/2015**

[2017] SCSC 156

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**THE REPUBLIC**

versus

**RALPH SONNY SAMEDI**  
Accused

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Heard: 9 May, 17, 20 October 2016, 16, 20, 31 January, 3 February 2017.  
Counsel: B Confait, State Counsel for the Republic  
A Amesbury for the accused  
Delivered: 21 February 2017

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**RULING**

**Dodin J**

- [1] The Accused stands charged with one count of trafficking in 32.493kg of cannabis herbal material; one count of trafficking in 1.559kg of cannabis resin and one count of trafficking in 11.7g of heroin (diamorphine).
- [2] At the close of the case for the prosecution, learned counsel for the accused moved to Court on a motion of no case to answer setting her supporting arguments as follows:
- i. That the accused was never at any material time found having in his physical possession any drugs contained in the charges for the

purposes of trafficking or to give rise to the presumption that he had the same for the purpose of trafficking;

- ii. That the prosecution failed to prove the element of possession in that the prosecution failed to prove that the accused had custody and control of the drugs;
- iii. That the drugs in question were allegedly found on the land owned and belonging to Michael Francis Samedi and Brian Peter Samedi as per the title documents produced as exhibit;
- iv. That there is no evidence including fingerprints evidence linking the accused to the drugs that was brought by the prosecution.

[3] In reply to the submission of no case, learned counsel for the Republic maintained that there are circumstantial evidence which the Court can rely on to find that the prosecution has proved all the elements of the offence charged and established a prima facie case against the accused on all the counts levelled against him. Learned counsel submitted that:

- i. Several witnesses gave uncontroverted evidence that a sum of Rs 8,600 and a digital scale having traces of heroin were found in the house;
- ii. That it was the accused who unlocked the door to the house and the shed for the agents to conduct their search;
- iii. That the accused although he denied that he had anything to do with the drugs, was observed by the agents looking in the directions where drugs were discovered on the property;
- iv. That the drugs were found immediately outside the house and the store therefore the accused must have assumed custody and have a certain amount of control over the drugs.

[4] The brief uncontested facts of the case as related by the prosecution witnesses are that on the 28<sup>th</sup> January, 2015, NDEA agents Roland Esther, Laurine Constance, Julius Rose, Andy Cesar, Barry Cadence and Collin Adrienne, under the direction of agent Nichol Fanchette went to Beoliere on a property legally owned by Michael Francis Samedi and Brian Peter Samedi upon which there are 2 houses constructed thereon and proceeded to conduct a search of the house occupied by Mrs Marie Samedi and Ms Taciana Samedi. Nothing illegal was found in the house.

- [5] Later during the day, the accused arrived in an NDEA vehicle driven by agent Jacques Tirant and the accused was promptly asked to open the door to the other house which he did by using a key from his pocket. The agents searched the house and took away 2 digital scales, a satellite phone and a sum of Rs8,600 from a divider. The accused was then asked to unlock the store and a search of the same did not result in anything illegal being found.
- [6] The agents then conducted searches around the premises outside the houses and at different places found several containers containing various amounts of cannabis herbal material, cannabis resin and heroin (diamorphine), totalling 32.493kg of cannabis herbal material; 1.559kg of cannabis resin and 11.7g of heroin (diamorphine). All the substances and their containers and wrappings were admitted as exhibits and the certificate of analysis was not in contention. However no findings were made in respect to fingerprint analysis of any of the items requested to be fingerprinted.
- [7] As each exhibit was discovered by the agents, the same was brought to the accused and pointed out to him and he was cautioned. The accused did not say anything. The accused was then placed in an NDEA vehicle and taken to the NDEA headquarters. On the way, he spoke only once to tell the agents in the vehicle with him that he did not know anything about these substances and that they were not his. The accused was subsequently charged and the charges were later amended as follows:

*Count 1*

*Statement of offence*

*Trafficking in a controlled drug, namely Cannabis Herbal material, contrary to section 5 of the Misuse of Drugs Act read with sections 2 and 26(1) of the said Act, Punishable under section 29(1) and the Second Schedule of the said Act.*

*Particulars of offence*

*Ralph Sonny Samedi on 28<sup>th</sup> January 2015, at Beoliere, Mahe, Seychelles was found in possession of a controlled drug namely 32.493 kilograms of Cannabis which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.*

*Count 2*

*Statement of offence*

*Trafficking in a controlled drug, namely Cannabis Herbal material, contrary to section 5 of the Misuse of Drugs Act read with sections 2 and 26(1) of the said Act, Punishable under section 29(1) and the Second Schedule of the said Act.*

*Particulars of offence*

*Ralph Sonny Samedi on 28<sup>th</sup> January 2015, at Beoliere, Mahe, Seychelles was found in possession of a controlled drug namely 1.559 kilograms of Cannabis Resin which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.*

*Count 3*

*Statement of offence*

*Trafficking in a controlled drug, namely heroin diarmorphine, contrary to Section 5 of the Misuse of Drugs Act read with sections 2 and 26(1) of the said Act, Punishable under section 29(1) and the Second Schedule of the said Act.*

*Particulars of offence*

*Ralph Sonny Samedi on 28<sup>th</sup> January 2015, at Beoliere, Mahe, Seychelles was found in possession of a controlled drug namely heroin (diarmorphine) of a net weight of 11.7 grams (with a purity of 58%) which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.*

[8] 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 critical issues.

- i. Whether all the elements of the offence have been established by the prosecution and therefore established a prima facie case against an accused.
- ii. Whether the available evidence has been so compromised by the defence or by serious inconsistencies in the prosecution's testimonies such evidence taken as its highest would not properly secure a conviction.

- [9] 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.
- [10] 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.
- [11] 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.

[12] In this case the prosecution has to establish all the elements of the offences as charged beyond reasonable doubt in order to secure a conviction. However, at this stage, the Court must only be satisfied that a prima facie case on each charge has been made by the prosecution in order to find that the accused has a case to answer. The elements of the offences are that:

- i. on the 28<sup>th</sup> January 2015,
- ii. at Beoliere, Mahe, Seychelles
- iii. the accused was found in possession of the controlled drugs
- iv. the drugs are 32.943kg of cannabis herbal material; 1.559kg of cannabis resin; and 11.7g of heroin (diamorphine).

[13] The testimonies of the witnesses for the prosecution were clear, cogent and uncontroverted on limbs i., ii. and iv., in that the NDEA agents on the 28<sup>th</sup> January, 2015, at Beoliere, Mahe, Seychelles found controlled drugs namely, 32.943kg of cannabis herbal material; 1.559kg of cannabis resin; and 11.7g of heroin (diamorphine) and the types and weight were testified to by the forensic analyst, ASP Jemmy Bouzin.

[14] There now remains the 3<sup>rd</sup> and most crucial element of the offence which is that the accused was in possession of the drugs giving rise to the presumption of trafficking. In criminal cases a person has to have a "guilty mind" if he is to be convicted of the offence charged. Hence a person must have knowledge of the fact that the thing in his possession or on his property is illicit drug. If an accused has on his person or on his property controlled drugs without knowing it, he should, if believed, be found not guilty of possession.

[15] Knowledge includes deliberately or recklessly disregarding the obvious fact that the item in one's possession is illicit substance and there is no requirement to know exactly what type of illegal drug is involved. Having an illegal drug in one's pocket or one's suitcase may not establish actual possession if a doubt can be raised on the issue of knowledge that the item existed. Another scenario may exist where the person was aware of the item in his possession but he did not know the item was an illegal drug. For example, someone in possession of a bag of marijuana, mistakenly thinking it was a bag of tea or a type of

herb used for cooking cannot be said to have the requisite knowledge to establish possession of the illicit narcotic.

- [16] The concept of possession is well established in the case of DPP. V Brooks [1974] A.C. 862. The prosecution must establish the elements of physical possession, that is, custody and knowledge of the substance that turns out to be the controlled drug. In the case of Republic vs. Serge Esparon Criminal Side No. 75 of 2008 the drugs were found in the vehicle of the accused who attempted to evade the police. The Court could therefore infer from the circumstances that the accused had physical custody of the drugs in his car to which he had exclusive control and also showed knowledge of having illegal substance in his vehicle by attempting to run away to evade the police who were trying to arrest him.
- [17] See also the cases of Republic vs. Sanders Vital Criminal Side No. 63 of 2008 and Republic vs. Raymond Patrick Francis case no: Cr 11 of 2010 the accused persons were seen throwing away the plastic bags which had been seen in their hands prior to being apprehended. See also the case of R. v. Marshall, [1969] 3 C.C.C. (3d) 149 where the accused was acquitted of drug possession as he had no control over drugs in the vehicle he was in.
- [18] In the case where drug is found on the land outside of buildings, the prosecution must also establish that the accused has exclusive access to the premises and had knowledge that the drugs were on the premises. Mere presence in a residence or on the land and knowledge of the presence of contraband at or near the residence is not sufficient to establish possession. That is because even if the person knows or has reason to believe that another person has placed drugs on the premises and decides not to do anything about it, that person has not necessarily committed any offence. The prosecution must bring evidence to show control. In R. v. Colvin and Gladue (1942), 78 C.C.C. 282 (B.C.C.A.) two accused persons were found visiting a premise where narcotics were present. Both were found not to be in possession of the drugs on the premises.

- [19] In this case all the NDEA agents testified that they went to the scene well prior to the accused and that initially they searched the house of Mrs Marie Samedi and Ms Taciana Samedi. They all testified that the accused was later brought to the scene by agent Tirant but none was able to enlighten the Court as to how the accused was apprehended, where and how. Agent Tirant did not testify.
- [20] All the agents testified to the fact that other than the money, scales and satellite phone which were seized from the house, nothing illegal was found in the house or the store to which the accused had the keys. No prosecution witness testified as to whether the accused was living on the premises or in the house at the material time. The closest inferences to that effect were by agents Roland Esther, Julius Rose, Andy Cesar, Barry Cadence and Collin Adrienne who stated that they were told that the house belonged to the accused. However they all admitted that they themselves did not find anything that showed that the accused was occupying or living in the house at the time. In fact the head of investigations of the NDEA categorically stated in cross-examination that they did not ascertain who actually lived at or occupied the house at Beoliere, they only sought information on the ownership of the land.
- [21] Learned counsel for the prosecution in her submissions has attempted to link one scale found inside the house which had traces of heroin on it, the money found in a divider in the house and the testimony of agent Cadence that he observed the accused looking in the directions where the drugs were found as factors establishing knowledge of the accused that drugs were found in the vicinity. Certainly it is not something strange or remarkable that an accused who has been brought to witness a search to look around to see what was going on. With regards to the money, it seems that even the investigating officers did not see it as important enough to have the accused sign for its seizure. With regards to the digital scale, there could be several other reasons why it had traces of heroin on it but at no point did the forensic analyst link the traces of heroin on the scale to the heroin contained in the 3<sup>rd</sup> count or any evidence link the same to the accused.
- [22] In fact what comes out clear is that the accused was arrested somewhere unknown and taken to Beoliere after the search of the house of Mrs Marie Samedi and Ms Taciana



Samedi had yielded nothing illegal. The accused was placed on the scene to observe the search of the rest of the premises of Michael Francis Samedi and Brian Peter Samedi upon which the accused had built a house and a store. Each time drugs were uncovered, the same was brought to where the accused was and showed to him and he was cautioned. No attempt was made to identify who was living in the house at the material time or who was occupying or having access to the premises.

[23] I do not find any other strand of evidence that would be strong enough to establish a prima facie case of possession against the accused. Consequently, I find that the prosecution has failed to establish any credible link between the drugs found on the premises and the accused. The element of possession has not been established at all even on the very low standard of establishing a prima facie case.

[24] I therefore find that the accused has no case to answer on all 3 counts and I acquit him on all 3 counts accordingly.

Signed, dated and delivered at Ile du Port on 21 February 2017



G Dodin

**Judge of the Supreme Court**

