

**IN THE SUPREME COURT OF SEYCHELLES**

**CriminalSide: CO43/2015**

**[2017] SCSC 202**

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**THE REPUBLIC**

versus

**FRANCIS CADEAU**

Accused

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Heard: 24<sup>th</sup>, 31<sup>st</sup> January and 27<sup>th</sup> February 2017  
Counsel: Mr. Vipin Benjamin, Assistant Principal State Counsel for the Republic  
Mr. S Rajasundaram Attorney at Law for the accused  
Delivered: 7 March 2017

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**RULING**

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**Burhan J**

[1] This is a ruling in respect of a *voire dire* held regarding the admissibility of the statement of the accused Francis Cadeau, recorded by the officers of the Criminal Investigation Department. Learned counsel for the accused objected to the production of the said statement as an exhibit, on the grounds that the statement recorded was not admissible as it was not a voluntary statement given by the accused. The main grounds urged by learned counsel were:

- a) the accused had been suffering from a mental illness namely “Paranoid Schizophrenia.
- b) that due to the said illness, he was not in his proper mental faculties and therefore even though he had signed the statement, it was not a voluntary statement as he was not in proper state of mental health.

[2] 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 called the recording officer Inspector Jeffrey Winsley Antoine who stated that he had recorded the statement of the accused on the 16<sup>th</sup> of June 2015. He further stated that prior to recording the statement, the accused had been cautioned and his constitutional rights explained to him. He said the statement was witnessed by Corporal Emile Fred.

[4] In his evidence, Inspector Antoine mentioned the details of the caution and constitutional rights read over to the accused. He stated the accused elected to give a statement voluntarily in Creole. After recording the statement, it was read over to the accused and the accused was invited to make any corrections, additions and alterations in the statement and sign it. He had not done so but placed his thumb impression on the statement. Inspector Antoine stated the accused had placed his thumb print on 6 different places in the statement. Witness categorically stated that no threat, promise or inducement was made to the accused during the recording of the statement and the accused understood what was happening, at the time the statement was recorded. He further stated, he had asked the accused what had happened and the accused had narrated the incident. He mentioned the accused was “a bit shaky but normal”.

[5] Inspector Antoine under cross examination stated he was unaware at the time of recording the statement that the accused was having a mental illness. He further stated that had he been aware of the mental condition of the accused prior to recording his statement, he would have produced the accused before a doctor, prior to recording it. It is also apparent from the cross examination, that the accused was subject to a medical

examination after the statement was recorded and a report prepared, only on the 10<sup>th</sup> of July 2015.

[6] Corporal Fred corroborated the evidence given by Inspector Antoine and stated he witnessed the taking of the said statement under caution. He also stated the accused had volunteered to give a statement.

[7] Dr Krassimira Barbova stated that the police had made a request on the 22<sup>nd</sup> of June 2015 for a medical report and after examining the accused, she had prepared her report dated 10<sup>th</sup> July 2015. She stated at the time she prepared her report, the accused was able to comprehend and understand what she said and was well oriented. She however admitted she could not tell what his condition would have been on the 16<sup>th</sup> of June 2015 when the criminal act occurred and stated “I cannot comment about his mental condition at the time of the alleged act due to lack of information.” (Pg 30 of the proceedings of 24<sup>th</sup> January 2017). She also confirmed the fact that the accused had been undergoing treatment from her since 2004 and 2005. She stated after treatment his illness was at the residual stage but even such patients could still experience delusions and can still hear voices from time to time but could handle such situation. (Pg 35 of the proceedings of 24<sup>th</sup> January 2017).

[8] The defence remained silent and tendered submissions.

[9] I have considered the evidence led and the submissions of both learned counsel. It is the duty of the prosecution to establish beyond reasonable doubt that the statement of the accused was given voluntarily. I have considered the evidence led by the learned prosecutor in respect of same. Firstly it is admitted by both parties that the accused was suffering from a mental condition termed “Paranoid Shizophrenia”. It is in evidence that the accused responded to the treatment given and his condition improved and he had only residual symptoms at the time he was last treated by the doctor as per her report dated 10<sup>th</sup> July 2015.

[10] It appears however, there is no record of his treatment or a report on his condition between the period 25<sup>th</sup> of August 2010 and the 10<sup>th</sup> of July 2015. Therefore one could not say what his mental state of health was at the time the incident occurred and at the

time his statement had been recorded i.e on the 16<sup>th</sup> day of June 2015. The evidence led by the prosecution indicates that despite the accused being already diagnosed as a Paranoid Schizophrenia as far back as 2004, no attempt was made by the police to have him produced before a doctor and his mental condition ascertained, prior to the recording of his statement on the 16<sup>th</sup> of June 2015. Inspector Antoine who recorded his statement admits that he had not done so as he was unaware of the mental condition of the accused. He further admitted in his evidence that had he been aware of the mental condition of the accused, he would have produced the accused before a doctor prior to recording his statement.

[11] The evidence of the doctor is that she is unable to comment on his mental condition at the time of him committing the act and quite obviously at the time his statement was recorded as she had not examined him. This would not help the prosecution whose burden is to prove beyond reasonable doubt the statement was given voluntarily. In a situation where an accused has been having a long history of mental illness, in the absence of medical evidence, it would be dangerous to rely on the evidence of police officers only, to come a finding that the accused was in a proper state of mental health and had the mental ability or capability to give a statement voluntarily and ascertain and understand the nature of a caution or his constitutional rights. I therefore hold that in the absence of medical evidence to ascertain his mental condition at the time of the statement being recorded, the prosecution has failed to prove beyond reasonable doubt that the statement of the accused has been given voluntarily and hold that the statement under caution is inadmissible as evidence against the accused.

Signed, dated and delivered at Ile du Port on 7 March 2017

M Burhan  
**Judge of the Supreme Court**