

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO51/2013**

**[2017] SCSC 32**

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**THE REPUBLIC**

versus

**HANSEL LESPERANCE & ORS**  
Accused

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Heard: 23<sup>rd</sup> January 2017  
Counsel: Mr. D. Esparon for the Republic  
Mr. E. Chetty for the 1<sup>st</sup> Accused  
Mr. N. Gabriel for the 2<sup>nd</sup> Accused  
Mr. J. Camille for the 3<sup>rd</sup> Accused  
Mrs. A. Amesbury for the 4<sup>th</sup> Accused  
Ms. K. Domingue for the 5<sup>th</sup> Accused  
Delivered: 23<sup>rd</sup> January 2017

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**RULING Number I**

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Akiiki-Kiiza J

- [1]** The Prosecution is seeking to admit a charge and caution statement allegedly made by A3 to Police Officer Hoareau Timothy in the presence of Police Officer Maggie Dubel. However, the learned defense counsel, Mr. Camille, objected to the admission of the said statement, basically on 2 grounds:-

- a) That the accused was never explained her Constitutional Rights and in addition, she was denied her right to counsel.
- b) That the statement was not voluntarily obtained from A3, as the Police Officers had promised her to go home and be with her child if she made the statement.

[2] On the other hand, Mr. Esparon, the learned Counsel for the Prosecution, submitted to the effect that A3 was explained all his Constitutional Rights including the right to Counsel but she never requested for the services of counsel and went ahead to give a voluntary statement by way of narration to Mr. Timothy Hoareau.

That Mr. Hoareau never promised A3 anything and that Judges Rules strictly adhered too.

[3] In the premises, I held a trial within a trial (*Voir Dire*) to determine the circumstances under which the caution statement was made by A3.

[4] The prosecution called 2 witnesses. TWT1&TWT2.

Mr. Hoareau (TWT1) told the court that he interviewed A3 in the presence of Maggie Dubel. That he had cautioned A3 in the usual way and had told her about the charges of Robbery against her. That she decided to make the statement and never requested for counsel services and that the statement was recorded in Creole in a narrative form. That no threats or violence or any inducement or promises were made to her. After recording the statement to her she signaled its correctness by signing it six times in different places including the Caution.

He told Court further that, he knew A3 had come to CID at 11 am, and he took the statement from her at 9.30 pm at night. He denied pressurizing A3 to make a statement at all. This version was supported by Maggie Dubel, (TWT2) who had witnessed the recording of A3's statement.

Both witnesses denied any knowledge about A3's relatives and lawyers being denied access to her, before making the statement under caution.

[5] On her part, A3 told Court that Mr. Hoareau never explained the Constitutional Rights to her and that she was told to make a statement which she did. That she was told if she did

not make the statement, she will not see her child again but if she did then she will be allowed to go home. That, however, she had been told of the charges against her soon before she recorded a statement with Mr. Hoareau

- [6] Rebutting evidence was called by both sides regarding allegations of denying legal counsel to A3 and other accused persons by the Police. Mr. Jean Baptiste a Police Officer, denied any knowledge of instructing anybody including Mr. Henanth Kumar, Senior State Counsel, or Mr. Hoareau that the accused should be denied access to her counsel.
- [7] Also, Mr. Kumar Henanth denied receiving specific instructions from the Police to deny legal Counsels to the accused persons, though the record of proceedings from the Magistrates Court appeared to contain some statement to that effect. The contents of the Lower Court proceedings were confirmed by the presiding Magistrate, Mrs. Laura Pillay as the record of that to have transpired before her. She mentioned also that Mr. Gabriel and Mr. Camille had told her about denial by Police Officers access to their client upon their arrest.
- [8] The privy Counsel in the case of **IBRAHIM VS R [1914] AC 599 at Page 609** held, as per Lord Sumner that:-

*"It has long been established as a positive rule of English Criminal Law, that no statement by an accused is admissible in evidence against him unless it is shown by the Prosecution to have been voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority"*

In Seychelles, the Law on the admissibility of confession is not by Statute but by *English Common Law* as it stood before 1982, together with the *principles of Seychelles Chapter of Fundamental Human Rights and freedoms in the Seychellois Constitution and Seychellois settled case Law in the matter.*

The principles enunciated in this body of Law make it clear that before such statement can be admitted into evidence, the trial Judge has to satisfy himself that both the Judges Rules and the Constitutional rights of the accused have been satisfied. ( See the case of **HELENE BEAUCHAMP VS THE REPUBLIC SCA Cr. App 10/12**)

- [9] The Constitutional Rights of an accused person, are enshrined in *Article 18 (3) and 18 (4) of the Constitution*. These rights include the rights to counsel of his/her choice and a right to keep silent. These rights, have to be explained to the accused at the time of the arrest or detention or soon as is reasonably practicable.
- [10] In addition to the above, the arresting officer upon getting evidence against the accused implicating him in the commission of an offense, the Officer must caution him before putting any question to him relating to the offense. (*Practice Directions 2 of 1971, commonly known as the 'Judges' Rules*)
- [11] In the instant case, it was Mr. Camille's submission that Mr. Hoareau did not conform with the 'Judges' Rules and never cautioned A3, nor did he explain her Constitutional Rights regarding the right to counsel.
- In addition, that the Police Officers had threatened her with not seeing her child again or go home if she did not corporate and say something about the case.
- [12] During the Voir Dire, the Police Officers (Mr. Timothy Hoareau and Ms. Maggie Dubel ) vehemently and forcefully disagreed with what A3 had stated and they clearly asserted that, all her rights were explained to her, including the right to keep quiet and the right to counsel, and that she freely chose to make a statement freely without requesting for the services of her lawyers and she proceeded to give a narrative of what had happened. They denied any knowledge of threatening A3 not to allowed to go home and join her child unless she made a statement and that she had signed 6 different areas on the statement including the caution.

- [13] I have carefully considered all the evidence in the trial within a trial (*Voir Dire*). I have also critically analyzed the demeanors of all those who testified, regarding the circumstances during the recording of A3's statement. I have found the 2 Police Officers Hoareau and Dubel, truthful witnesses and were consistent throughout. They withstood rigorous Cross-examination at the hands of the able defense counsel. They maintained that they had complied with the requirements of the law before recording a statement for A3. They denied threatening or promising anything to A3 before she recorded the statement.
- [14] On the other hand, A3 never impressed me as a reliable or truthful witness. As pointed out by the learned prosecutor, she first denied being told why she was making the statement and charges against her. This was in both her examination in chief and cross-examination. However, at the end of her re- examination, she inexplicably admitted that the charges were explained to her soon before officer Hoareau Timothy had recorded a statement from her. I wonder why she took so long to reveal this crucial fact. This in my view corroborates testimonies of both Timothy Hoareau and Maggie Dubel that they had explained to A3 the charges and also all her Constitutional Rights including the right to counsel which is also part of *Article 18 (3) of the Constitution*. I see no reason why the Police Officers would conform with only part of the of the law.
- [15] As to the evidence of what took place at the Magistrate Court before Mrs. Laura Pillay, as per exhibit D1, this had nothing to do with the *Voir Dire* proceedings.
- [16] In my considered view, the best witness to be called during the *Voir Dire* proceedings would have been Mr. Gabriel and/or at least some relatives of the accused who are reported to have contacted him and Mr. Camille. What was allegedly stated by Mr. Camille before Mrs. Laura Pillay was mere allegations from the bar and not evidence as such. Also what Mr. Henanth Kumar had stated before the same Magistrate was secondary evidence only.

[17] In any case, the learned Magistrate acknowledged that she did not record whatever was being spoken in Court by Mr. Kumar, and Mr. Kumar appeared to dispute the contents of D1, regarding denying legal counsel to the accused persons.

In this respect, the evidence for both Mr. Kumar and Mrs. Pillay is not conclusive about the accuracy of what had actually had taken place during the 101 hearing in the Lower Court.

[18] I also dismiss A3's allegation that she had been told to talk or else they not let her go home as mere lies on her part.

I am convinced that she has realized the impact of her statement to the case, and has decided to change her mind and try to dispute and retract it.

[19] All in all, I dismiss the objection raised by the learned defense counsel on behalf of A3 and I find that the A3's statement was made in accordance with the law and is, therefore, admissible in evidence.

Signed, dated and delivered at Ile du Port on 23 January 2017

D Akiiki-Kiiza  
**Judge of the Supreme Court**