

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO51/2013

[2017] SCSC 33

THE REPUBLIC

versus

HANSEL LESPERANCE & ORS

Accused

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

RULING Number II

Akiiki-Kiiza J

[1] The prosecution is seeking to admit in evidence the charge and caution statement made by A4 to Police Officer Fred Malbrook on the 19th August 2013 at CID Police Head Quarters.

[2] The defence objected to its admission on the grounds that A4 was denied legal counsel, and that the statement at hand was not a confession *under Section 14 (3) of the Evidence Act*.

[3] Consequently I had to hold a trial within a trial (*Voir Dire*).

The prosecution called Mr. Malbrook as the person who had recorded the statement from A4. He told Court that he was with Mr. Jean Baptist at the time. That he had complied with the provision of the law, by explaining A4's Constitutional Rights including the rights to counsel, but that A4 did not request for services of counsel. That after recording A4's statement he had read it back to him who agreed with its content and he signed and he also counter signed it.

This version was more or less supported by Mr. John Baptiste as a witness to the recording of A4's charge and caution statement. That all this had taken place after Mr. Malbrook had cautioned A4 though both differed whether it was once or twice.

[4] The defence decided not to call A4 or any witness during the *Voir dire* hearing, which or course was within their rights.

[5] I have carefully reviewed the evidence during the trial within a trial and find the two prosecution witnesses largely consistent and truthful regarding what had transpired during the recording of the charge and caution statement from A4.

[6] The only inconsistency is with regard the number of times Mr. Malbrook had administered the caution. This in my Judgment is a minor detail.

Mr. Malbrook told Court that he had cautioned the accused after telling him that he was a robbery suspect. This I believe would be in line with 'Rule Number 1 of the Judges Rules'.

[7] After the evidence tending to implication an accused is got, then the officer must caution that suspect before putting anymore questions to him in relation to the offence. This is in accordance with Rule Number 2 of the Judges Rules.

- [8] The judges rules are meant for administrative purposes, they are not legal provisions. Failure to strictly abide by them is usually not fatal. (See **R Vs Steward [1970] 1 A.E. R 689**)
- [9] In any case no question of voluntariness was raised by the defence.
To my mind what is important is that the accused was cautioned after he had been told that he was arrested due to having taken part of the robbery. Mr. Malbrook told Court that he conformed with 'Rule number 2 of the Judges Rules'
- [10] As to whether the accused was told of his right to counsel both Mr. Malbrook and Mr. Jean Baptiste told Court that he was told but decided to waive that right as he never requested for on it.
- [11] As to whether A4 had specifically requested for Mr. Derjaques to attend to him as his personal attorney, there is no evidence to that effect before me. It was merely a statement from the bar which is not evidence.
- [12] All in all I overrule the objection to admit A4's statement under caution and I find the Prosecution has proved beyond reasonable doubt that the provision of law had been complied with by Mr. Malbrook and Mr. Baptiste.
It was a voluntary statement and hence admissible in evidence for prosecution.

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

D Akiiki-Kiiza
Judge of the Supreme Court