

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO51/2013

[2017] SCSC 34

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 III

Akiiki-Kiiza J

[1] At the time of tendering in the statement made by A1 by PW18, Mr. Jeffrey Jean Baptiste, Mr. Chetty the learned Counsel for him, objected to its admission, on the ground that it was banned by *Section 14 (3) of the Evidence Act*.

[2] Secondly that A1 was denied his right to legal counsel and that, he had been induced to make the statement with a promise to go home afterward.

I therefore, held a *Voir Dires*, to determine the circumstances under which A1 had made that statement.

[3] The prosecution called 2 witnesses. Mr. Jean Baptiste who recorded the statement from A1, and Mr. Timothy Hoareau, who had witnessed the exercise. Both told Court that they had followed the provisions of the law and procedure and denied inducing A1 to make that statement which he had made on his own free will. That on the 19 August 2013 he had cautioned A1 and had informed him about his Constitutional Rights including the right to counsel. That the accused decided to make a statement right away and which he had read back to A1 and A1 confirmed it as correct before signing it. He told Court further that he was not aware that one Octobre had promised A1 to go home if he made a statement and that he was not aware that any other Police Officer had prevented A1's lawyers to access him at the gate of CID Head Quarters. That as far as he was concerned he never prevented any lawyers from having access to A1 and that A1 never requested to have them.

This version was more or less corroborated by the testimony of Mr. Timothy Hoareau.

[4] On the other hand, A1 told Court that, on the 19th August 2013, he was arrested by the Police and taken to CID Head Quarters. That while there, he was asked to make a statement, but he asked for his lawyer first. That he had told this to one Octobre, who had insisted that he should make the statement because when he was stealing his lawyer was not present. That if he made the statement, then he would be allowed to go home. Then he agreed to make a statement to both Mr. Baptiste and Hoareau. However that he made the statement without telling him his Constitutional Rights first.

It was also agreed from both sides that the evidence of Mrs. Pillay, which had been given earlier in respect of A3, be adopted also for A1.

I have carefully gone through the evidence for both sides in this trial within a trial.

[5] As for *Section 14 (3) of the Evidence Act*, is concerned, the Court is not yet privy to the statement made by A1. I cannot know whether it is inculpatory or exculpatory in nature. This would only be possible after that statement had been admitted and read by the Court.

If it is found to be exculpatory in nature as maintained by Mr. Chetty, then it would not be held to be a confession and it would be ignored, despite its being admitted in evidence. As for the allegation regarding legal representation, it appears A1 knew his legal rights as he said he had requested for it but he was denied the same.

[6] The evidence of Mrs. Laura Pillay the Magistrate who handled the prosecution's application popularly known as 101 proceedings in the Magistrate Court regarding the accused in the substitutive case of robbery now before me, she said she recalled counsel Gabriel and Counsel Camille complaining that they had been denied access to the accused person. However, none of these lawyers were called as witnesses during the *Voir Dire* to substantiate these allegations as a primary source. Mrs. Laura Pillay did not find out as a fact or made a ruling to that effect during the 101 hearing before her. What exhibit D1 show is partly recorded proceedings whose accuracy appeared to be disputed by the prosecutor Mr. Henanth Kumar. Hence the 101 proceedings were in my opinion not conclusive as to what had happened.

[7] Both Police Officer stated that they had explained to A1 his Constitutional Rights including a caution and right to Counsel. That he decided to record a statement in absence of legal representation.

I see no reason to disbelieve them. They were consistent and had corroborated each other's testimony.

[8] On the other hand, A1 struck me as an unreliable person who was avoiding responsibility for making the statement to the Police Officers. Most likely he has now realized the full effect of his statement might have on his case and he is looking for a way out.

I, therefore, dismiss his allegations as mere lies.

[9] As to the promise to go home if he made the statement allegedly given by Mr. Octobre this was denied by the prosecution. Mr. Jean Baptiste and Mr. Hoareau also denied giving A1 that promise.

In the other hand even if this was done, that Mr. Octobre had promised A1 to go home if he made the statement it would have seized to operate at A1's mind given the fact that, Mr. Octobre met A1 much earlier in the afternoon and he made the statement to Jean Baptiste at 8 pm at night. In my Judgment the promise by then had seized to operate on his mind.

[10] All in all, I find that the prosecution had proved beyond reasonable doubt that, the statement by A1 was voluntarily made and in accordance with the law. I dismiss his denial and assertion as an afterthought.

The objection is accordingly overruled and s A1's statement made under caution as admissible.

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

D Akiiki-Kiiza
Judge of the Supreme Court