

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO22/2016

[2017] SCSC 51

THE REPUBLIC

versus

FRANCIS ERNESTA

First Accused

BRIAN MOTHE

Second Accused

KEVIN QUATRE

Third Accused

Heard: 19th January and 27th January 2017
Counsel: Mr. Chinnasamy Jayaraj, Assistant Principal State Counsel for the Republic
Mr. Clifford Andre Attorney at Law for the accused

Delivered: 30th January 2017

RULING

Burhan J

[1] This is a ruling in respect of a *voire dire* held regarding the admissibility of the statement of the 2nd accused Brian Mothe recorded by the officers of the NDEA (National Drug Enforcement Agency). Learned counsel for the accused objected to the production of the said statement as an exhibit, on the grounds that the statement was not admissible as it

was not a voluntary statement given by the accused. The main grounds urged by learned counsel were:

- a) The content of the statement was not that was given by the accused Mr. Mothe.
 - b) His constitutional rights were not read over to him and an opportunity was not given for him to contact a lawyer.
 - c) He was not informed of his right to a lawyer or the right to remain silent.
- [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] NDEA agent Mr. Egbert Payet giving evidence on behalf of the prosecution at the *voire dire* stated that the said statement from the accused Mr. Mothe was recorded by him on the 26th of March 2016 and he had cautioned the accused on his right to remain silent and his constitutional rights and the statement had commenced at 17.36 hrs. Mr. Payet in his evidence mentioned the details of the caution and constitutional rights read over to the accused. He had informed him of his right to a lawyer. The accused had wanted to give a statement without a lawyer. He stated the accused elected to give a statement voluntarily in Creole and wanted him to write it down. He further stated the statement was witnessed by agent Malvina. After recording the statement, it was read over to the accused and the accused was invited to make any additions and to remove anything from the statement but the accused had not done so and signed the statement. Agent Payet stated the accused had signed the statement 7 times.
- [4] Witness agent Egbert Payet denied allegations he had not read out to the accused his constitutional rights or caution. In his evidence agent Payet categorically stated the accused was cautioned and was informed of his constitutional rights to a lawyer and his right to remain silent but the accused had not wanted a lawyer but volunteered to give the statement. He denied suggestions he had not done so. He admitted he had given Mr. Mothe an opportunity to call his family after the statement was recorded on the 27th of March 2016.

- [5] Agent Johnny Malvina corroborated the evidence given by agent Egbert Payet and stated he witnessed the taking of the said statement under caution. He too stated at the time the statement was being taken the accused was calm and comfortable and had volunteered to give a statement and Mr. Payet had written it down in Creole. He further corroborated the fact that the statement was read over and explained to the accused and the accused had signed it in his presence. Thereafter the prosecution closed its case.
- [6] The accused Mr. Mothe gave evidence and denied that his constitutional rights were read over to him. He denied signing any document. He denied saying anything to Mr. Egbert Payet or Mr. Malvina. The NDEA chief had told him there were no lawyers and that they were the lawyers and they were dealing with him. He stated when the agents boarded the vessel he had been taken to the front and handcuffed. Under cross examination he denied he was telling lies. He stated he had been taken to hospital by the officers of the NDEA and denied he had signed a statement.
- [7] Having considered the entirety of the evidence led at the voire dire, it must first be noted that the voire is being held to determine whether the statement of the accused had been given voluntarily as the accused has retracted the statement on the grounds that it was not given voluntarily. It appears learned counsel also wishes to repudiate the contents of the statement. All these matters concerning repudiation of the statement will be dealt with as and when they arise as the trial progresses.
- [8] On consideration of the evidence of the prosecution, I find that the evidence of officer Egbert Payet in regard to the accused being informed of his constitutional rights and the caution being given to him prior to his statement being recorded, stands corroborated by the evidence of agent Johnny Malvina. It is clear that agent Payet had explained the right to a lawyer to the accused but the accused had not wanted a lawyer and wanted to give a statement and therefore, the necessity of offering the accused a telephone facility to contact his lawyer had not arisen as the accused had volunteered to give the statement in the absence of his lawyer. Though subject to lengthy cross examination, no material contradictions were observed in their evidence. I will therefore proceed to accept the evidence of the prosecution.

[9] The fact that the accused subsequently after the statement was recorded, contacted members of his family according to the entries in the occurrence book, does not affect the voluntariness of the statement as this court is satisfied beyond reasonable doubt that the relevant provisions of Constitution and the Judges' Rules had been followed by the recording officers prior to the recording of the statement of the accused. Further learned counsel in his objections at the time the statement under caution was being admitted has not raised any grounds in this particular *voire dire* that the accused was beaten up and this statement obtained by any form of threat or oppression. Further the sworn testimony of the officers indicate a statement was recorded from the accused and it is apparent that though the accused remained silent at the time his rights were explained at the time of arrest, as borne out by the entries in the occurrence book he had thereafter according to the evidence during the course of investigation, changed his mind and decided to give a statement.

[10] For the aforementioned reasons I proceed reject the contentions of the defence and as no material contradictions are observed in the evidence of the prosecution witnesses which has been tested by cross examination, I proceed to accept the evidence of the prosecution and am satisfied on the evidence before court that the prosecution has proved beyond reasonable doubt that the statement of the accused had been given voluntarily. I therefore hold that the statement is admissible as evidence in the case.

Signed, dated and delivered at Ile du Port on 30th January 2017

M Burhan
Judge of the Supreme Court