

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO25/2016

[2017] SCSC

THE REPUBLIC

versus

IMAM BAKSH TARANI

HATTAM MOTHASHIMINA

HOSEYN BAZDAR

Accused

Heard: 4 April 2017

Counsel: Mr. David Esparon, Acting Attorney General for the Republic
Mr. Clifford Andre Attorney at Law for the accused

Delivered: 12 May 2017

RULING

Burhan J

[1] The aforementioned three accused stand charged as follows:

Count 1

Importation of a Controlled Drug contrary to Section 3 of the Misuse of Drugs Act read with Section 26(1) (a) of the said Act and read with Section 23 of the Penal Code and punishable under Section 29 read with Second Schedule of the said Act.

Count 2

Trafficking in a Controlled Drug contrary to Section 5 read with Section 14(1) (c) (ii) and 26 (1) (a) of the Misuse of Drugs Act and further read with Section 15(3) of the Misuse of Drugs Act and punishable under Section 29 of the Misuse of Drugs Act, read with Second Schedule of the same Act.

Count 3

Importation of a Controlled Drug contrary to Section 3 of the Misuse of Drugs Act read with Section 26(1) (a) of the said Act and read with Section 23 of the Penal Code and punishable under Section 29 read with Second Schedule of the said Act.

Count 4

Trafficking in a Controlled Drug contrary to Section 5 of the Misuse of Drugs Act read with Section 14(1) (a) (i) and 26 (1)(a) of the Misuse of Drugs Act and further read with Section 15(3) of the Misuse of Drugs Act and punishable under Section 29 of the Misuse of Drugs Act, read with Second Schedule of the said Act.

[2] I have considered the submissions made by learned counsel Mr. Andre on behalf of the three accused at the close of the prosecution case, in regard to his contention that the three accused have no case to answer. I have also considered learned counsel for the prosecution's reply in respect of same.

[3] In the case of **R vs. Stiven 1971 SLR 137**, it was held what court has to consider at this stage is whether:

- a) there is no evidence to prove the essential elements of the offence charged.

- b) whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

[4] ***Archbold in Criminal Pleadings Evidence and Practice 2012 Edition 4-363*** sets out the principle in a no case to answer application.

“A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict”.

[5] The main contentions of learned counsel Mr. Andre on behalf of the accused are that:

- a) the evidence of the prosecution witnesses does not disclose that the controlled drug was for importation to the Seychelles but the evidence only indicates that the ship was on its way to Tanzania.
- b) the evidence of the NDEA (National Drug Enforcement Agency) officers do not disclose that there was any act of by the three accused of Trafficking which was witnessed by them at the time they boarded the vessel.
- c) It would be impossible to charge them for being in possession of the quantity of controlled drug as other than these three accused there were 11 other crew members manning the ship.
- d) the statement of the accused should not be accepted as despite the officers of the NDEA knowing there was a lawyer representing them, he was not informed that the accused were to give a statement.
- e) document P16 and P17 should be disregarded as there is a discrepancy in the age and therefore does not refer to the 1st accused and the arrest of the ship was wrong as they were only exercising their right to innocent passage through the Seychelles waters en route to Tanzania.

[6] Learned counsel for the prosecution contends that the ship was arrested in the Seychelles waters and therefore it is immaterial whether the ship was going to Tanzania or not. Further the defence claim that the ship was only exercising its right of innocent passage cannot be accepted as illegal or controlled drugs namely a quantity of 97.945.1 kilo grams of Diamorphine (Heroin) and 784.6 grams of Opium was found on it. I am inclined

to agree with learned counsel for the prosecution on these issues and that a ship ceases to have a right of innocent passage when it is boarded and controlled drugs referred to above are found aboard it.

[7] I have considered the evidence of the prosecution witnesses on the issues referred to by learned counsel for the defence. I observe that several witnesses namely Corporal Jerry John Cesar, Major Estico and agent Labiche have deponed to the fact that the vessel Al Mannsur on which all three accused were arrested was in the Seychelles waters close to Bird Island Ile aux Vaches. Further several agents of the NDEA agent Hussein Jaffar, agent Padayachy, agent Errol Ragain, have deponed to the fact that the controlled drugs set out in the charges were found on the vessel Al Mannsur, some in the compartment of the kitchen, in the engine room and anchor room of the vessel and their evidence implicates all the three accused in the recovery of the controlled drug. They have identified the respective exhibits recovered by them in open court.

[8] It is to be borne out that the evidence of the prosecution indicates that the 1st accused was the Captain of the ship, the 2nd accused the son of the owner of the ship and the 3rd accused had played an active part in recovering the controlled drug from the engine room of the vessel, indicating they all had knowledge of the fact that there was controlled drugs aboard this vessel. Further it is contention of the prosecution that the 1st accused in his statement under caution has admitted, he was the Captain of the crew and the prosecution has produced documents P16 and P17 to further establish this fact. The statement was admitted after a voire dire in which the objection of learned counsel for the defence about the failure of the officers of the NDEA to inform the lawyer was considered and dealt with. It appears that the prosecution is also relying on the presumptions contained in section 14 and 17 of the Misuse of Drugs Act CAP 133, to establish the charges of trafficking against the three accused.

[9] Though most of the aforementioned facts were challenged by the defence in cross examination, it cannot be said that the entire evidence of all the aforementioned witnesses, on these material aspects has been totally discredited by the said cross examination or is manifestly unreliable and the accused should be released at this stage of trial. Further even though material aspects of the evidence have been challenged by

learned counsel, it cannot be said there is no evidence to prove the essential elements of the offence.

[10] For the aforementioned reasons, this court is satisfied that a prima facie case exists in respect of the offences with which the three accused have been charged and there is no merit in the contention of learned defence counsel that the accused have no case to answer in respect of the charges framed against them.

[11] I therefore proceed to call for a defence from all three accused in respect of the charges framed against them.

Signed, dated and delivered at Ile du Port on 12 May 2017

M Burhan
Judge of the Supreme Court