

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 46/2011

[2017] SCSC 923

THE REPUBLIC

versus

DAVID BAKER

DOMINICO BANANE

Accused

Heard: 19 January, 10 July, 2017.
Counsel: V. Benjamin, Principal State Counsel for the Republic
N. Gabriel, B Hoareau for the accused
Delivered: 21 September 2017.

RULING

Dodin J

[1] Learned counsel for the 2nd accused objected to the admission of a statement recorded from the 2nd accused during the course of investigation of this case maintaining that the statement was made as a result of inducements and that the 2nd accused was not read his rights before the taking of the statement.

- [2] Learned counsel for the 2nd accused submitted that prior to the taking of the statement, the 2nd accused was interviewed by a superior officer of the NDEA, Niall Scully who promised him that he will be released if he gave a statement that the drug in question were his. Learned counsel submitted that in fact, the 2nd accused was released and went home on that day but the following day he was again arrested and told again by Mr Scully that he will be released if he gave a statement admitting that the drug was his. The 2nd accused relying on the inducement gave the statement which was recorded by S I Seeward.
- [3] Learned counsel further submitted that before the taking of the statement, S I Seeward did not read the 2nd accused his constitutional rights and also for that reason also the statement that he gave should not be admitted as evidence against him.
- [4] Learned counsel for the republic submitted that the 2nd accused was cautioned and read his constitutional rights by S I Seeward immediately prior to the taking of the under-caution statement. Learned counsel submitted that no threat or inducement was made towards the 2nd accused by Mr Scully or S I Seeward or Bella Azemia who witnessed the taking of the statement. Learned counsel submitted further that if Mr Scully spoke to the 2nd accused as the defence maintains, it was on the 1st October, 2011 and then the 2nd accused was released and went home without giving any statement. The 2nd accused gave a statement the next day, 2nd October, 2011 when he was taken back to the NDEA headquarters. Learned counsel submitted that this shows that the 2nd accused did not rely on any inducement made to him the previous day before he was released and gave his statement voluntarily.
- [5] The prosecution called S I Seeward who testified that he was on duty at the NDEA headquarters on the 2nd October, 2011 when he received instructions to record a statement from the 2nd accused, Dominico Banane. It was Sergeant Bella Azemia who conveyed the instructions to him. Together with Sgt Azemia, they went to the opposite building where the 2nd accused was being detained and after cautioning him, he recorded the statement which was witnessed by Sgt Azemia. He denied that Mr Niall Scully was present in the investigation room during the recording of the statement but admitted that he had seen Mr Scully's vehicle in the parking area both on the 1st and 2nd October, 2011.

- [6] The witness further maintained that no threat or inducement emanated from him or Sgt Azemia prior to or during the recording of the statement. Although he was aware that the 2nd accused had been arrested the day before, he was not aware if he had been released or if Mr Scully had spoken to the 2nd accused or if Mr Scully was involved in the investigation but during the time he was there MR Scully was not present in the room with them. The statement started at 1231 hours and ended at 1415 hours. The statement was then read over to the 2nd accused who signed without making any alteration. The witness signed and Sgt Azemia signed as witness.
- [7] Bella Azemia testified she was on duty at the NDEA headquarters on the 2nd October, 2011 and she was the investigating officer in this case. However she could not recall if she recorded the statement from the 2nd accused on that day. She recalled being present when a statement from David Baker, the 1st accused was recorded. She also recalled that Mr Niall Scully was present during the investigation of this case and that she swore an affidavit asking for the remand of the accused but other than that she could not remember the details.
- [8] Sigguy Marie an NDEA agent testified that he was involved in the operation leading the arrest of the accused persons in this case as team leader and that he had the opportunity to meet with the 2nd accused during that time. He testified that the 2nd accused appeared to be afraid but no threat or inducement was made to the 2nd accused by Mr Scully in his presence and that he did not witness anyone making threats or inducement to the 2nd accused. He admitted that there were times when he was not with the 2nd accused because he was also interviewing the 1st accused in the case and they were being kept separately.
- [9] The 2nd accused made a dock statement stating that on the 1st October, 2011, he was arrested and taken to the NDEA headquarters where he was placed in a cell and interviewed by agent Sigguy Marie. He did not know anything about the drug he was being questioned about. Later that same day, a white man name Scully questioned him about drugs and told him that if he did not tell him about the drugs he will be kept in detention and he will go to prison for a very long time. He stated that Mr Scully was very aggressive and at one point shoved him in the chest. He was by then very afraid. He was kept until 1230am then told he could go home. He had to go home on foot. The next day

at around 1030am NDEA agents came to his place and arrested him again and took him to NDEA headquarters and this time placed him in another office where Mr Scully was. Mr Scully told him that if he gave a statement he will be released and would not go to prison, he will not lose his job and will stay with his family. He was told that he only had to say what he had been told to say and he will be released. Bella Azemia then came out with another man who recorded the statement without giving any caution or reading him any rights. When he had given the statement they did not release him.

- [10] An under caution statement of an accused is admissible as evidence if such statement had been given voluntarily. In the case of Ibrahim v R [1914] AC 559, at 609, Lord Sumner defined the concept of voluntariness as follows:

“It has long been established as a positive rule of English Criminal law, that no statement by the accused is admissible against him unless it is shown by the prosecution to have been a 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.”

- [11] Lord Parker CJ in the case of Callis v Gunn [1964] 1QB 495 made the important point that

“ a fundamental principle of law that that no answer to a question and no statement is admissible unless it is shown by the prosecution not to have been obtained in an oppressive manner and to have been voluntary in the sense that it has not been obtained by threats or inducements.”

- [12] This Court in the case of Republic v Steven Maria, Criminal Side NO: 51 of 2010 also stated that:

“It is also a well accepted principle that each accused has to be looked at in accordance with his own temperament, characteristics and frailties when considering the voluntariness of that accused’s statement.”

- [13] It is necessary for the prosecution to satisfy the court that from the time of the arrest of the accused to the time the statement was taken, there was no threat, inducement or promise made which caused the accused in the circumstances he found himself in to give the said statement. In the case of Republic v Ralph Sonny Samedi Cr 13/15 this very Court stated that:

“It is not sufficient for the prosecution to show that only at the time of the

taking of the statement was no threat, inducement or promise made. This is especially crucial in cases where an accused has been arrested and kept for a considerable time without the court being apprised of his whereabouts and in whose custody he had been and if anything had happened in that interval.”

- [14] From the evidence before the Court, it is clear that there are some discrepancies in the testimonies of the witnesses for the prosecution. S I Seeward maintained that during the time he met with the 2nd accused and recorded his statement, Mr Niall Scully was not present in the room and only Bella Azemia and himself were in the room. This might well have been the case except for the fact that Bella Azemia maintained that she only recalled recording the statement of the 1st accused, David Baker and not of the 2nd accused. She also maintained that Mr Scully was present during the investigation although she could not be specific as to when Mr Scully was present and what he did.
- [15] The evidence of agent Sigguy Marie is consistent in so far as no threat or inducement was made to the 2nd accused in his presence but he also admitted that he would not know what happened in his absence as he was dealing with the two accused persons separately.
- [16] The 2nd accused made an unsworn statement that the inducements were made to him by Mr Niall Scully in the absence of the three witnesses who testified for the prosecution. Of course the best person who could have testified as to his role in the investigation is Mr Niall Scully, but he has left the jurisdiction. The witnesses who testified therefore could not fully contradict the 2nd accused and the evidence showed that there were times when none of the witnesses were with the 2nd accused and that the 2nd accused was not under their observations at all times.
- [17] It is for the prosecution to prove beyond a reasonable doubt that the events alleged by the accused in fact did not occur. It is not for the accused to prove that these events happened. If at the end of the prosecution’s evidence the Court is still left with a reasonable possibility that the events alleged could have taken place, then the prosecution has failed to discharge the burden of proof beyond reasonable doubt. Where there is reasonable doubt, such doubt must be resolved in favour of the accused. Where there are contradictions in the testimonies of the prosecution witnesses which also go to the root of

the matters in issue, such unresolved contradictions must be resolved in favour of the accused.

[18] Considering that the contradictions in the evidence of S I Seeward and Bella Azemia has not been satisfactorily resolved by any other witness' testimony, and that the accused statement appears to have much credibility, the Court must resolve the doubts as to whether the statement was given voluntarily in favour of the 2nd accused.

[19] Consequently I find that the statement was not given voluntarily as there was a high likelihood of the 2nd accused having been induced to do so by Mr Niall Scully in the absence of the witnesses who testified. Having so decided, I find it not necessary to make a further finding on the contention of whether the rights were read to the 2nd accused.

[20] I rule therefore that the statement recorded from the 2nd accused is not admissible as evidence in this case.

Signed, dated and delivered at Ile du Port on 20 September 2017

G Dodin
Judge of the Supreme Court