

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 62/2017

[2018] SCSC 555

THE REPUBLIC

versus

CLIFF EMMANUEL

First Accused

MARCO MATHIOT

Second Accused

Heard: 13 June 2018

Counsel: Mr. George Thachett, Assistant Principal State Counsel and Ms. Brigitte Confait Senior State Counsel for the Republic
Mr. Bernard Georges along with Mrs. Teeromoljee Attorney at Law for the First Accused
Mr. France Bonte Attorney at Law for the Second Accused

Delivered: 14 June 2018

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 Marco Mathiot, recorded by the officers of the Criminal Investigation Department. Learned counsel for the 2nd 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 2nd accused. The main ground challenging it's voluntariness urged by learned counsel for the 2nd accused was that the 2nd accused was promised and induced into a deal where he was told he would not be prosecuted, if he helped the police with their investigation.

[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] At the voire dire, Sub Inspector Timothy Hoareau gave evidence for the prosecution stating that on the 16th of November 2017, he had proceeded to the Beau Vallon police station where the 2nd accused was being detained and on reaching the station had proceeded to caution the 2nd accused and inform him of his constitutional rights and then interviewed him. Witness Hoareau in his evidence, explained the caution administered to the 2nd accused and constitutional rights read out to the 2nd accused. The 2nd accused had been invited to give a statement and he had opted for Mr. Hoareau to write the statement and witness had proceeded to record the statement in the form of a narrative.

[4] During the recording of the statement, Sergeant Brian Dogley had been present and witnessed the said statement. There was no one else present in the room. After recording the said statement which commenced at 20.00 hrs (8.00 p.m.) and ended at 21.58 hrs (9.58) p.m, he had read the statement back to the 2nd accused and asked him if there were any alteration or additions to be made. The 2nd accused had not made any and signed the statement in the presence of both officers. He categorically stated no promise, inducement or threat was made to the 2nd accused either before, during or after the taking of the statement. He further stated, the 2nd accused had signed the said statement in 12 different places and identified the places he had signed and witness further identified the statement written by him.

[5] Sergeant Brian Dogley who witnessed the recording of the statement, corroborated the details of the recording of the statement given by SI Hoareau. He stated that they had been informed by the Beau Vallon police that the accused wished to give a statement and they had gone to the station around 19.50 to 19.55 hrs. The 2nd accused had informed them he would like to see them privately and they were given the interview room at the police station, where the 2nd accused had informed them, he would like to tell the truth

and after cautioning him and explaining his constitutional rights, SI Hoareau had proceeded to take down his statement which the 2nd accused had given voluntarily. He had witnessed the taking of the statement and he too had signed the said statement. He corroborated the fact that there was no threat, promise or inducement either before, during or after the taking down of the statement. He too identified the statement taken from the 2nd accused. He further stated no subsequent complaints were made by the 2nd accused in regard to the recording of the said statement. Thereafter the prosecution closed its case.

[6] The 2nd accused gave evidence under oath admitting he had made a statement on the 25th of October 2017 and another statement on the 16th of November 2017. He stated he made a subsequent statement as he was asked to by officer Hoareau to give a statement in order for him to get a favour. He denied telling the Beau Vallon police that he wanted to give a statement and to call officer Timothy Hoareau. He stated that Officer Hoareau had come a few days earlier and told him that he would be given a favour, if he made a statement. In addition, Mr. Hoareau had told him, as he was young, he had a lot of opportunities in his future. On the day he came to take the statement, he had spoken nicely to him and told him he had learned the truth as Terry and Tirant had spoken to him and whether he was willing to give a statement that he will return the favour.

[7] I have considered the evidence led by the prosecution and the evidence of the 2nd accused. I find that the evidence of SI Hoareau is corroborated on material issues by the evidence of witness Sergeant Brian Dogley. Though both witnesses were subject to cross examination, no material contradictions were apparent. It is clear that the statement of the 2nd accused as admitted by all parties was recorded at the Beau Vallon police station and not at the CID headquarters at Bois de Rose as set out in document “voire dire A”. The evidence of both the prosecution witnesses and the 2nd accused confirm this fact.

[8] It is the contention of the 2nd accused that he was promised a favour that he would not be prosecuted if he gave a statement. Both prosecution witnesses categorically deny this fact. It is borne out by the evidence that some persons in this case, had been granted conditional offers in terms of section 61 A of the Criminal Procedure Code which learned counsel for the 2nd accused referred to as “deals”. I see nothing wrong as the law very

clearly provides for it but it is not the police who grant these conditional offers, the only person authorised to grant such conditional offers is the Attorney General. Therefore SI Timothy Hoareau is correct when he says, he would have not made such promise or inducement as he did not have the capacity to give “deals” (conditional offers) to accused persons.

[9] Further, there is no contemporaneous complaint made by the 2nd accused when he realised that he was not getting such a conditional offer, to the authorities or even to the Court to the effect that he had been promised or induced into giving his statement by the offer of not being prosecuted. Despite continued prosecution after giving his statement, even when he had the services of an Attorney at Law, he had not sought to complain. This indicates that at the time of giving the statement, he had done so on his own free will and voluntarily but is now attempting to retract it, by falsely stating it was obtained by the promise and inducement of not being prosecuted.

[10] I therefore proceed, to accept the evidence of the prosecution and reject the contention of the 2nd accused that he was promised and induced into giving the said statement, by the offer of not being prosecuted. I am satisfied on the evidence before court that the prosecution has proved beyond reasonable doubt that the statement of the 2nd accused dated 16th November 2017 had been given voluntarily. I therefore hold that the said statement is admissible as evidence and can be produced by the prosecution.

Signed, dated and delivered at Ile du Port on 14 June 2018

M Burhan
Judge of the Supreme Court