

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO36/2017**

**[2018] SCSC 861**

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**THE REPUBLIC**

versus

**STEVE JAMES RAGUIN**  
Accused

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Heard: 06 August 2018  
Counsel: Mr. Khalyaan Karunakaran, Senior State Counsel for the Republic  
Mr. Nichol Gabriel Attorney at Law for the Accused  
Delivered: 27 September 2018

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**JUDGMENT**

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**Burhan J**

[1] The accused Steve Ragain has been charged as follows:

**Count 1**

*Threatening and intimidating an NDEA Officer, contrary to Section 35(2) read with Section 35(3) and punishable under the Second Schedule of the Misuse of Drugs Act 2016.*

*Particulars of offence are that, Steve Ragain of Les Mamelles, alias “Blondy”, on 16<sup>th</sup> July 2017 at around 1920hrs, at Ile Perseverance, threatened NDEA Agent Robert*

*Padayachy who was on patrol with other agents, by swearing and stating, among other obscene things, that he was going to 'fuck him up' and that he should take care so that he doesn't 'disappear like Marvin', (alluding to one Marvin Asba who has been missing for almost a month).*

## **Count 2**

*Threatening and intimidating an NDEA Officer, contrary to Section 35(2) read with Section 35(3) and punishable under the Second Schedule of the Misuse of Drugs Act 2016*

*Particulars of offence are that, Steve Ragain of Les Mamelles, alias "Blondy", on 17<sup>th</sup> July 2017 at around 0930hrs, at Corgate Estate, threatened NDEA agents by telling Agent Ronny Joseph that there were those two agents in a Picanto (vehicle) whom he was going to "fuck up and cut them with a machete" and that he's already been in prison and made money with the Nepalese to "fuck them up".*

## **Count 3**

*Threatening and intimidating an NDEA Officer contrary to Section 35(2) read with Section 35(3) and punishable under the Second Schedule of the Misuse of Drugs Act 2016.*

*Particulars of offence are that, Steve Ragain of Les Mamelles, alias, "Blondy", on 25<sup>th</sup> July 2017 at his residence at Les Mamelles, threatened NDEA Agent Jude Volcere by telling him that he was 'a dead man' and that he was going to be beaten up, not by himself, but by someone else.*

## **Count 4**

*Using force against an NDEA Officer, contrary to Section 35(2) read with Section 35(3) and punishable under the second Schedule of the Misuse of Drugs Act 2016.*

*Particulars of offence are that, Steve Ragain of Les Mamelles, alias "Blondy", on 25<sup>th</sup> July 2017 at his residence at Les Mamelles, used force against NDEA agents investigating his prior threats, NDEA Agent Jude Volcere by pushing him away, and*

*resisting arrest, and causing superficial injuries to Agents Sandy Marie and Alexandre Cherry in the process.*

- [2] The prosecution opened its case by calling witness Robert Padayachee an officer attached to the Anti-Narcotics Bureau know earlier as the NDEA (National Drug Enforcement Agency). He stated he had accompanied his colleague, Mr Kerry Hoareau on his drive home for the purpose of driving back in the ANB vehicle he was using. On the way they had passed the home of Mr Ossama Kassim, an individual with whom they had had many encounters in their anti-narcotics enforcement work. At Mr Kassim's home, they were impeded in their drive by a silver Kia Sportage which was parked in the middle of the road. The vehicle had reversed so they could pass and then the accused Mr. Steve Ragain got down from the vehicle, and addressed Mr. Padayachee as "cunt of his mother". He further threatened to make Mr Padayachee "disappear like Marvin". As a crowd of his associates and Mr Kassim's neighbours gathered, the accused had jeered at the officers to get out of the vehicle so that he could assault them.
- [3] Witness stated they immediately left the scene and drove to the police station to file a report of the incident. Under cross examination, he stated that several prosecutions were brought against persons who verbally abused and threatened NDEA officers. For minor offences they received warnings but the accused's insulting and threatening conduct was more serious to the verbal abuse officers usual expect and endure. Witness further stated the accused had used the word "disappear" like Marvin and not the word "missing." Witness further stated that the accused was respectful when he was alone but arrogant and aggressive when surrounded by his friends or associates.
- [4] Witness Kerry Hoareau an ANB officer corroborated the evidence of witness Padayachee in that the vehicle they were going in was impeded by a silver Kia Sportage at Mr Kassim's home and he asked the accused who was driving it to remove the vehicle which he did and as they were passing the accused exited the car and referred to Agent Padayachee as "cunt of his mother". He also corroborated the fact that the accused stated he would make Mr Padayachee "disappear like Marvin". Witness admitted under cross examination the accused complied with his request to reverse and allowed them to pass.

- [5] Witness Jude Volcere an officer attached to the NDEA stated on the 25<sup>th</sup> of July, he received instructions from his superior, Mr Pierre Servina, that he was to arrest Mr Ragain for threatening two NDEA agents “on the 16<sup>th</sup> and 17<sup>th</sup> of July”. He was informed by agent Mellie that four officers had already been dispatched to Mr Ragain’s home, but that they had been unsuccessful in arresting him and needed assistance He and agent Servina had gone to the suspect’s home together immediately.
- [6] When they arrived at the suspect’s home, they observed the accused Mr Ragain was aggressively resisting arrest and hurling profanities at all of the officers. Officer Volcere and Servina assisted Agents Marie and Cherrie to handcuff the suspect behind his back and force him into the vehicle they had arrived in. Witness further stated he had read the suspect his rights and informed him of the offence for which he was being arrested before they drove him to the station. The accused had become suddenly aggressive in the car during the trip and threatened agent Volcere’s life by saying he was “a dead man” and that he would not do it, and the NDEA would not get him out of this. He had also used obscene language on him like cunt of your mother and called him gay. Witness Volcere claimed he has never been threatened in such a way during the course of his employment as an NDEA officer, and that it made him concerned and frightened because he has no protection outside of work. The accused also threw himself between the seats and tried to hit Volcere with his head while he was driving. Agent Servina restrained him until they reached the office and completed further formalities. Witness denied the allegations in cross examination that he had beaten the accused in the face after placing him in the car. He also denied verbally abusing the accused and braking the car suddenly, so that the accused would be hurled into the front of it.
- [7] Officer Sandy Marie a dog-handler at the NDEA stated he was instructed on the 25<sup>th</sup> July 2017 by Agent August Louise to travel to Les Mamelles to arrest Mr “Blondy” Ragain. He made this trip together with agents Cherry and Mellie. The officers found the accused sitting on his veranda and he resisted their attempts to arrest him, cursing at them and telling them that he had just left prison and was not going back. Mr Marie stated that he attempted to put handcuffs on Mr Ragain while the other agents attempted to restrain him and he believes he was scratched in the altercation with the accused while putting the handcuffs. The officers were aware that officers Volcere and Servina were on the way to

assist them and when they arrived they managed to arrest Ragain and put him in the police car. Officer Marie said he did not notice Ragain scratching them but that he saw his own scratch and that of officer Cherry. When he returned to the office, he visited the SPDF clinic in order for his scratch to be examined and the doctor made a report for him to take back to the office. Agent Marie maintained the fact that they were scratched by the accused at the time of handcuffing him.

[8] Agent Alexandre Cherry corroborated the fact that he was sent by Agent Servina to make the arrest along with agents Marie and Mellie and that the accused aggressively resisted arrest and swore at the officers until Servina and Volcere arrived and assisted them to arrest him. He stated it was Agent Mellie who had requested back-up. He stated that he too was scratched on the left hand and believes that it was human nails. He does not believe it was done by Marie, but by Ragain as he resisted arrest. He further corroborated the fact that he and Marie both went to the doctor for examination after the arrest.

[9] Under cross examination witness admitted that there was a 10-day delay before the arrest was made and admitted the accused did not attempt to run away, but he did swear at the officers.

[10] Witness Yves Leon stated he was a photographer at the NDEA. He produced the photos of agents Cherry and Marie after their altercation with the accused which showed the injuries on agents Marie and Cherry. He affirmed that there was blood on Marie's scratch, but none on Cherry's. He conceded that he did not test for blood, but states that he was certain that it was blood and not red ink. Witness Lieutenant Doctor P Gupta whose expertise was not contested stated that he works at the SPDF and produced the examination reports and confirmed that both agents Marie and Cherry suffered minor injuries, superficial scratches from a human nail. Under cross examination he conceded that the injuries were minor and not grievous, life-threatening or limb-threatening.

[11] Witness Mr Marius Jean an agent of the NDEA stated that on 17 July 2017, he was posted at Corgate Estate to conduct stop and searches of passing vehicles. On this day the accused stopped his Kia Sportage vehicle where Officers Jean and Joseph were stationed.

The officers had not stopped him. He proceeded to hurl profanities and threats at the officers. Mr Jean accepted the prosecutor's inference that the words must have been directed at both officers, but later during his testimony stated that he doubts that the words were directed at him since he and Mr. Ragain had never had any problems. He further stated that the threats were made with a calm almost playful demeanour that he doubts they were meant to be serious.

[12] Witness Mr. Ronny Joseph stated he did not have a clear recollection of the events of 17 July 2017 but recalls that he was stationed at Corgate Estate and was responsible for keeping people who did not live there away from the area. While being stationed there Steve Ragain drove by shouting that there were two NDEA agents who were constantly looking for trouble with him and that if they did not give him peace of mind he would "break their cunt". Witness identified the accused in Court and stated that he knew him as Steve Ragain because he had been a suspect in the NDEA office. He admitted the accused Mr Ragain did not name the two agents he was referring to and admitted that Mr Ragain did not threaten or insult him personally. He made no attempt to detain Mr Ragain.

[13] Witness Yanna Dupres stated she was with officer Joseph at the time of the alleged incident. She stated that a PC Joseph and PC Morel were also on the patrol with them. She corroborated the fact that the accused Mr Ragain briefly stopped his Kia Sportage where they were stationed and shouted that there were two guys in a grey Picanto giving him trouble and that he would "break the cunts of their mother with his machete". She stated the officers filed a report of the incident when they returned to the office.

[14] Thereafter the prosecution closed its case.

[15] The accused in defence made an unsworn statement from the dock and denied all the allegations against him. He called Myrah Sinon who stated that she was his girlfriend and the mother of his son. She stated that she was with him at the time of the incident on the 16<sup>th</sup> of July 2017. She stated the incident occurred as the NDEA officers were doing an illegal U turn and wanted the accused to reverse his vehicle and had used the word 'mother fucker' on him. He had responded using the same word. In regard to the incident of the 25<sup>th</sup> of July, she admitted that the agents had attempted to arrest him but had

refused to tell him why and he had resisted and told them they were harassing him. She admitted that over the years there had been ugly interactions between the accused and the officers of the NDEA.

[16] Thereafter the defence closed and both parties made submissions.

[17] On consideration of the evidence of the defence, I observe from the evidence of Myrah Sinon, that it was the NDEA agent who had called her boyfriend, the accused, a mother fucker first and her boyfriend the accused retaliated by calling him one too. However this is not supported by the unsworn statement given by the accused himself. Her defence that the agents who came to arrest the accused had not told him the reason they were arresting him and therefore the accused had resisted, is also not supported by the accused in his unsworn statement. I therefore reject the defence of the accused and his girl friend Myrah Sinon.

[18] It would be pertinent at this stage to set out the law as contained in section 35 of the Misuse of Drugs Act 2016 which reads as follows:

“(1) A person who –

(a) obstructs an officer or any other person in the exercise of any functions under this Act or regulations made thereunder;

(b) gives false information to an officer in respect of any investigation or prosecution under this Act, including information that is misleading by omission;

(c) breaches a travel restriction order or any requirements of Section 50; or

(d) without reasonable excuse, fails to comply with any other requirement of this Act or regulations made thereunder,

commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

- (2) A person who uses force, threats or intimidates or promises, offers or gives any undue gift, concession or other advantage to another person in order to prevent or obstruct an investigation by NDEA or police into any offence under this Act or any related money laundering offence commits an offence and is liable on conviction to the penalty specified in the Second Schedule.
- (3) Where an offence under subsection (2) is committed by or in relation to an officer, the Court shall treat the offence as aggravated in nature.”

[19] It is apparent therefore that the accused should have used force, threat or intimidated another person in order to prevent or obstruct an investigation into an offence under this Act.

[20] When one considers the evidence in respect of Count 1, it is apparent that at the time the accused uttered the words as set out in the said charge to the NDEA officers according to their own evidence, they were not investigating an offence under the Misuse of Drugs Act but according to the evidence of witness Agent Padayachee was on his way to drop Agent Kerry Hoareau at his place at Perseverance and bring the vehicle back. It was while he was doing so that the incident with the accused as set out in Count 1 occurred near th house of one Kassim. Therefore it appears that the essential element that the threat occurred in order to prevent or obstruct an investigation under the Act has not been proved by the prosecution for this offence to come under section 35(2) of the Misuse of Drugs Act.

[21] Further it is apparent that the officers namely Marius Jean, Ronny Joseph and Yanna Dupres stated that the ‘threats’ made by the accused on the 25<sup>th</sup> of July were in a calm and playful demeanour and were not directed at them. Further there is no evidence to indicate that they were conducting any investigation in respect of the earlier incident involving the two NDEA officers Agent Padayachee and Kerry Hoareau who he was apparently referring to, when he referred to “two agents in a Kia Picanto”. Therefore once again the prosecution has failed to establish an essential element that the threat or intimidation was in order to prevent or obstruct an investigation under the Act or was to a person who was conducting such an investigation under the Act. For the aforementioned reasons this Court is of the view that the essential elements as required by section 35(2)

of the Misuse of Drugs Act, have not been proved by the prosecution and therefore the prosecution has failed to prove Counts 1 and 2. The accused Steve Ragain is acquitted of Counts 1 and 2.

[22] However, when one considers the evidence of agent Jude Volcere, it is clear he had received instructions from his superior, Mr Pierre Servina, that he was to assist agent Mellie and four officers who had already been dispatched to Mr Ragain's home to arrest him , but that they had been unsuccessful in arresting him. When both he and Servina arrived at the suspect's home, they had observed the accused aggressively resisting arrest and hurling profanities at all of the officers. Officer Volcere and Servina assisted Agents Marie and Cherrie to handcuff the suspect behind his back and force him into the vehicle they had arrived in. Inside the vehicle the accused had become suddenly aggressive during the trip and threatened agent Volcere's life. Volcere categorically stated he had never been threatened in such a way during the course of his employment as an NDEA officer, and that it made him afraid because he has no protection outside of work.

[23] According to the evidence before Court the accused had also thrown himself between the seats and tried to hit Volcere with his head while Volcere was driving. Agent Servina restrained him until they reached the office and completed further formalities. The evidence of Officer Sandy Marie corroborated the fact that the accused had resisted arrest and cursed them telling them that he had just left prison and was not going back. It is apparent from the evidence of Mr. Marie that the injury occurred when he attempted to put handcuffs on Mr. Ragain while the other agents attempted to restrain him. He too corroborated the fact that agents Volcere and Servina came to assist them and with their assistance, they managed to arrest the accused and put him in the car. Agent Alexander Cherry corroborated the fact that the accused aggressively resisted arrest and swore at the officers until Servina and Volcere arrived and assisted them to arrest him. He stated that he too was scratched on the left hand and believes that it was human nail. He does not believe it was done by Marie, but by Ragain as he resisted arrest and corroborated the fact that he and Marie both went to the doctor for examination after the arrest.

[24] Witness Yves Leon stated he was a photographer at the NDEA. He produced the photos of agents Cherry and Marie after their altercation with the accused which showed the injuries on agents Marie and Cherry. He affirmed that there was blood on Marie's scratch, but none on Cherry's. Witness Lieutenant Doctor P Gupta produced the examination reports and confirmed that both agents Marie and Cherry suffered minor injuries, superficial scratches from a human nail. Under cross examination he conceded that the injuries are minor and not grievous, life-threatening or limb-threatening. Having considered the aforementioned corroborated evidence of the prosecution which is further corroborated by independent medical evidence, this Court will proceed to accept the evidence of these witnesses.

[25] Having considered the evidence as set out above this Court is satisfied that the prosecution has proved all the elements of the offence as contained in Counts 3 and Count 4 beyond reasonable doubt. Therefore the accused Steve Ragain is found guilty on Counts 3 and 4 and convicted of same.

Signed, dated and delivered at Ile du Port on 27 September 2018

M Burhan  
**Judge of the Supreme Court**