

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC ...
CO30/2018

In the matter between

THE REPUBLIC

(rep. by Lansinglu Rongmei & Mr Ananthj)

and

EMMANUEL JONATHAN SAFFRANCE

(rep. by Joel Camilles)

Accused

Neutral Citation: Republic v Emmanuel Saffrance CO30/2018 [2019] SCSC..... (18 April 2019)

Before: Govinden J

Summary: Trial within a trial. Objection of admissibility of a statement under caution
Not informing of the rights to Counsel. Statement admissible

Heard: 2 April 2019

Delivered: 18 April 2019

RULING

GOVINDEN J

- [1] Detective Sergeant Brian Dogley, the Investigating officer in this case whilst testifying in chief, testified that on the 17th April 2018 he took a statement under caution from the Accused person, the then suspect Emmanuel Saffrance, at the Bois De Rose CID Headquarters. And that the statement was witnessed by Detective Inspector David Belle.
- [2] Upon the Prosecution attempting to produce this statement under caution in evidence the Learned Defence Counsel objected to its production on the ground of involuntariness.
- [3] The Learned Defence Counsel Mr Joel Camille grounded his objection as follows:

- (a) That the statement was not given voluntarily and was not given as per the procedure.
 - (b) The accused person was not informed of his Constitutional rights.
 - (c) The accused person was tricked by the Police officers Dogley and Belle, more particularly Sergeant Dogley deliberately, improperly or in bad faith tricked his client into giving a statement a statement under caution which goes towards his client's right to be questioned fairly.
- [4] Mr Camille submitted that his grounds of objection is relying partially on the case of R versus Mason, 1988, WLR, Page 139.
- [5] In effect Mr Camille objections to the admissibility of the said statement under caution is one in which he is contesting the admissibility of the said statement essentially based on an abused of the Constitutional rights of the suspect and devices and tricks used by the two officers in extracting the statement from the suspect.
- [6] Upon this objection being made the Court proceeded into a "voire dire" on the admissibility of the said statement under caution, in the absence of the jury.
- [7] The Prosecution called two witnesses in the "voire dire" Sergeant Brian Dogley was the first witness to be called. He testified that he is attached to the Bois De Rose CID office. And that he has been in the Police force for 33 years, minus 3 years. He testified that he was on duty on the 17th of April 2018 and that he was working at the Bois De Rose CID Officer. He was appointed as the Head Investigating officer in this case. He went on to state that the accused who he identified in a dock identification in this Court was brought from the Anse Aux Pins Police Station for him to be interviewed.
- [8] Mr Saffrance was brought in his office, there he cautioned him for the offence of the murder. After cautioning him he informed the Accused person of his Constitutional rights. This included informing him of the offence for which he was suspected of committing, which was murder and his right to have a lawyer present and his right to remain silent.

- [9] According to the witness after that the Accused person informed him that he would say what had happened and he requested him to take it down in writing in creole.
- [10] The officer testified that at all material time when the statement was being taken, Detective Inspector David Belle was present as a witness and no one else. According to him the statement started at 1513 hours and ended at 1733 hours.
- [11] When the statement was completed it was read over to the Accused person and he was invited to make any alteration, addition and correction that he wanted. According to him the Accused person made two corrections and additions upon the request of the accused person which was marked on the statement as “A “ and “B”.
- [12] The witness testified that the statement was given in the narrative form and after it was given the accused was informed that he could correct, alter or add anything that he wished and after the correction was done the accused person signed his statement in many places on the said statement under caution. According to the witness before the signature was put on the statement a certification was written by him at the bottom of the statement. That the certification was also read to the accused person. The certificate is to the effect that the evidence that *“I have given to Sergeant Dogley in the evidence that I have given to Sergeant I have been informed that I can correct, alter or add anything and that the evidence is true and I have given it voluntarily.”*
- [13] According to this witness the general demeanour of the accused person shows that he was calm and not aggressive at the material time and that he had grown up with the accused person and always knew him as gentleman. Sergeant Dogley testified that he never threatened the Accused person and neither offered him any promises or inducements.
- [14] The witness was given the statement for identification and he identified the statement including the places where he said the Accused person signed the statement and where he signed and the witness signed. The statement was admitted as item P19.
- [15] The witness identified the terms of the caution he imparted to the accused person before the statement started which was to the effect *“you are not oblige to say anything unless you wish to say something, or whatever you say will be taken in writing and be given in*

evidence.” The witness denied applying any tricks to the accused person for him to give the statement under caution. He stated neither did he apply any force or give any promises or any other undue influences.

[16] Under cross examination witness Dogley denied that he informed the Accused that there was a complaint procedure that can be activated following giving of a statement under caution.

[17] The witness explained that he is on friendly terms with the Accused person as they were school mates and he had once lived at English River and they were neighbours at the material time. The witness maintained his evidence given in chief that the Accused person was brought from the Anse Aux Pins Police Station to the Boise De Rose Police Station and there in the room in the presence of Detective Inspector David Belle he has interviewed, caution and he was informed of all his relevant Constitutional rights.

[18] The witness insisted that the caution and the Constitutional rights were imparted to the Accused person and he thereafter decided to give a statement. The witness denied that any tricks were effected in order to extract the statement under caution. He denied vehemently that he informed the Accused person that interviewing without informing him of his Constitutional rights and caution was a formal procedure and that this was a straight forward matter.

[19] The witness denied that Mr Saffrance informed them that he needed the presence of Mr Joel Camille before he was to give the statement. The witness denied the fact that a caution has to be signed by the Accused person before he proceeded to give the statement as a whole. He insisted that the caution is signed by an accused person after the whole statement is completed and read over to him.

[20] Detective Inspector David Belle was the next witness called by the Republic. He testified that he was a Police officer until January 2019, when he retired. He had been in the Police Force for 43 years. On the 17th of April 2018 he was working in the CID office at Bois De Rose Avenue. He started his duties at 8.00 a.m onwards and he carried out some specific duties in regards to this case. He did so by witnessing the statement under

caution from the suspect Emmanuel Safrance. Inspector Belle testified that the Accused person was informed by the taker of the statement under caution, Sergeant Dogley, of the offence that he was suspected of, which was murder and the right to have a lawyer present and the right to remain silent and that this was before the statement was given.

[21] According to the witness when he was informed of his right the Accused person said that he did not need a lawyer and that he was ready to give a statement in writing. Inspector Belle testified that Sergeant Dogley recorded the time of the cautioning of the accused person which was 1510 hours the time. That the statement started, which was 1530 hours. And that the Accused person told his story and Sergeant Dogley wrote it down.

[22] Inspector Dogley identified the accused person in Court in a dock identification. According to him the statement was given in creole and he witnessed the statement taking and was present throughout the taking of the statement in that the statement ended at 1733 hours. That after the statement was completed the content of the statement was read back to the Accused person and he was invited to alter, correct or add anything that he wished. Whereas the accused person saw that two words were missing and this was added in the text of the statement in two places marked as "A" & "B" and put in addendum which was added on an A4 paper to indicate that they were added at "A" & "B" in the text.

[23] The witness to the statement taking testified that after the statement was completed it was read over to the accused person with the invitation to add, alter or correct anything. And subject to the correction, the Accused person signed the statement including the caution and certificate and he signed the statement as the witness signed the statement and the taker Brian Dogley then signed the said statement under caution.

[24] Item P19 was shown to Inspector Belle and he identified it as the statement taken by Sergeant Dogley from the Accused on the 17th of April 2018. Inspector Belle testified that neither he nor Sergeant Dogley threatened the Accused person in order for him to give his statement. He testified that neither did they force or use undue influence to extract the statement from the Accused person. He testified that neither of them also used coercion or pressure on the Accused person in order to extract the statement from him.

- [25] In his testimony, Sergeant Dogley testified that did not use any tricks on the Accused person in order to trick him into giving a statement and he considered that the statement was given voluntarily without any promises, threats or inducement.
- [26] The witness was cross examined thoroughly by Learned Defence Counsel. He testified that he did not inform the accused person of any existing policy of complaint that the latter needed to follow if he felt that the statement was wrongly taken.
- [27] As to the personal relationship between Sergeant Dogley and the Accused person, Inspector Belle testified that he was unaware as to whether the two were in good terms or were friends. The witness under cross examination maintained his position that the Accused person was informed of all his constitutional rights and that it was not true to say that the Accused person was informed that the statement taking was a straight forward procedure that did not need the imparting of Constitutional rights.
- [28] According to him the Constitutional rights that the accused person were informed of were informing him of the offence that he was suspected to have been committed, which is murder; the right to a lawyer and the right to remain silent.
- [29] According to the witness Sergeant Dogley informed the accused person of his Constitutional rights and further cautioned him prior to the statement taking. The witness categorically denied that the Accused person said that he was not going to give a statement unless he got access to his Counsel Mr Joel Camille. He maintained that the statement was voluntarily given and that the Accused person signed the statement after he was informed about the fact that he could add, alter, correct anything on the statement.
- [30] Inspector Belle maintained further that in law there was no need to have the Accused person signed the caution before the statement was recorded. Following the evidence of Detective Inspector Belle the Prosecution closed their case in the trial within a trial.
- [31] The Defence case was opened with the leading of the evidence of the Accused person under oath. Mr Jonathan Emmanuel Safrance testified that on the 17th of April 2018 he was brought at the CID Headquarters, at Bois De Rose, from the Anse Aux Pins Police Station. There he was brought in a room where there were 3 persons, 3 police officers

Sergeant Dogley, Inspector David Belle and another police officer who he knew by face. The latter left when the statement was being recorded.

[32] According to the accused person Sergeant Dogley got him to sit down and informed him “*Saffrance you were brought here regarding the death that happened at Montagne Posee.*” According to the accused person he then informed Sergeant Dogley that he has a lawyer whose name is Joel Camille and that he wanted his lawyer present. Dogley then asked him what was the phone number of Mr Camille and he answered that he does not know he does not recall. According to him Dogley then said that it is not a problem given that they were there he could give a statement. Feeling under pressure he said he gave up and told Dogley that he will give a statement to him.

[33] He goes on to state that all the statement was completed the statement was read back to him and he corrected it and signed it. According to the accused person he was however not informed of his Constitutional rights, especially his right to Counsel and his right to remain silent and neither was he cautioned. Thereafter, he was brought back to the Anse Aux Pins Police Station.

[34] In cross examination the Accused person testified that he never complained of the irregularity in the statement taking procedure to any authorities including the Court as he wanted to tell his lawyer Mr Camille, which he did at the first instance. The Accused person testified that that he knew Sergeant Dogley, who was a childhood friend and that Sergeant Dogley might not have made a trick on him for him to give the statement under caution. That Dogley might have made a mistake of forgot to read him his rights and this mistake could have been made as Sergeant Dogley was a human being.

[35] In their submissions Learned Counsel for the Republic submitted that both Sergeant Dogley and Inspector Belle’s evidence are cogent, reliable and non contradictory. It is their submission that both testified that all relevant constitutional rights were imparted to the Accused person and that he was cautioned. It is their submission that if there were any vices or irregularities in the statement taking the Accused had the ample opportunities to complain and he did not.

- [36] According to the Learned State Counsel the statement taking procedure was in accordance to law and the Constitution, with an interview taking place first then followed by a caution of the Accused person, and then informing him about his Constitutional rights to Counsel, right to remain silent and the offence that he was suspected of. That the Accused person chose freely to give a statement in creole that was read over to him and that was corrected on his behalf after it was given. That a certificate was made by Sergeant Dogley which was also read over to him and that the accused person signed the statement as correct, including both officers.
- [37] The Republic submitted that were no evidence of any tricks that had been played on the Accused person and that there was no coercion, threats, inducement, intimidation upon the Accused person in order for him to give the statement.
- [38] It is their submissions that the Accused person changed his story in the course of his testimony from saying that Sergeant Dogley intentionally and in bad faith failed to inform him of his rights to Counsel and therefore denied him Counsel to him saying that Sergeant Dogley could have made a genuine human mistake.
- [39] Accordingly, it is the submission of the Learned Counsel for the Republic that the statement has been made voluntarily beyond a reasonable doubt. On the other hand according to the Learned Defence Counsel the statement should not be admitted given the fact that the statement was not given voluntarily as things were done that have sapped the free will of the accused person. According to Counsel, in evidence, Dogley testified that he was not sure whether he informed the Accused person of his rights to Counsel and there is doubt as to whether such a right was imparted to the accused person. Learned Counsel said that he is not going on a breach of the Judge's Rules but a breach of fundamental Constitutional rights.
- [40] According to Learned Defence Counsel Mr Saffrance evidence was strong, cogent on the aspect that he was not informed of his rights to Counsel. As far as the lack of complain is concerned Defence Counsel maintained that this is not a legal requirement if one is to challenge the voluntariness of a statement under caution.

[41] Learned Counsel finally submitted that the fact that his client was read the statement corrected it and signed it are after the fact as this was done after the breach of his Constitutional rights to be informed of his right to Counsel.

[42] Having heard the evidence from the witnesses for the Republic and the evidence of the Accused person in this voire dire, bearing in mind the objection to the admissibility of the statement under caution and the grounds upon which his objection is based I am of the following opinion:-

(a) As far as the law is concerned, the burden of proof lies on the Republic to prove the admissibility of a statement under caution that is retracted as this one.

(b) The Accused person has nothing to prove, if anything, maybe he has an evidential burden. The Republic bears the burden of proof and this has to be established beyond a reasonable doubt.

(c) The Republic must establish beyond a reasonable doubt that the statement under caution was taken from the Accused person without any tricks or any other means such as coercion, intimidation, inducement or violence that have the potential to gap and have gapped the free will of the Accused person, so that he gave the statement involuntarily.

[43] In this case there is a further burden of the Republic to show beyond a reasonable doubt that the accused person was informed of his Constitutional rights to remain silent and his right to Counsel and the offence that he was suspected of.

[44] As far as the facts of this case is concerned, I find that the evidence of Sergeant Dogley and Inspector David Belle to be cogent, credible, consistent and reliable in all material particulars. Their evidence is corroborative and non contradictory and shows no reasonable doubts. They both testified that the Accused person was informed of all his Constitutional rights including his rights to Counsel and that the Accused person chose to give a statement in the absence of his Counsel and he was cautioned also.

- [45] I chose to believe their evidence in that regard I don't see any tricks or devices that was used or employed by both officers to extract this statement from the Accused person. At the outset he was cautioned and informed of his rights and he voluntarily in the absence of his Counsel decided to give a written statement that he corrected and signed.
- [46] On the other hand, I find that the evidence of the accused person to be contradictory. He testified first in chief that he was intentionally tricked into giving his statement under caution to the officers denying him his rights to Counsel seemingly in order for them to extract a statement from him.
- [47] However, under cross examination he testified that Sergeant Dogley may have failed to inform him of his rights through a genuine mistake. Evidence that the mistake could have been made is in total contradiction to the bad faith upon which his Counsel objected to this statement and his initial testimony that seem to impure that Sergeant Dogley and Inspector Belle tricked him into giving the statement.
- [48] It is my further opinion that there appear to be a genuine friendship or affection between Sergeant Brian Dogley and the Accused person and that Dogley would not have tricked in bad faith his friend into giving a statement through a denial of rights.
- [49] To the extent that the statement is given voluntarily and through the free will of the Accused person, to my mind it doesn't matter that he gave it to a friend. In my view I do not find that the friendship between Dogley and the Accused person was used in order to induce the accused person from giving a statement under caution. At any rate it is not the contention of the Defence that this was such.
- [50] Accordingly, I find that the statement under caution given to Sergeant Dogley by the accused person on the 17th of April 2018, now before the Court as item P17, to have been given voluntarily beyond a reasonable doubt and therefore can be admitted in evidence.
- [51] It also appeared that Mr Camille indicated that the accused person is repudiating the statement.

[52] On the basis of the evidence before the Court I find that beyond a reasonable doubt that the statement is made and given by the accused person and by no other person and therefore it can be admitted.

Signed, dated and delivered at Ile du Port 18 April 2018

Govinden J