

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC ...
CO27/2017

In the matter between:

THE REPUBLIC
(rep. by Mr Kumar)

and

ALBERT ALEXANDER GEERS
(rep. by Mr Joel Camille)

Accused

Neutral Citation: *R v Geers* (CO 27/2017) [2020] SCSC 973 (17 December 2020).

Before: Govinden CJ,

Summary: Trial within a trial, confession admitted in evidence

Heard: 14 December 2020

Delivered: 17 December 2020

RULING

GOVINDEN CJ

[1] This is a Ruling made following a trial within a trial held to determine admissibility of a verbal utterance allegedly made by the accused to the Police officers when they were searching his premises on the 30th of May 2017.

[2] It is alleged by officer Wayne Ernesta that during the search the accused Mr Alexander Geers had said to him that all the exhibits including the controlled drugs found in a bedroom and a bathroom belongs to him.

- [3] Upon this learned Defence Counsel Mr Joel Camille objected to the admissibility of the utterance coming into evidence on the ground that it is hearsay and that the admission has been extracted by oppression and in breach of his constitutional rights.
- [4] In the trial within a trial which unfold the Prosecution called 2 witnesses, both police officers. The first one is the exhibit officer Mr Pierre Servina and the other one is officer Wayne Ernesta. Mr Ernesta testified that he entered a house in which the accused was living on the 30th of May 2017 at around 8.p.m and there in the company of officer Pierre Servina we went into the bedroom and the bathroom of the said dwelling house were they had seen a lady gone into. Inside the bedroom and the bathroom they found suspected drug materials. The accused person who was not in those rooms was brought into the bedroom thereafter he was shown the suspected exhibits and the accused person answered that they belonged to him. After this reply according to this witness Agent Servina arrested the accused person and read over to him his constitutional rights and he was also arrested. He was arrested for committing an offence regarding controlled drugs. According to this witness nobody forced the accused to reply. And that the right that he was informed of was that he has a right to remain silent and he is not oblige to say anything for whatever he had to say could be taken in writing and placed in evidence and he was informed of the offence he was being charged with which is suspected in a controlled drugs for the herbal materials that was seized.
- [5] Agent Servina on the other hand testified that on the 30th of May 2017 at around 8 p.m inside the resident of Mrs Geers at Bel Ombre he sought the assistant of Agent Cherry to bring the accused into the bedroom and asked the accused person for whom the bedroom belonged to and the accused stated that it belonged to him. He then showed him all the exhibits that has been seized in the bedroom and the accused stated that all of these belongs to him. Following that he informed the accused person that he has been arrested and the offence for which he was arrested for which was one of possession of a controlled drug and he read him his constitutional rights. These were that he is not obliged to say anything for whatever he says will be taken in writing and placed in evidence. He also

says the accused remained silent after and he informed the accused as part of his right that he has a right to remain silent and he has a right to seek a lawyer of his own choice. Following the imparting of his right to him the accused person remained silent. Following that the scene was photographed and the accused was brought to the Central Police Station for detention. The officer testified that the arrest procedures of the accused person was not recorded in his note-book and that he assumed that it was recorded in the occurrence book or OB book instead.

[6] At the close of the Prosecution case the accused person elected to give evidence under oath. According to him during the search of the house the accused was always in handcuffs and he was placed in handcuff by the NDEA as soon as they entered the house and they found him in the attic not downstairs behind the sofa. He testified that he was not present when the search was carried out but was in the living room with his father. They then moved him near the main door and this is where all the evidence seized in the bedroom and bathroom were placed these includes big plastic bags everything was there beside the main door. "When he was asked "for who is this"? he replied "this is mine" and he continued by saying I had not seen my mother the whole time. She was in a room, I do not know what situation, this was another issue because my dad also came in and they did not allow him to see her.

[7] Further as regards who occupied the said bedroom, in the said house the accused said "*I think it was just understood and he could not recall but he thinks it was an assumption that the bedroom was seized as he was the only person living in the said house*". And they knew that means the Police knew that he was living in the house. According to him he was not informed that he was arrested for drug possession and he was informed whilst he was in the house and he was informed that he was in possession of the drugs only outside when the vehicles of the Police were being loaded with the exhibits.

Submission

[8] According to Learned Counsel for the defendant the evidence of the accused person shows both he and his mother were placed in the hallway of the house and the ANB were deciding who between the mother and the son were going to be charged and his client had

no option but to admit to the offence and therefore this could not have been voluntary. Secondly learned Counsel submitted that according to evidence of Servina it was only after ascertaining the occupant of the bedroom and having shown to his client the exhibit that his client had allegedly admitted that the drugs belonged to him. However the evidence in that regard according to Counsel is contradictory, for Wayne Ernesta only testified that he was informed about the offence of drugs. Further he submitted that regarding the imparting to the accused of his constitutional rights Counsel for the Prosecution did not cross examine his client on this issue and therefore the evidence of his client in that regards is deemed admitted.

[9] On the other hand Mr Kumar submitted that the evidence of the officer who arrested the accused person in the bedroom at his residence at Bel Ombre is clear. According to him it showed that the drugs that the accused correctly admitted having possessed the drugs and it also shows that he was informed of his rights.

[10] And further he submitted that neither the accused nor his mother were treated badly during this process. He also submitted that according to him he has managed to prove beyond a reasonable doubt that the accused admitted liability regarding the controlled drugs found in his bedroom on the 30th May 2017.

The Law

[11] It is trite law that an admission from an accused person in whatever form that it maybe has to fulfil certain conditionalities before it is allowed to come into evidence. In this case the accused person is alleged to have made a verbal admission to the effect that all the controlled drugs found in his bedroom and bathroom belonged to him. The defence objected to this admission based on the fact that it was hearsay, that it was given involuntarily and that it was given in breach of the accused constitutional rights. Upon the objection being tendered the Prosecution bore a burden of proving beyond a reasonable doubt that utterance was given in accordance to law and the Constitution.

Issues for determination

[12] The defence objection was clarified by the defence Counsel during the course of the proceeding. Initially he objected based on the ground of hearsay, hearsay in his submission was meant to say that the utterance did not fulfil the condition of admissibility of a statement given to a person in authority. As regards to the other objections, the involuntariness is founded on the fact that the accused was placed in a position of accepting the possession of the controlled drug given that the NDEA was placing on either his mother or himself the decision of who was in fact suspected for the offence. And according to him he choose to implicate himself given the dilemma that they had placed upon him. As regard the 3rd ground it is the defence submission that the two Police officers contradicted themselves when they testified as to what rights were imparted to the accused person.

Determination

[13] I have carefully considered the objection raised by the Defence Counsel and the response thereto. I have given due consideration to the facts that arose in the voire dire especially the evidence given under cross examination which imputes on the credibility of the Defence witnesses. I have also scrutinised the case law and the law regarding the admission of confessions by accused persons at the stage of investigation.

[14] Having done so I find that there has been no coercion, intimidation, force or the manoeuvres used by the agents of the ANB to sap the free will of the accused person. The accused testified that the only thing that sapped his free will and compel him to admit was the dilemma that he found himself in. That is either he admits to the facts that the exhibits were his or he saw his mother being charged with the offence instead. That appears to have been a mental dilemma of the accused person, it was found in his mind it was not something that the Police officers used as a stratagem that is telling him that if he does not admit then his mother will be charged. The mental pressure faced by the accused person was therefore not induced by the said officers but was the product of his own imagination. This cannot have been the result of the action of the Police officers therefore they did nothing to sap his free will and voluntariness.

[15] The 2nd objection relates to the fact that the constitutional rights were not properly imparted to the accused person. An accused upon being arrested or soon as reasonably thereafter has to be informed of his rights to Counsel, the offence that he is arrested for and his right to remain silent, this is a per his constitutional rights.

[16] The Judge's Rule II on the other hand call for the accused to be cautioned before any statement is taken from him and the caution is to the effect that he is not obliged to say anything however if he says anything whatever he says maybe taken down in writing and given in evidence. A caution is to be given to a suspect in such a way when the Police office has reasonable suspicion that it is the suspect who has committed the offence. Whilst it is mandatory to inform an accused person on his constitutional rights and that imputes the admissibility of his confession. According to case law the Judge's Rules is not absolute and it is discretionary and a statement given or taken contrary to the provisions of the rules maybe decided, maybe admitted in evidence on a case to case basis and depending on the facts of the case.

[17] I find in that regard that there is some inconsistency between the evidence of Wayne Ernesta and Pierre Servina in that regards. Wayne Ernesta appears to have assimilated the provisions of the Judge's Rule II without of the constitutional right and he does not relates to the right to remain silent and the right to retain Counsel in his evidence. On the other hand Pierre Servina being the officer that arrested the accused person testified that he read those rights to the accused he is more forthcoming and he categorically informed the Court that the accused was caution in term of Judge's Rule II and he was informed of all his rights as provided for under the Constitution in the bedroom after he was brought in that said room by officer Cherry.

[18] I have considered the evidence of both officers singly and collectively. Having done so I find that notwithstanding the inconsistencies their evidence taken as a whole shows that the facts that they related too are cogent and credible and they are witnesses of truth.

[19] Accordingly, I am of the view that the accused person were informed of all his rights under the constitution and he was cautioned in term of Judge's Rule II. This was done at the right time it was done as soon as evidence shows that there was a reasonable

suspicion of the suspect being in possession of the controlled drugs. Prior to the said utterance, there were two persons in the house, the accused and his mother and the facts did not show that it was the mother who was necessarily in possession of the said drugs.

[20] The accused evidence under oath to my mind given further credence to the fact that things happened the way that the police officer said. He gave to the Court the perception that he voluntarily admitted to the possession in order to save his mother the embarrassment of being charged. As regards to his denial that he was informed of his constitutional rights under caution I am of the view that he was not a witness of truth and that this was mere concoction.

[21] The utterance being an admission and a confession given by a suspect to a person in authority and it fulfils all the requirements or voluntariness in law. The first objection of the learned defence Counsel therefore cannot be uphold the accused person did not give hearsay statement it amounts to a confession and it's admissible.

[22] I rule accordingly.

Signed, dated and delivered at Ile du Port on 17 December 2020

Govinden R

Chief Justice