

IN SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 85
CR29/2019

THE REPUBLIC
(rep. by Joshua Revera)

Prosecution

and

ANDREW MEIN
(rep. by Joel Camille)

1st Accused

BRANDON HOAREAU
(rep. by Joel Camille)

2nd Accused

RICHARD SOURIS
(rep by Clifford Andre)

3rd Accused

Summary	<i>Republic v Andrew Mein & Ors</i> CR29 of 2019 [2021] SCSC 85 delivered on 27 th March 2021
Before:	Vidot J
Summary	Voire Dire
Heard:	23 rd March 2021
Delivered:	25 th March 2021

RULING

VIDOT J

- [1] This Ruling is in respect of a voire-dire regarding the admissibility of statements recorded from the first and second Accused by Police officers following their arrest. Learned Counsel for the Accused objected to the production of the Accused statements as exhibits on the grounds that the statements were not obtained voluntarily.

- [2] Mr. Joel Camille, Learned Counsel for both these Accused, based his objections on allegations that the confessions were extracted through coercion and oppression. He submitted that force was exerted on the Accused. He further submitted that the Accused were not informed of their constitutional rights which basically include, right to counsel, right to remain silent and right to be informed of the offences that were allegedly committed.
- [3] The Prosecution called the two officers that recorded and witnessed the taking of the statements. They are Corporal Samia Etienne (Lafleur) and WPC Natasha Harrison. The former recorded the statement under caution of Andrew Mein and witnessed the taking of statement of Brandon Hoareau and the latter recorded the statement of Brandon Hoareau and witnessed the recording of that of Andrew Mein. These witnesses categorically deny the allegations put forth by Mr. Camille.
- [4] Corporal Samia Etienne insists that the first Accused was cautioned and informed of his constitutional rights but that he stated that he did not need a lawyer and that he gave his statement voluntarily. After the recording of the statement, the same was read over to him and that he was invited to make any alterations, additions and corrections that he wished to do and he made none. Andrew Mein, it is stated by Corporal Etienne related his statement in a narrative form and in the Creole language. He signed the statement voluntarily.
- [5] Corporal Etienne insisted that there was no coercion applied on Andrew Mein on grounds on which the objection is being made. They are that the Accused did not make the statement voluntarily due to the fact that he was denied the right to have his lawyer present as he was not told that he had such right and the fact that he was under emotional pressure
- [6] WPC Harrison who witnessed the recording of the statement of Andrew Mein corroborated in most parts the testimony of Corporal Etienne. She corroborated Corporal Etienne's evidence in as far as the first Accused was cautioned and informed of his constitutional rights. She maintained as did Corporal Etienne that when they recorded the statements of both the first and second Accused that contrary to what was suggested by

the defence, they were the sole officers or persons present in the CID office at Beau-Vallon Police station. She also maintained that after the statement was read to the first Accused he accepted it as it was. She further denied defence allegations that Andrew Mein was tricked into giving a statement.

- [7] Mr. Andrew Mein gave evidence that on 22st May 2019, at 2.00 am he was brought to the Central Police Station in respect of an incident that happened next to the Barrel Discotheque. He was arrested and detained and later on informed that Corporal Etienne of the CID wanted to talk to him and he was brought to Beau-Vallon Police Station. He testified that he was under pressure but that he was informed of his right to remain silent and right to a phone call. He was not advised of his right to counsel. The officers at the CID put pressure on him and told him that should he agree to give a statement he will be released. He complained that he had not had any breakfast that day. He was only given something to eat at around 2 p.m.
- [8] As mentioned about the second Accused statement was recorded by Natasha Harrison and witnessed by Corporal Etienne. Both of them corroborated each other's testimony. They were the sole officers present in the CID office when Brandon Hoareau gave his statement under caution. In fact, Mr. Hoareau came to the station on his own volition.
- [9] They maintained that the accused gave the statement voluntarily and that Mr. Hoareau was cautioned and informed of his right to counsel and right to a phone call. He was also informed of his right to silence. Once the statement was recorded he was informed that he could alter, correct and add to the statement but that he did none. The statement was also recorded on 27th May 2019.,
- [10] Brandon Hoareau admitted to going to the Police Station on his own volition. When he arrived there they told him that there was an object with him that he needed to hand over, which he did. They queried as to what happened and Natasha Harrison wrote it down. Once he finished relating what had happened, he was told that Natasha Harrison was waiting for him downstairs to sign a piece of paper. Since he had been arrested he spent the night in jail and taken to the Magistrate Court the next day. He said that prior to recording the statement he was not informed of his Constitutional rights. He said that he

was tricked in giving the statement as Natasha Harrison had informed him that when he is taken to court she will ask for forgiveness for him from the Magistrate. That was promised to him the next day when he was going to court

- [11] It is trite that the Prosecution has to discharge the burden of establishing the case beyond reasonable doubt.
- [12] Under examination in chief, the first Accused complained that he was not provided with food prior to the recording of the statement. Yet, this not one of the grounds raised by his Counsel for objecting to the production of the statement. This was not a matter that was put to witnesses for the prosecution. That being the case, I have difficulty to believe that this is a correct recollection of events and will not attach any merit to this allegation.
- [13] In fact, in evidence, the only complaints made by Mr. Mein was that he was denied his right to Counsel and that pressure was placed on him. In fact he stated that all kinds of pressure was placed on him, but yet could identify any instances of pressure and what such pressure was. If anything what he described to Court was that the officers tricked him because they allegedly told him that he would be released in a week's time if he gave a statement. Furthermore, he refutes allegations put to witness for the Prosecution by his own Counsel, that at the time of his arrest and the time he presented himself before the Magistrate he had already retained Mr. Gabriel as his Attorney. He stated that it was much later that Mr. Gabriel represented him. Therefore any suggestion by Counsel for Mr. Mein to the Prosecution witnesses that they knew that Mr. Mein had retained Mr. Gabriel but still failed to inform him of his right a counsel prior to taking of the statement is devoid of credibility.
- [14] So, I have to consider further whether Mr. Mein was informed of his right to Counsel. That I believe is not the case. However, I accept suggestion from Counsel for the first and second Accused that they are young people and the youth are nowadays aware of their rights. So, there is no way that the Accused would have given their statements. On the contrary, if they were aware of their right, they would not have given statements in the event that they were not informed that they have right to Counsel, a right which counsel

suggested they were aware of. I believe prosecution witnesses who were coherent in their testimony that the first and second Accused were informed of such right.

[15] As regard allegation of trick being played on him in that he was informed by Corporal Etienne that he would be released after a week as hard to believe. I find the prosecution witnesses credible in that no such practice was exercised on the first Accused and I do not accept the testimony of that Accused.

[16] Mr. Hoareau on his part stated that he too was not informed on his right to counsel and tricks were exercised against him in that he was told that Natasha Harrison would ask for forgiveness from the Magistrate for him when he went to Court and that when he did go to court he looked at Natasha Harrison but she did nothing. That is something that I find inconceivable. Natasha's evidence is corroborated by Corporal Etienne's testimony in that this never happened.

[17] Mr. Hoareau also stated that once he had completed his statement he was asked to go downstairs from the CID office where Natasha Harrison was waiting for him to sign his statement. That again it not a credible piece of evidence. If Natasha was recording his statement, and there were only another officer in the room with them, why would the other officer, Corporal Etienne, tell him to go down where he will meet Natasha Harrison. The latter was already there in the office recording his statement. In my opinion, that lacks logic. The second Accused also complained that pressure was placed on him but failed to describe the nature of the same.

[18] The confession of an accused person is admissible in any proceedings and may be given in evidence against him provided it is relevant and is not excluded by the fact it was illegally obtained. It must not be obtained by oppression to the person who made it and not contrary to Judges Rules and the Constitution. In this case the issue in contention is that the Accused were under pressure and they were not informed as his right to counsel and right to remain silent, as guaranteed under Article 18(3) of the Constitution.


[19] I note that the Accused failed to make any contemporaneous complaint, not until now against the two officers who recorded and witnessed the recording of their statements that

they were denied their constitutional rights and that pressure was exerted upon them that they felt obliged to give the statements, see **Republic v Robin Paul Roaudy CO 24/2014 SCSC 220/2016** (delivered on 01st April 2016) Further there are no material contradictions observed in the evidence of prosecution witnesses which has been tested through cross examination. Therefore, I proceed to rule that the statement may be admitted as exhibit.

[20] I have given due consideration to the objections put forth by Counsel for the first and second Accused, but I do not find merit in such objections. I find that the Prosecution has discharged the necessary burden of proof. I believe that the statements were given voluntarily and therefore declare them admissible.

[21] I shall also take that opportunity to renew my demand that the Police adopt a more transparent means of recording confession from suspects. I strongly recommend that the taking of such statement is filmed. The cost of necessary equipment for that is not exorbitant. It is an investment that is necessary and one that will make police evidence more credible, fairer to suspects and one that will assist in the dispensation of justice.

Signed, dated and delivered at Ile du Port on 25th March 2021


M Vidot J