

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CO33/2020

In the matter between:

THE REPUBLIC
(rep. by Joshua Revera)

Republic

and

MANUEL FREMINOT
(rep. by Anthony Juliette)

Accused

Before: Burhan J
Heard: 21st February 2022
Delivered: 16th March 2022

ORDER

BURHAN J

[1] The accused Manuel Freminot stands charged as follows:

Count 1

Manslaughter, contrary to Section 192 of the Penal Code and punishable under Section 195 of the same Code.

[2] This is a ruling in respect of a *voire dire* held regarding the admissibility of the statement of the accused Manuel Freminot, recorded by the officers of the Criminal Investigation Department. Learned Counsel for the 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 accused. The main ground challenging the voluntariness of the statement

urged by learned counsel for the accused Mr. Juliette was that the accused was promised and induced with a promise that if he gave the said statement he would not be prosecuted and he would be able to go. The statement Mr. Juliette states was not a voluntary one.

[3] It is settled law that the burden is on the prosecution to prove beyond reasonable doubt that the said statement had been given voluntarily.

[4] At the voire dire, Sergeant Eulentine attached to the CID gave evidence for the prosecution stating that on the 21st of May 2020, she had proceeded to record the statement of the accused Manuel Freminot at the CID headquarters at Bois De Rose. She stated the statement was recorded in Creole and prior to the recording of the statement the accused had been cautioned and informed of his constitutional rights. He had agreed to give a statement and the statement was recorded in Creole by her in the presence of WPC Lina Lawen. She stated the caution she had given him and that the accused understood the caution and was fine at the time his statement was recorded. He had given the statement in story form. After recording the statement, she had read the statement back to him and asked him if there were any additions, amendments or removals he wished to make. He had done none but signed the statement in her presence.

[5] Under cross-examination, she admitted the incident had occurred on the 24th of March 2019 and she had recorded the statement of the accused on the 21 of May 2020. She stated she was unaware of whether the sister of the deceased had come to the police 14 months later and told the police she would bring a witness who would tell something about the case. She only received instructions to record the statement after cautioning the accused. She denied that she had told the accused when he said he had nothing to do with the killing “We know that. Just say you slapped her and left her on the beach and you will go home, and everything will be okay”. She also denied she told the accused “Slapping is not a problem. Just say you slapped her and then everything will be ok. I promise I will release you. You will not go before the court and go to jail” She further denied she told the accused “You can say that you slapped her and you were going to have sex with her on the beach and that is not a problem. We will let you go.” She also denied that she had told him to say “I slapped Catherine two times in her face and on the left side”. She admitted he had mentioned one Daniel in the statement but it was not her duty to follow it up and that it was the investigating officer who should have done so. She further denied

that the accused had stated he did not want to give a statement or that she told him “not to worry just say you slapped her and you were going to have sex with her and everything is okay we will let you go.”

[6] Witness Sergeant Lina Lawen stated she too was present at the time the accused was cautioned and his constitutional rights read out to him on the 21st of May 2020 at the CID headquarters at Bois De Rose. She corroborated the fact that after cautioning him and informing the accused of his constitutional rights, the accused had agreed to give a statement and had done so in story form. She further stated there was no promise, threat or inducement made to the accused at the time the statement was given. She had witnessed the statement being taken down and she too had signed the statement. She also corroborated the fact that the statement was read over and explained to the accused and an opportunity given to him to correct the statement and he had not signed the statement. She too denied that they had told the accused to give a statement saying that “you slapped that lady. You were going to have sex with her on the beach and we will let you go”

[7] The accused gave evidence under oath. He admitted a statement was taken from him on the said date and time and that he had signed the said statement. He stated when the police had come to take him in there were four of them. They told him that they were investigating a murder of a lady they had found on the beach at Anse La Mouche. They had told him they had no evidence against him. They had asked him to make a statement saying he was there and he had been drinking with the lady and had sex with her. If he did not give that statement Mr. Simeon had stated that he would end up in prison. At the statement he admitted his constitutional rights were read over to him. He was however denied answering a call from his mother and his request to take a call was also refused. He had then given the statement based on the things they had told him to say and then he signed it. He had done so because they had threatened to sentence him to life if he did not. He stated in the room where his statement was being recorded there were four persons.

[8] I have considered the evidence led by the prosecution and the evidence of the accused. I find that the evidence of Sergeant Eulentine is corroborated on material issues by the evidence of witness Officer Lina Lawen. Though both witnesses were subject to cross-examination, no

material contradictions were apparent. It is clear that the statement of the accused as admitted by all parties was recorded at the CID headquarters at Bois de Rose. The evidence of both the prosecution witnesses and the accused confirm this fact.

[9] It is the contention of the accused that he was asked to say by the police that he had slapped the lady (deceased) and had sex with her and left her on the beach and promised that he would not be prosecuted if he gave such a statement and would be allowed to go free. Both prosecution witnesses categorically deny this fact. I also observe that while learned counsel for the accused based his cross examination more on promise and inducement of being set free if he gave the statement as suggested by the police, the accused evidence differs in that he states he was threatened with life imprisonment if he did not. In addition to this discrepancy between the cross-examination and evidence of the accused, I also observe there is no contemporaneous complaint made by accused to higher authorities when he realised that he was asked to give a statement that was not true by the police or that he had been promised induced or even threatened into giving his statement. 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 in evidence that it was obtained by threat of life imprisonment.

[10] For the aforementioned reasons, I proceed to accept the evidence of the prosecution and reject the contention of the accused that he was promised, induced by the offer of not being prosecuted or even threatened into giving the said statement, by the threat of being sent for life imprisonment. I am satisfied on the evidence before court that the prosecution has proved beyond reasonable doubt that the statement of the accused has been given voluntarily.

[11] I therefore hold that the said statement of the accused recorded on the 21st of May 2020, is admissible as evidence and can be produced by the prosecution.

Signed, dated and delivered at Ile du Port on 16th March 2022.

M Burhan J