

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 386

CO 100/2021

In the matter between:

THE REPUBLIC

*(rep. by Georges Thachett
alongside Corrine Rose)*

Republic

and

KEN JEAN-CHARLES

(rep. by Oliver Chang Leng)

1st Accused

SINDU PAREKH

(rep. by Anthony Juliette)

2nd Accused

Before:	Burhan J
Heard:	11 th May 2022
Delivered:	12 th May 2022

ORDER

BURHAN J

- [1] It is clear that the main objections of learned Counsel for the 1st accused Mr. Chang Leng in regard to the production of exhibits RA 1 to RA5 are that a) the mobile phones were taken into custody without a search warrant and the accused was not present during the time of search. He also submits that only when a later search was done on the vehicle was a search warrant produced. The submissions made by Learned Counsel for the prosecution indicate that the accused was arrested and the vehicle he was travelling in searched soon after his arrest and the mobile phones RA/01 to RA/05 taken into custody for further investigation purposes in respect of a missing person who was subsequently

found dead. Learned Counsel for the prosecution further relied on the case of **Jean Francois Adrienne & Anr v Republic SCA 25& 26 of 2015** where it was held that non-compliance with procedural requirements pertaining to taking of finger prints was held to be not fatal and the case of **Khan v U.K (2001) 31 E.H.R.R. 10166 and R vP [2002] 1AC 146** where Lord Hobhouse of the House of Lords held “a defendant is not entitled to have unlawfully obtained evidence excluded simply because it was so obtained.”

- [2] I have considered the submissions made by both parties in the absence of the jury.
- [3] Section 15 and 18 of the CPC empowers a police officer to stop search any vehicle and arrest any person who is suspected of committing a cognisable offence. It is the view of this court that the mobile phones taken into custody by the police were ‘seized material’ at the time of arrest, necessary for investigative purposes into the offence of murder. It is not necessary for the police every time they arrest a suspect on reasonable grounds to get a search warrant prior to searching the vehicle the suspect is travelling in. Items taken into custody from accused at the time of his arrest are referred to as seized material for which no search warrant is required. On the facts before court, I am satisfied that the said items taken into custody namely the mobile phones found in the vehicle which was in his possession and being driven by the accused at the time of his arrest are exhibits very relevant and necessary for the continued investigation of the serious offence of murder. In my view any delays in taking the phones into custody from the accused/ suspect would cause grave prejudice and have serious consequences on the investigation, as the data in the phone could be erased instantly, thereby impeding or crippling the investigation.
- [4] I see nothing illegal or unlawful in the taking into custody of the said mobile phones without a search warrant. The probative value of the seizure of the said exhibits far outweighs any prejudice caused referred to by learned Counsel for the 1st accused. It is clear the police Officers were acting in good faith as they went to the extent of subsequently obtaining a warrant to take the other items into custody as admitted by learned Counsel Mr. Chang Leng. It cannot be said that such conduct in obtaining the mobile phones was unfair, reprehensible or oppressive or a trickery by the police that would affect the fairness of the proceedings. Refer **King v R [1969] 1AC 304 Jeffrey v**

Black [1978] QB 490. Where a search of a premises without warrant was done in the case of **Seeletso V State [1992] BLR 71 (HC)**, it was held such conduct would not necessarily render the evidence inadmissible, the test to be applied in considering such evidence was whether such evidence was “relevant to the matters in issue”. If it was, barring express statutory provisions to the contrary it would be admissible.

- [5] For the aforementioned reasons, I therefore proceed to reject the objections of learned Counsel for the 1st accused and grant permission for the prosecution to produce the mobile phones RA1 to RA 05 as exhibits as I am satisfied these exhibits are relevant to the matters in issue and have not been obtained by unfair, reprehensible, oppressive conduct or trickery by the police.

Signed, dated and delivered at Ile du Port on 12th May 2022.



M Burhan J