

IN THE SEYCHELLES COURT OF APPEAL

DAVID ANTOINE

APPELLANT

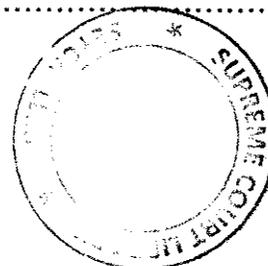
VERSUS

THE REPUBLIC

RESPONDENT

Criminal Appeal No. 26 of 1996

Appellant in person
Ms. K. Domingue for the Respondent



JUDGMENT OF THE COURT
Delivered by Silungwe, J.A

The appellant appeared before the Magistrates' Court on a charge containing two counts, namely, housebreaking and stealing from a dwelling house, contrary to Sections 289(a) and 264 (b) (respectively) of the Penal Code. The particulars of offence alleged that, on October 22, 1995, at La Misere, Mahe, he broke and entered the dwelling house of Mark Ballard with intent to steal and that he did steal therefrom items of property (belonging to the said Mark Ballard) whose value aggregated SR14,965/-. The appellant pleaded not guilty to both counts but was, after trial convicted as charged and sentenced to five years imprisonment on each count to run concurrently. Having been unsuccessful in his appeal to the Supreme Court against conviction only, he is now before us in pursuit of his appeal.

There is no dispute that Mr. Ballard's house, which had previously been secured, was broken into and the property stolen therefrom. The prosecution led evidence which pointed an accusing finger at the appellant, alleging, inter alia, that he had been found in possession of certain items of property stolen from Mr. Ballard's house, for instance, that he was awash with stolen alcoholic beverages which he shared with some prosecution witnesses. When he saw two police witnesses and Mr. Ballard approaching him, he bolted but was apprehended. He allegedly made a free and voluntary statement which was tendered in evidence.

In his defence, the appellant testified that he had neither broken into nor stolen any property from Mr. Ballard's house. He denied having taken to the heels at the sight of the approaching police and added that the police

were the ones who had run towards him for the purpose of effecting his arrest. Further, he denied having made any statement to the police.

The appellant represented himself during the proceedings before the Magistrates' Court; but he had the benefit of legal aid representation on appeal to the Supreme Court.

The appellant's main grounds of appeal filed on March 3, 1997 hinge on the repudiated confession. The first ground is really a complaint against the Senior Magistrate's failure to conduct a trial within a trial. It is the submission of Ms. Domingue, the learned State advocate, that this ground raises a question not of law, but of fact or mixed fact and law and that as the appellant is a party to an appeal from the Magistrates' Court against the decision of the Supreme Court in its appellate jurisdiction, the Court of Appeal has no jurisdiction to entertain the ground in terms of Section 326(1) of the Criminal Procedure Code, Cap. 54. In the view that we take, however, admissibility of a disputed confession is a question of law which falls outside the purview of the sub-section aforesaid.

The issue of the repudiated confession was fully argued by Mr. Juliette on behalf of the appellant when the case came up on appeal before the Supreme Court. In support of his arguments, he cited the cases of Guy Pool v The Republic (1974) S.C.A. R. 88; and Jean Gobin v The Republic, Criminal Appeal No. 14 of 1983. Having given due consideration to the submissions of learned counsel on both sides and to the authorities cited, the Learned Chief Justice made the following observations:

"In the present case, the learned Senior Magistrate quite rightly did not hold a trial within a trial because voluntariness was not in issue and the court had only to decide whether or not the repudiated statement was made. Although no express ruling was given by the learned Senior Magistrate, as he ought to on that issue, by implication, it is evident that the learned Senior Magistrate must have satisfied himself that the said repudiated statement had indeed been given by the appellant and hence he admitted it in evidence. The learned senior magistrate must have come to the conclusion before convicting in this case and that the impugned statement had been repudiated by the appellant in court because of its truth."

The foregoing is an accurate reflection of the legal position affecting a repudiated confession. Clearly, "the trial within a trial" procedure comes into play only for the purpose of deciding whether the alleged statement was made voluntarily, that is, whether the confession was made by the accused freely and without having been unduly influenced to make it. The issue whether it was made at all is a question of fact whose resolution rests on the credibility of witnesses and is for the court to decide. Thus, a denial by the accused, as in this case, that the alleged confession was ever made by him does not give rise to the invocation of the procedure in question.

The next ground calls for corroboration of the repudiated confession. The short answer to this ground is that there is no necessity for the trial court to look for corroboration in the case of a repudiated confession as it is competent to found a conviction solely on the confession of an accused. Conversely, however, a retracted confession requires corroboration: Roger Guy Pool v The Republic, supra.

The appellant questions why Constable Christine Talma who had recorded the warn and caution statement, witnessed and signed by Detective Constable Fred Leon, was not called to testify. This matter was never raised either at the appellant's trial or during the hearing of the appeal in the Supreme Court when the appellant was legally represented. A possible explanation for this lies in the fact that the matter was not in issue since the appellant had denied having ever made the confession. Ideally, Constable Talma should have been called as a prosecution witness.

Finally, the appellant complains that his counsel in the Supreme Court did not take his instructions. This is a matter between counsel and client the raising of which serves no useful purpose at this stage.

In conclusion, and for the reasons given, the appeal fails and is dismissed.



H. GOBURDHUN
President



A.M SILUNGWE
Justice of Appeal



E.O AYoola
Justice of Appeal

Given this ^{5th}..... day of April, 1997.