

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 59/2010

[2014] SCSC

THE REPUBLIC

versus

IVAN SUZETTE
Accused

Heard: 1 August 2012, 29 October 2012, 1 February 2013
Counsel: Mr. Vipin Benjamin, Assistant Principal State Counsel for the Republic
Mr. Basil Hoareau Attorney at Law for the accused
Delivered: 20 January 2014

JUDGMENT

Burhan J

[1] The accused in this case Ivan Suzette has been charged as follows;

Count 1

Statement of offence

Trafficking in a controlled drug contrary to Section 5 of the Misuse of Drugs Act as read with Section 14 (d) and 26 (1) (a) of the same as amended by Act 14 of 1994 and

punishable under the Second Schedule of the said Misuse of Drugs Act read with Section 29 of the same.

The particulars of offence are that Ivan Steve Suzette, on the 14th of September 2010, was trafficking in a Controlled drug by virtue of having been found in possession of 26.2 grams of Cannabis (Herbal materials) which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

- [2] The accused denied the charges and the prosecution called Mr. Raminoson who stated he was attached to the NDEA (National Drug Enforcement Agency) at the time of this incident and stated that on the 14th of September 2010 while they were patrolling the Beau Belle area and were coming out of a pathway on the beach they had seen a rasta man later identified as the accused. Witness had been with NDEA agents Siggy Marie and Terry Florentine at that time. Siguy Marie had called out to the accused telling him they were NDEA agents and had told him they were going to do a search on him. Witness had disembarked from the vehicle and removed the back pack which was on the back of the accused and also his phone when suddenly the accused had run away. The accused had run on a pathway where there was a water pump and while running had taken something from his pants and thrown it into a gutter.
- [3] Witness had run after him jumped into the gutter while agent Florentine had given chase to the accused. Witness had got into the gutter and having collected the piece of paper the accused had thrown was coming out of it when he had seen the accused coming back to pick up what he had thrown. He had arrested the accused and handcuffed him and by then agent Florentine had come. He had opened the paper in the presence of the accused and found it to contain herbal material suspected to be Cannabis. He had arrested the accused and taken him to the NDEA office.
- [4] Witness had placed the exhibit in an envelope sealed it and kept it in his locker after completing all procedures and taken it to the Government Analyst for analysis on the 17th of September 2010. He had handed over the exhibit to the Government Analyst Dr. Meghjee. He had received the exhibit back the same day after the analysis in a sealed

plastic bag. He also identified the exhibit namely the Cannabis herbal material produced as P8 as what he had taken into custody that day.

[5] Under cross examination witness admitted that it was Siguy Marie who wanted the accused searched and stated the accused had come back to collect the drug he had thrown in the gutter almost immediately. Witness NDEA agent Terry Florentine corroborated the evidence of witness Raminoson in respect of the detection, chase and finding of the controlled drug and the arrest of the accused. He confirmed the fact that he had given chase to the accused when he had run but had lost him as the accused was faster than him. He too identified the exhibit taken into custody that day. He described in detail the route taken by the accused during the chase. He admitted he had given up the chase after he had lost the accused.

[6] Agent Siguy Marie too corroborated the evidence of agent Raminoson and agent Florentine and stated he was conducting a routine patrol and was the team leader. He corroborated the fact that as agent Raminoson was going to search the accused he had run away. He also identified the accused as the person he arrested that day. Dr Megjhee too was called by the prosecution and she affirmed the fact that she had analysed the exhibit of herbal material brought to her by agent Raminoson and identified the herbal material as Cannabis. Her report was produced as P4. She stated that the herbal material had been properly weighed and that the balance she used was working properly. She also stated after being appointed as a Government Analyst in 1995 she was reappointed again from the 13th of September 2010 by a certificate issued to her dated 21st February 2011. It appears this was done as an additional precaution even though her 1995 certificate had not expired. The prosecution thereafter closed its case.

[7] The accused in defence made an unsworn statement from the dock. He stated on the said day he had gone to work when the NDEA agents had wanted to conduct a body search on him. They had not found anything on him so they had become brutal. He stated even on earlier occasions they had been brutal on him and harassed him in front of his clients. When they started to harass him he had run away. They had not seen him but had arrested

him later on. He denied that there were any drugs on him that day. Thereafter the defence closed its case and both parties made submissions.

[8] When one considers the evidence in this case it is apparent that the accused himself admits that he was searched by the officers of the NDEA on the 14th of September 2010 and admits he had run away but the reason was because the NDEA agents had become brutal on him. He also mentions that this had occurred several times earlier. However there is no contemporaneous complaint made of assault or of the continuing brutalities or harassment committed on him nor any contusion, laceration or injury shown by way of a medical report to court to indicate that he had been brutalised that day. It appears this is a last minute fabricated defence on his part and therefore this court will proceed to reject his defence.

[9] When one considers the evidence of the prosecution in this case the evidence of Raminoson is corroborated by that of agents Florentine and Siguy Marie in respect of the stopping and searching of the accused that day. As stated earlier the accused accepts these facts and even the fact he ran away. The evidence of agent Raminoson and Florentine is that the accused threw something into the gutter while running which Raminoson was able to retrieve. It is apparent that after eluding agent Florentine the accused had doubled back to collect the material which he had thrown away only to be arrested by officer Raminoson who was still present in the vicinity of where the object had been thrown.

[10] On opening the paper they had noticed herbal material inside which they suspected to be Cannabis. The evidence of Raminoson is corroborated by the evidence of agent Florentine and agent Siguy Marie. Their evidence under oath withstood intense and lengthy cross examination by learned counsel and no material contradictions were observed in their evidence that would make court disbelieve their evidence.

[11] The evidence of Raminoson is that after taking the accused into custody he had registered a case against him and taken the exhibit namely the herbal material placed it in an envelope and sealed it and placed it in his locker. He had thereafter taken it to the government analyst on the 17th of September 2010. He had handed over the exhibit to the

analyst which is confirmed by the evidence of the analyst Dr Meghjee. He had thereafter collected the exhibit the same day together with the report. The exhibit had been in a sealed evidence bag. Dr Meghjee giving evidence stated that she had received the exhibit for analysis from Raminoson and after weighing and analysing the exhibit she had identified the herbal material as Cannabis weighing 26.2 grams. She had prepared her report accordingly.

[12] The chain of custody of the exhibit is clearly established from the evidence of Raminoson and Dr. Meghjee. Dr. Meghjee identifies the exhibit in open court as that analysed by her and brought to her for analysis by Raminoson while Raminoson too identifies the herbal material in open court as that taken into custody from the gutter after the accused had thrown it and that handed over by him to the analyst. This court is satisfied that the chain of custody in respect of the detection, taking into custody, analysis and production in court of the exhibit has been established beyond reasonable doubt by the prosecution. The evidence of Dr. Meghjee clearly indicates beyond reasonable doubt she was properly authorised to conduct the analysis and this court is satisfied beyond reasonable doubt of her findings set out in her report.

[13] For all the aforementioned reasons this court proceeds to accept the corroborated evidence of the prosecution and reject the evidence of the defence. This court is satisfied beyond reasonable doubt that the accused was in possession of a quantity of 26.2 grams of Cannabis herbal material prior to him throwing it in the gutter.

[14] The concept of possession connotes two elements, the element of custody or mere possession and the element of knowledge as held in the case of *DPP v Brooks (1974) A.C. 862*. With regard to the element of knowledge it is evident that the accused while being searched had suddenly taken to his heels and while being chased by the officers of the NDEA thrown the controlled drug into a gutter. This clearly establishes the fact that the accused had knowledge of the fact he was in possession of a controlled drug.

[15] For the aforementioned reasons I am satisfied that the prosecution has established the elements of possession and knowledge against the accused beyond reasonable doubt. The quantity of Cannabis herbal material detected in the possession of the accused is 26.2

grams which attracts the rebuttable presumption that the accused was trafficking in the controlled drug. The accused has failed to rebut the said presumption.

[16] For the aforementioned reasons this court is satisfied that the prosecution has proved beyond reasonable all the elements of the charge as set out in the charge and finds the accused guilty of the charge and proceeds to convict him of same.

Signed, dated and delivered at Ile du Port on 20 January 2014

M Burhan
Judge of the Supreme Court