

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO75/2013

[2016] SCSC 773

THE REPUBLIC

versus

JEMMY ALLY
First Accused

KENNETH ISMAEL
Second Accused

Heard: 18 July 2016 and 19 September 2016
Counsel: Mr. George Thachett, Assistant Principal State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the first accused and second
accused
Delivered: 17
10 October 2016

RULING

Burhan J

- [1] I have considered the submissions made by learned counsel for the accused at the close of the prosecution case in regard to his contention that the accused has no case to answer. I have also considered the submissions of learned counsel for the prosecution in reply to same.

[2] Both the accused has been charged as follows:

Count 1

Kenneth Ismael

Possession of a controlled Drug contrary to Section 6(a) of the Misuse of Drugs Act read with Section 26 (1) (a) of the said Act and punishable under Section 29 read with Second Schedule of the Misuse of Drugs Act, the controlled drug being Heroin (Diamorphine) weighing 6.1 grams containing 1.5 grams of pure Heroin.

Count 2

Jemmy Ally

Aiding and abetting in the Possession of a controlled Drug contrary to Section 27(a) of the Misuse of Drugs Act read with Sections 6(a) and 26(1) (a) of the said Act and punishable under Section 29 read with Second Schedule of the Misuse of Drugs Act, the controlled drug being Heroin (Diamorphine) weighing 6.1 grams containing 1.5 grams of pure Heroin

[3] In the case of *R vs. Stiven 1971 SLR 137*, it was held what court has to consider at the stage of no case to answer is whether:

- a) *there is no evidence to prove the essential elements of the offence charged.*
- b) *whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.*

[4] *Archbold in Criminal Pleadings Evidence and Practice 2012 Edition 4-363* sets out the principle in a no case to answer application.

"A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict"

- [5] The main contentions of learned counsel on behalf of the accused is that:
- a) The controlled drug when brought to court was in an envelope which had a hole in it and the prosecution evidence revealed there was a break in the chain of custody.
 - b) The evidence of the prosecution witnesses in respect of the controlled drug being thrown out of the window in the car was contradictory in nature and therefore should not be accepted.

[6] I have considered the evidence before Court and observed that Government Analyst in his evidence stated that the exhibit seen in court was what he had analysed and identified as Heroin (Diamorphine). Officer Chantal Prea who brought the exhibit to court explained the slight damage to the envelope occurred due to a flooding at the Central police station. Learned Counsel for the prosecution showed in open court that the larger well wrapped exhibit inside the envelope, could not be removed from the small hole in the envelope. Further the Government Analyst also deponed to the fact that the seals placed by him on the exhibit had not been tampered with. On consideration of this evidence, I am satisfied at this stage that the prosecution has successfully explained the damage caused to the envelope and also the fact that the exhibits inside had not been tampered with.

[7] The main contention of the defence is that there are contradictions in the evidence of the police officers in regard to the throwing of the exhibit from within the moving car which was being chased by the police vehicle. It is apparent that the prosecution is not relying solely on the evidence of eyewitnesses but also on the confessionary statement of the 2nd accused that has been declared admissible after voire dire was held. Although there exists contradictions in the evidence of the prosecution, it cannot be said that the evidence of the prosecution witnesses have been totally discredited or that the evidence of the prosecution witnesses in its entirety is manifestly unreliable nor could it be said that the prosecution has failed to prove an essential element of the offence.

[8] In regard to whether these contradictions are of a material nature, it is best decided at the end of the case. For the aforementioned reasons, this Court is satisfied that a prima facie case exists against both the accused and proceeds to call for a defence from the accused in respect of the charges framed against them.

17th

Signed, dated and delivered at Ile du Port on ~~10~~ 17 October 2016

A handwritten signature in blue ink, followed by the date "17/10/2016." written in blue ink.

M Burhan
Judge of the Supreme Court