

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO33/2016

[2016] SCSC 864 .

THE REPUBLIC

versus

JUDE HARRY JOUBERT

Accused

Heard: 03rd November 2016
Counsel: Mr. G. Thatchett, Assistant Principal State Counsel for the Republic
Mr. C. Andre for the accused
Delivered: 03rd day of November 2016

RULING

Vidot J

[1] This is a Ruling in respect of the voire dire held regarding the admissibility of the statement of the accused recorded by Police officer, Sub-Inspector Janet Georges and witnessed by Inspector David Belle. When Learned Counsel for the Prosecution moved to produce the above mentioned statement, Learned Counsel for the Accused raised objection to its production on the ground that it was being retracted because it was not admissible for the following reasons;

- i. The accused was not informed of his Constitutional rights and in particular, his right to have a lawyer present before and at the time of making the statement;
- ii. There was no caution administered to the accused before and at the time of making the statement;
- iii. When being asked questions and his statement being recorded he could not see the answers that were being written down; and
- iv. The statement was not read back to him and that the accused was merely shown where he had to sign on the statement.

[2] I note from the grounds enumerated above, the accused had not raised voluntariness per se as a ground for the objection. This would have been necessary, especially whereby the accused seeks to retract the statement. However, reading from the grounds this court believes that impliedly, Counsel for the accused was addressing the issue of voluntariness of the statement.

[3] It is trite that the burden is on the prosecution to prove beyond reasonable doubt that the statement was given voluntarily.

[4] I also note that on the grounds raised in objection by Counsel for the accused, there was no allegation of oppression of the accused before, during and after the recording of the statement. Oppression would by definition includes, inhuman or degrading treatment and the use or threat of violence. The court remains alert nonetheless that part of the defence was relied on the existence of some form of oppression exerted on the accused and such evidence will be considered within that context.

[5] In order to establish its case that the statement was obtained voluntarily, the prosecution called 2 witnesses, namely the 2 police officers mentioned in paragraph 1 above. Sub-Inspector Janet Georges who recorded the statement stated that she had been involved in the investigation of the case from the early morning of the 20th June 2014. She had been working whole day and that from 8.44pm to 9.52 pm she recorded the statement of the

Accused. She stated that this was done at the CID office at Bois de Roses. She maintained that before recording the statement she identified herself to the accused as she was not in uniform at that time. Inspector David Belle also identified himself. She informed the accused of the reasons for the interview and in particular the charge that the accused was facing which is "murder" and was given information about the deceased. She proceeded to inform him of his constitutional right and that his right to counsel was explained to him. She said that the accused did not elect to exercise that right. The accused was also cautioned and was informed that he is not obliged to say anything, but that anything that he decides to say shall be recorded and used in evidence against him. Sub-Inspector Janet George also stated that the statement was recorded in the narrative and that once the statement was recorded the accused was asked if he wanted to read it but he invited the officer to read it over to him, which was done. Thereafter the accused was invited to make any correction, addition or alteration, to which he made none and he signed the statement at multiple places. The officer stated that the entire procedure was done in the Creole language.

[6] Inspector David Belle strongly corroborated the evidence of Sub-Inspector Janet George. Under cross-examination, it was forcefully put to both officers that there they were in effect not telling the truth to the court which was strenuously denied by them. It was suggested by the defence that the officers did not inform the accused of his constitutional rights and that no caution was administered at anytime. It was also put to them that they did not read over the statement to the accused and that the accused was not informed of his right to silence. All those suggestions were denied by both officers. The officers further denied claims that the accused was tired at that time and that pressure was exerted on him.

[7] The accused took the stand to give evidence on behalf of the defence. Under examination in-chief and cross examination he insisted that he was not informed of his constitutional rights and that no caution was administered. He was not made aware of his right to silence. He said that he was not informed of reasons for his arrest. He also maintained that the statement was never read to over to him. He said he was not informed of his right

to a lawyer but that he requested that his relative be informed and that his lawyer be called, but that was denied.

[8] The accused then raised some issues that were not part of the grounds of objection and which counsel for the prosecution did not cross-examine the police officers about. He alleged that he was not fed, that there was considerable pressure placed on him and that Inspector Belle insisted to him that he was the one who committed the offence and banged his hand on the table and insisted that he admits it and got him to sign the statement whilst covering the statement with his hand so that the accused could not see what was written on the statement. He said that Officer Janet Georges every now and then went out of the room to talk to Inspector Belle and that there was another black person present. He insisted that he was being shouted at and made to sign the statement. I note that these allegations were never put to the prosecution witnesses, which would have given them an opportunity to respond.

[9] It was held in **Ibrahim v R (1914) AC 559**, that no statement by the accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of an advantage exercised or held out by a person in authority. This is in agreement with the principle provided in the Judges Rules of England which has applicability to Seychelles, in that "it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held by a person in authority, or by oppression"

[10] Counsels for both the prosecution and the accused also relied on the case of **R v L. Uzice [1983-1987] 2 SCAR** wherein it was held that "a breach of the Judges Rules is not fatal *unless* (emphasis mine) it causes a miscarriage of justice". In making this Ruling, I have given ample consideration to this proposition. I have also given consideration to Mr. Andre's plea that the court should always keep in mind Article 19 of the Constitution and ensure that the accused's right to a fair hearing is always maintained. Indeed, it is this

court's position that justice can only be dispensed if the accused rights are always protected.

- [11] Having heard the witnesses I find that the police officers were very coherent in their evidence. I find that the defence did not manage under cross-examination to contradict them and I believe that they were being truthful and accept their testimony.
- [12] As stated above I also observed that certain allegations listed in paragraph 8 above was not raised in cross-examination of the police officers that could have further tested their veracity. I also note that that no contemporaneous complaint has been made by the accused against these officers as alleged in respect of the recording of the statement and as mentioned there was no material contradiction in the evidence of the prosecution witnesses.
- [13] I have taken into account that the accused had been arrested some 12 hours before the statement was taken from him but I don't believe that that affected his decision in giving a statement.
- [14] It should be noted that the failure to observe the Judges Rules does not necessarily render the confession inadmissible. This was the principle adopted in **R v Stewart (1970) 1 ALL ER 689**. It remains a matter for the trial judge to exercise his discretion as to whether the statement should be admitted or not considering the evidence as a whole; see **R v Osbourne (1973) 2 WLR 209**.
- [15] Again I remind myself that as per the case of **Leon v Republic 2 SCAR 188** that the onus the onus is always on the prosecution to prove beyond reasonable doubt, that the statement was obtained voluntarily and therefore admissible.
- [16] I therefore proceed to accept the evidence of the prosecution and hold that the prosecution has proved beyond reasonable doubt that statement of the accused has been given voluntarily and therefore the statement is declared admissible as evidence in this case.

Signed, dated and delivered at Ile du Port on 03rd day of November

M Vidot
Judge of the Supreme Court