

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 38/2012

[2014] SCSC

THE REPUBLIC

versus

JACQUELIN VICTORIN

Accused

Heard: 04/04/13, 08/04/13, 16/04/13, 21/05/13, 23/05/13, 29/05/13, 25/06/13,
27/06/13, 17/07/13, 18/07/13, 02/09/13, 03/09/13, 20/09/13, 14/11/13

Counsel: Mr. David Esparon, Principal State Counsel for the Republic
Mrs. Alexia Amesbury Attorney at Law for the accused

Delivered: 29 January 2013

JUDGMENT

Burhan J

[1] The accused Jacquelin Victorin 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 read with Section 14(d) of the Misuse of Drugs Act and Section 26(1)(a) of the same Act and punishable under Section 29 of the Misuse of Drugs Act read with the Second Schedule to the same Act.

The particulars of the offence are that, Jacquelin Victorin on the 24th June 2012 at Baie St. Anne, Praslin, was found in the possession of a controlled drug namely 234.6 grams of Cannabis (herbal Materials), which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

Count 2

Statement of offence

Conspiracy to commit the offence of trafficking in a Controlled Drug contrary to Section 28(a) of the Misuse of Drugs Act read with section 5 of the Misuse of Drugs Act and further read with Section 14 (d) and Section 26(1) (a) of the Misuse of Drugs Act and punishable under Section 29 of the Misuse of Drugs Act as read with Second Schedule of the same Act.

The particulars of the offence are that Jacquelin Victorin on or around the 24th June 2012 agreed with other persons known to the Republic namely Shirley Ragain, Jerina Marengo and Marie Brioche that a course of conduct shall be pursued which if pursued will necessarily amount to or involve the commission of an offence namely the offence of Trafficking in a controlled drug namely 234.6 grams of Cannabis (Herbal materials).

[2] The accused denied the charges and the prosecution called Yvon Leggaie who testified that he had been an agent of the NDEA (National Drug Enforcement Agency) for the past 5 years and stated that on the 24th of June 2012 he was on duty at La digue. He was working with other agents namely Moumou Bacco and Gomme and he had got information around 12.30 a.m that one Shirley Ragain had a lot of drugs with her. They had proceeded to the location around 12.45 a.m. and surrounded the house. He had instructed agents Gomme and Bacco to watch the windows and he and agent Moumou had entered through the window. They had got in and knocked on the bedroom but there was no response. Thereafter they had gone in and observed a woman sleeping on a bed and another on a mattress. He had identified himself as an NDEA agent. The two women had identified themselves, the one on the bed had said she was Jerina Marengo while the

one on the floor was Shirley Ragain. He stated there were two men namely Guillaume Bochie and Etienne Kilindo in a separate bedroom.

- [3] When they had searched under the bed in the room where the women were sleeping they had observed a carton box on it was written ‘ Au Plsir La Digue’. He had placed it on the bed and opened it in the presence of the 2 ladies and agent Moumou. Inside the carton box there was a black plastic wrapping a red plastic and inside the red plastic there was a white STC bag. Inside the STC bag there was a plastic with a white tape on it. The white plastic bag was wrapping a brown paper packet with a brown tape on it. He had opened this packet and observed inside there was herbal material which he suspected to be controlled drugs. He had placed both the ladies under arrest and informed them of their constitutional rights. It was around 10.00 a.m when he arrested them. He stated that Shirley Ragan had informed him that she had collected the controlled drug from Jacquelin Victorin (later identified as the accused) at his residence at La digue. The accused had informed her that Jerina Marengo would make arrangements for the transport of the controlled drug from La digue to Praslin.
- [4] Thereafter Jerina had informed them that she had already received a call from Jacquelin and he informed her to transport something for him from La digue to Praslin the next day. The ladies informed the agents that they were willing to co operate and deliver the drugs to the accused as he had had informed Jerina he would be waiting for them at Praslin to collect the drugs.
- [5] Witness had taken custody of the mobile phones of the two ladies for the purpose of investigations. He stated that the ladies were willing to co operate and he had taken possession of the carton box for the purpose of further investigations and controlled delivery. The agents had then prepared themselves for the controlled delivery which was to take place that day. A call had been received at 6.40 a.m from tel no 756235 to Shirley and she had thereafter informed agent Leggae that the accused had instructed her to come on the 7.00 a m boat that he would be waiting for her at Praslin.
- [6] Agent Leggae had thereafter gone with the others to the Ladigue police station and had registered a case against Shirley for the possession of controlled drug. It was CB 73/12. He had instructed Gomme and Bacco to take the NDEA boat to Praslin and prepare for

the controlled delivery which was to take place at Praslin. He had handed over the phones back to the ladies in the event of the accused calling them.

- [7] He had informed them to call the accused and tell him that they were unable to get “Cat Rose” but at that time a call had come into Shirley Ragain’s phone from the accused from the number 756235 and he had heard Shirley Ragain say that they did not get the 7.00 a.m boat but were going to come to Praslin on the 10.00 am boat. He had placed the carton box containing the controlled drug in a black plastic for easy carrying. He together with agent Moumou had thereafter boarded the 10.a.m Cat Rose. The parcel had been with Shirley Ragain. They had been sitting close to the ladies and a call was received to Jerina from the accused and she had signalled to them it was ok as she had wanted her to tell the accused they were coming with the parcel. All along he had a view of the exhibits.
- [8] When they disembarked at Praslin the accused was not seen by them. Shirley had made a sign for them to move on and they had followed her. While they were walking when they came near “Dream Yacht Charter” they had seen a woman coming in the direction of Shirley Ragain and Jerina with a carton box under her arm. They had heard her come up and ask the ladies whether they had a carton box for Mr. Victorin. Shirley had handed over the black plastic bag and contents to the lady who was later identified as Marie Brioché.
- [9] Marie Brioché had taken the black bag which contained the controlled drug and gone in the direction of “Dream Yacht Charter” towards her office and placed her carton box on the floor next to a step and placed the black plastic containing the controlled drug inside and walked away. The accused Jacquelin Victorin who had been standing near a car had been watching Marie Brioché from a distance and after she had left the box on the floor and walked away, he had come and collected the black plastic bag containing the controlled drugs and run quickly across the road and agent Leggai had run behind him.
- [10] On seeing agent Leggai, he had dropped the black bag containing the controlled drug and run in the direction his car was parked. Agent Leggai had picked up the parcel and placed it in his back pack and while doing so he had seen the accused embarking into a car. He had signalled to agents Gomme and Bacco to stop the car which they did and he had seen

them disembarking and putting him in the NDEA car. Agent Leggai had been running towards them when the accused had got out of the car and run away. Gomme and he had given chase to the accused and as they were coming close to the Sea View guest house he had jumped into the bush but agent Leggai had continued to follow him and when he knew agent Leggai was gaining on him the accused had gone to the sea but agent Leggai was able to apprehend him in the sea.

- [11] The accused was arrested cautioned and taken to Baie St Anne police station. The exhibits were kept in Agent Leggai's possession together with the mobile phones of Shirley, Jerina and Marie Brioché. Next to the office there was an NDEA station and he had shown the controlled drug to the accused and Marie Brioché. He produced the black plastic bags, the phones and the SIM cards of the phones. He stated that the accused had been arrested around 11.00 a.m. Thereafter they had all gone back to La digue and completed his books and then gone back to Mahe around 1.50 p.m. He and all the suspects had left to Mahe in the NDEA boat. The exhibits had been with him throughout. They had reached the office around 03.12 p.m. He had sealed the exhibits and placed in his locker. The registered CB number for the exhibit was the La digue number CB/ 73/12.
- [12] Witness had thereafter on the 25th day of June 2012 taken the exhibits for analysis to the Government Analyst and handed over the exhibit together with the letter of request. He had thereafter collected the exhibits on the 26th of June 2012 which after analysis had been sealed in a police evidence bag. Witness identified the controlled drug namely herbal material subsequently identified as Cannabis, in open court as that taken into custody by him from the accused when he had dropped the bag containing it and run away.
- [13] Witness Alexander Moumou corroborated the evidence of agent Leggae in respect of the finding of the controlled drug in the room where Shirley Ragain and Jerina Marengo were sleeping and the evidence in respect of the controlled delivery and the arrest of the accused Jaquelin Victorin in Praslin.
- [14] Witness Marie Brioché who was called by the prosecution testified to the fact that on the 24th of June 2012 when she was working at the Dream Yacht Charter, she received a call around 10 a.m from the accused also known as 'Yellow'. She stated her telephone

number was 2536200. He had said he was coming to collect something from the Cat Rose. She had met him in her office upstairs and when she was about to speak to him his phone had rung. She had gone to the pontoon and he had accompanied her. The accused had asked her to collect a parcel from two girls who were arriving on the Cat Rose.

- [15] When the Cat Rose had arrived he had pointed out the two girls to her. She described the girls one was thin and one was big. She had gone up to them and asked if they were bringing a parcel for Jacquelin and one of them had replied yes. The bigger one had pulled out a plastic bag and given it to her. She had taken the parcel which was in a black plastic bin liner and placed it in her carton box and made a signal for the accused to come and collect it as she had to go back to the pontoon. She stated she had signalled to him to indicate that she had kept the plastic bag in a carton near her office. She had gone to the pontoon and helped to untie the boat and she was returning when two NDEA officers had seized her.
- [16] Miss Jerina Marengo gave evidence that she was a skipper and that on the 23rd of June 2012 she had received a phone call from Jacquelin Victorin at 9.38 in the morning and told her he had a package for her to bring to him. She had asked what kind of package he had asked her to go to Shirley for her to know and he could not tell her anything on the phone. She had received the call on her mobile phone 2506439.
- [17] She stated that Jacquelin had two phone numbers which he used 2764445 and 2756235. Shirley Ragain had introduced her to him. She had met him around the 16th of June and was in communication with him between the period 16th and the 23rd June. On the 23rd she had taken the boat in the afternoon and arrived in La digue around 6.30 p.m. Shirley had come to meet her at the jetty and taken her to her house. She had shown her a carton box with herbal material. Witness identified the carton box in open court. She also identified the Cannabis herbal material in the box. She had told Shirley she was not going to take the passage to Jacquelin as it was dangerous stuff. They had gone to sleep that night with the box under the bed. She then described how the NDEA had arrived around 1.00 a.m and found the controlled drug. They had agreed to co operate with agent Leggae for the controlled delivery.

- [18] Witness stated she had phoned Jacquelin and told him they were bringing the package on the 7.30 a.m boat. She told that day she not only used her own phone but also the phone of Shirley Ragain 2563550. They had left for the controlled delivery and Shirley had been carrying the box in a black plastic bag. When the boat left at 10.00 she had phoned Jacquelin and informed him. When the boat had reached Praslin she had phoned Jacquelin and asked who was coming to collect the parcel. He had told to walk until the Dream Yacht office. She stated the agents were with them but she could not remember where but were close by. They had walked until the Dream Yacht office and there was a lady she knew as Marie who had called them and asked if there was a package for Victorin and Shirley had given the plastic bag to her containing the herbal material. Witness had continued on her way and did not know what had happened thereafter.
- [19] Witness Shirley Ragain in her evidence stated that on the 22nd of February she had received a call from the accused Jacquelin and he had wanted her to come and pick up something from his place. It was a plastic bag. He had told her to be careful with it. She had taken the plastic bag and put it in a carton on which was written Au Plasir. She too stated the accused had two telephone numbers namely 2756235 and 2764445. She did not see the contents but she suspected that the parcel contained drugs as he was wanted by the NDEA.
- [20] On the 23rd of June she received a call from Jerina and she had asked her if Jacquelin had given her something she had said yes. Around 5.00 Jerina had called her and informed her she was taking the boat to La digue and coming for an interview for a job and the accused had asked her to pick up the parcel from her and give it to him. Jerina had arrived at 6.30 p.m and they had a few beers and had gone to her house around 9.00 p.m.. She had bought the parcel and as Jerina had said she won't take it unless she sees it they had opened it.
- [21] It contained a drug which she thought was like Marijuana. She too admitted the fact that the NDEA had raided around 1.00 a. m in the morning. She thereafter gave evidence in respect of the controlled delivery done and she too stated that Marie Brioché had come and asked them whether Jacquelin had given them a parcel for Marie Brioché. She also affirmed the fact that the plastic bag was with her and she had handed it over to Marie

Brioche. Thereafter they had not seen what was happening and continued on their way and the accused had come in a car and asked them to get in. The agents had come and arrested all of them. Witness identified the exhibits in open court. It appears that Jerina was using the phone of Shirley Ragain as well to call Jacquelin.

[22] The prosecution also called Mr. Morel from Airtel to produce the telephone records and Mr Doffay from Cable and Wireless. Mr Morel gave evidence in respect of the telephone records of phone numbers 2756235, 2713124 and 2764445. He produced the details of incoming and outgoing calls from these telephone numbers between the period 1st June 2012 and 25 June 2012. The telephone numbers 2756235 and 2764445 according to the evidence of witnesses Jerina and Shirley were numbers used by the accused Jacquelin Victorin. While Marie Brioche stated her phone number was 2713124. The prosecution highlighted the dates and times calls were made between the phone numbers belonging to the accused and the telephone numbers of Jerina phone 2506439, Shirley Ragain's phone 2563550 and the phone of Marie Brioche 2713124. Similarly Mr. Doffay also produced telephone records of Cable and Wireless telephone numbers 2506439 (Jerina Marengo.), 2536200 (Marie Brioche) and 2563550 (Shirley Ragain) .

[23] Agent Bacco corroborated the evidence of agent Leggae in respect of the raid and detection made in the house where Shirley Ragain was staying at Au Plasir La digue but stated he had not entered inside the house but stood guard outside with agent Gomme. Agent Leggae had informed them he had made a successful detection of controlled drug. Thereafter the next day he and agent Gomme had received instructions from agent Leggae to go to Praslin.

[24] At Praslin they received instructions from agent Leggae of a controlled delivery. They had gone by car and parked it in the car park of Dream Yacht Charter. He had witnessed Marie Brioche taking the plastic bag and placing it in the carton box she had. They then saw Jacquelin Victorin who they had observed earlier walking around the port area and speaking on his phone. Marie Brioche had taken the carton box with the plastic bag inside and placed it near the steps of Dream Yacht Charter and gone away. They had seen the accused Jacquelin Victorin approach the carton box near the steps of Dream Yacht office collect the plastic bag in the carton box. He corroborated the evidence of Leggae in that

Victorin had dropped the parcel and run on seeing agent Leggae and he had run and got into a silver car. At that time agent Gomme had used the car they were in to block the path of the vehicle of the accused. Witness had been with agent Leggae and agent Moumou. The accused Victorin had been placed in the car but the moment agent Gomme went to the driver's side to get into the vehicle the accused Victorin had got out of the car and run away. Agent Leggae and Gomme pursued the accused and he was instructed to assist Moumou.

- [25] The Government Analyst stated he had received the exhibits in a sealed state from agent Leggae on the 25th of June 2012 together with the request letter. He had verified the items after opening the seals signed and accepted them. He described the items he had received. He had proceeded to analyse the herbal material. He had commenced by first weighing the exhibit and noted the weight as 234.6 grams. He described the various tests done by him during the analysis and stated he identified the exhibit as Cannabis net weight being 234.6 grams. After analysis he had placed the exhibits in an evidence bag sealed it and handed it over to agent Leggae on the 26th of June 2012. On viewing the exhibits in open court he stated his seals were still intact. He thereafter opened the seals in open court and identified the exhibits and the Herbal material as that brought to him for analysis by agent Leggai and that analysed by him and identified as Cannabis. This was the case for the prosecution.
- [26] The accused in defence gave evidence under oath. He stated he was living at Baie St Anne Praslin and he had a spare part shop and accessories and was a marine mechanic. He stated he had two boats one named Tranquil and the other Shakespeare. He stated he usually came to La digue by boat. He was having a girl friend in La digue but that broke up. He denied he had given a consignment of drugs to Shirley and stated he was on Praslin that day. He admitted calling Shirley and Jerina but said it was about his business.
- [27] He stated when they were arrested Shirley and Jerina had told him that Yvon Leggae had given the drugs. He stated that on the 24th of June 2012 as usual he went to the jetty. On that day he had seen the ferry arriving and at that time had seen a person called Wills Ernesta who owed him money. Ernesta had said the money was not ready but to go with him and he will give it to him. While going in the car Shirley and Jerina had stopped the

car. They had opened the door and got in. They had told him these people have given something to be given to you. Shirley had said a police officer had given but they had nothing in their hands.

[28] He had noticed a vehicle at the back which he had noticed earlier in the car park. Inside the vehicle were two agents Baccoco and Gomme. They had stopped his car and put him into their vehicle after Gomme had sworn at him. Will was also put in the vehicle. They had left the two women. At the T junction Gomme had got down and opened the door and told him they didn't need him he could go. Then a Terios jeep had come at full speed and Leggae and Moumou had got down and had pointed a pistol at him. He had run down a road and into the sea. They had hit him and punched him and sprayed tear gas on him. He was handcuffed and taken to the police station. He stated he had not seen any box until it was brought to court. He admitted meeting Mario Broche earlier on in the day and that often she would lend him the car to use.

[29] The other witness for the accused Wills Ernesta stated he knew the accused and he had come in the same boat as the girls and had noticed they had nothing with them. He had also seen Leggae and he too had nothing with him. There was a vehicle arranged for him so after getting down he had gone to get into it. The accused had put his hand into his pocket and taken his phone and SR35 as he owed him SR 300. He had told the accused he was going to Anse Kerlan and would get some money to give him. Jacquelin had got in the vehicle and two girls had flagged their vehicle and got in. Then a vehicle had come and stopped in front of them. Both of them were put in the NDEA car. The two girls were removed from his car but he did not know what happened to them.

[30] The driver of their vehicle the NDEA officer received a phone call and then he had opened the door and asked Victorin to get down. They had driven off with him and he had been taken to the jetty and to Baie St Anne where he was detained. The next defence witness ASP Praslin produced the occurrence book entry of 24th June 2012, 11.46 a.m which referred to the arrest of Jacquelin Victorin, Marie Brioché, Jerina Marengo and Shirley Ragain who all were brought to Baie St Anne police station, He stated that there were no mention about any exhibits. Another witness Sandy Dias stated that she did not stay in La digue but in Mahe and if Jerina had said she had come to see her she would be

lying. She admitted she stayed in Ladigue a long time ago. Mr. Terry Songoire for the defence stated that on the 24th of June he was based at Seychelles Port Authority and he had seen the accused that day. The accused had taken a man out of the car and searched him and let him go. When the car was leaving the accused shouted at the car and it stopped and the accused got into the back seat. Under cross examination he stated it was a busy day and it could have been somebody else and not the accused. Thereafter the defence closed its case.

- [31] Having thus carefully analysed the evidence in this case, it is apparent that the defence of the accused is that the controlled drug found by the agents of the NDEA belonged to Shirley Ragain and she had in order to escape prosecution, stated the controlled drug in this case namely Cannabis herbal material belonged to the accused Jacquelin Victorin. It appears from the line of cross examination that Jerina Marengo a lady friend of hers had assisted her in attempting to deliver the controlled drug to the accused to falsely implicate the accused.
- [32] It is the defence position that the accused was as usual present doing his daily chores on the jetty at Praslin and had got into the vehicle of one Wills Ernesta in order to collect a debt owing to him and when he was proceeding in the vehicle the NDEA agents had stopped his vehicle and taken him and put him in their vehicle. Thereafter a call was received and he was released when suddenly a Terrios Jeep had come in his direction and as agent Leggae had a gun pointing at him he had run away but finally was arrested when he had jumped into the sea. He states he never saw the controlled drug and saw it only in court.
- [33] The prosecution witness Shirley Ragain categorically denies this fact. She states the controlled drug was handed over to her by the accused for safekeeping and for it to be handed over to one Jerina who would transport the controlled drug to Praslin to be given to the accused. She stated that the accused was being watched by the NDEA as he was a suspected drug dealer and therefore it is apparent that even though he had his own mode of transport boats, he could not transport the controlled drug for fear of being apprehended. Jerina Marengo specifically mentions in her evidence that she was asked by the accused to come to Praslin to collect the parcel from Shirley and bring it to Praslin for

him. This explains why Jerina Marengo had come to La digue and met Shirley. Understandably it was evident that both these witnesses were attempting to play down there complicity with the accused in the transport of the said controlled drug but this does not make one disbelieve or reject their evidence in respect of the controlled delivery which stands corroborated by other independent evidence.

[34] The telephone records indicate a flurry of calls at the time the controlled drug was being transported between La digue and Praslin between the telephones used by the accused and the telephones of the two ladies. This does not in any way indicate that the accused had nothing to do with it. What clinches the involvement of the accused is the evidence of Marie Brioché who states that it was the accused who had told her to collect the parcel from the two ladies. It is apparent from her evidence that she had very little to do with the other two ladies and infact she states it was the accused who had pointed out the two ladies to her at the jetty when the ferry arrived. It was only then that Marie Brioché knew from whom the parcel had to be collected and it is very clear from her evidence that she did so, on the instructions of the accused and not on the instructions of the two ladies or the officers of the NDEA who she did not know at that time.

[35] Having collected the parcel Marie Brioché had once again followed the instructions of the accused and signalled the accused to come and collect it from the steps leading to Dream Yacht Charter. The involvement of Marie Brioché who was also arrested for the part she played in the controlled delivery clearly indicates that Shirley Ragain and Jerina Marengo were not attempting to frame the accused with the help of the NDEA.

[36] I see no reason otherwise for the NDEA agents to have arrested Marie Brioché other than for her involvement in the collection of the drug in the controlled delivery. It is apparent that she had no connection with Shirley Ragain or Jerina therefore would the NDEA agents arrest a person who was just walking around the jetty in Praslin? It is quite obvious and plausible that she was arrested as she had taken part in accepting the controlled drug from Shirley on the instructions of the accused.

[37] The evidence of the accused that he ran and jumped into the sea because he saw agent Leggae coming with a pistol and because he thought he was coming to arrest him for fighting with Wills Ernesta is somewhat far fetched. It is apparent that Wills Ernesta

testified on behalf of the accused admittedly he owed money to the accused. The evidence of agent Leggae that the accused collected the bag containing the controlled drug is corroborated by the evidence of other agents. Mr. Leggae's evidence that the accused dropped the bag with controlled drug and ran when he saw agent Leggae is corroborated by the evidence of NDEA agent Bacco. It is apparent that even after being put in a vehicle the accused had attempted to run away and was finally caught when he had gone into the sea. For the aforementioned reasons the defence stands rejected.

[38] It is to be borne in mind that the main prosecution witnesses namely Shirley Ragain, Jerina Marengo and Mario Brioché were accomplices in that they had the controlled drug with them for the purposes of transporting it for the accused. The law in respect of the evidence of an accomplice has been settled in the cases of ***Raymond Lucas v the Republic SCA 17/09 and Dominique Dugasse & Ors v the Republic*** which dealt with the fact as to whether a corroboration warning should be made by a judge in all cases involving the evidence of an accomplice. It is settled law in the Seychelles that it is left to the discretion of the judge to decide whether corroboration is necessary before accepting the evidence of an accomplice and should do so only when an evidential basis exists.

[39] The Seychelles Court of Appeal in the case of ***Raymond Lucas v Rep SCA No 17 of 2009*** held at paragraph 28 of the said judgment.

“it is not obligatory on the courts to give a corroboration warning in cases involving sexual offences and we leave it at the discretion of judges to look for corroboration when there is an evidential basis as stated earlier.”

[40] When one considers the detailed evidence of the accomplices in this case, it cannot be said that the witnesses were lying or their evidence was unreliable or had made a false complaint against the accused. Thus, as held in the aforementioned cases there exists no evidential basis for the need to look for corroboration or for the corroboration warning even though in this instant case factually many aspects of the evidence of the accomplices stand corroborated by the telephone records and by the evidence of the NDEA officers.

- [41] Considering these facts, this court is of the view that the evidence of these witnesses is acceptable to court as there is no doubt in the mind of court that the witnesses were telling the truth. On considering the whole of the evidence before court, this court is satisfied that the evidence of the accomplices and that of the NDEA agents stands corroborated and is acceptable to court. For the aforementioned reasons I am satisfied that the evidence of the prosecution can be accepted.
- [42] Mr. Bouzin, the Government Analyst corroborated the fact that the exhibits were brought for analysis by agent Leggai on the 25th of June 2012 and after analysis he had placed them in a police evidence bag P3 and sealed it. He identified in open court the seals placed by him and that they were intact. He described the analysis conducted by him and stated he identified the herbal material P11 as Cannabis weighing 234.6 grams. His report P2 affirming same was tendered to court. His evidence was not challenged by the defence.
- [43] The chain of custody of the exhibits has been established beyond reasonable doubt by the evidence of Agent Leggæ and Mr. Bouzin the analyst. Agent Leggæ identifies the exhibits as that taken into custody by him and handed over to the analyst. The analyst Mr. Bouzin identifies the exhibit as that handed over to him by Agent Leggæ, analysed by him and identified as Cannabis herbal material weighing 234.6 grams. It is clear from his evidence that the chain of custody of the exhibit from the time of detection, taking into custody, analysis conducted by Mr. Bouzin and the production of the exhibit in court has been proved beyond reasonable doubt ensuring the fact that the exhibits were not tampered with.
- [44] Further when one considers the evidence of witnesses Shirley Ragain. Jerina Marengo it is clear that they had an agreement to transport the controlled drug from Ladigue to Praslin with the accused. It could be clearly inferred from the evidence of Shirley Ragain and Jerina Marengo and it is clearly established, that the accused in this case when he entered into an agreement with them each of them intended to play some part in the agreed course of conduct in furtherance of the criminal purpose which agreed course was intended to achieve. (*R v Anderson 1986,A.C.*). It is also clear from the evidence of the prosecution that the accused Jacquelin Victorin agreed with Shirley Ragain and Jerina

Marengo and Marie Brioché that a course of conduct shall be pursued which if pursued will necessarily involve the commission of an offence namely the offence of Trafficking in a controlled drug.

[45] For the aforementioned reasons this court will proceed to accept the corroborated evidence of the prosecution. Though the evidence of the prosecution witnesses were subject to intense cross examination no material contradictions that would make court disbelieve the evidence of these witnesses were apparent. Therefore this court will proceed to accept the evidence of the prosecution. This court is satisfied beyond reasonable doubt that the controlled drug was in the possession of the accused prior to him dropping it and running on seeing agent Leggæ.

[46] 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 the accused had on seeing the agents approaching dropped the bag containing the controlled drug and run. This clearly establishes the fact that the accused had knowledge of the fact he was in possession of a controlled drug. The quantity of controlled drug taken into custody attracts the rebuttable presumption of trafficking. The accused has failed to rebut the said presumption.

[47] For all the aforementioned reasons this court is satisfied that the prosecution has proved all the necessary elements of the charges 1 and 2 against the accused beyond reasonable doubt and finds the accused guilty on both counts and proceeds to convict him of same.

Signed, dated and delivered at Ile du Port on 29 January 2014

M Burhan
Judge of the Supreme Court