

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO51/2013

[2017] SCSC

THE REPUBLIC

versus

HANSEL LESPERANCE & ORS

Accused

Heard: 23 January 2017

Counsel: Mr. D. Esparon for the Republic
Mr. E. Chetty for the 1st Accused
Mr. N. Gabriel for the 2nd Accused
Mr. J. Camille for the 3rd Accused
Mrs. A. Amesbury for the 4th Accused
Ms. K. Domingue for the 5th Accused

Delivered: 23 January 2017

RULING Number IV

Akiiki-Kiiza J

[1] This *Voir dire* is in respect of A5. When the Prosecution sought to introduce his statement made under caution, the defense objected on the grounds that:-

- a) That A5's Constitution Rights were not explained to him.
- b) Rights to Counsel was not availed to him.

- [2] In the premises, therefore, I held a trial within a trial to determine the circumstances under which A5 made a statement to the Police Officers.
- [3] According to PW19, Mr. Jean Marcus, he is the one, together with Corporal Maggie Dubel, who had recorded a statement under caution from A5 and both stated categorically that they had informed A5 of the charges of robbery against him and had explained to him his Constitutional Rights and had cautioned him. That after which he told them what he had to say and signed 8 times on the statement including the caution. They both stated that they had told him about his right to counsel but he decided to go ahead to tell them what he wanted, which they recorded down. Corporal Dubel denied signing during the recording of the statement.
- [4] According to A5, Mr. Channel Quatre, he was tired at the time of recording his statement and was never cautioned or informed about his right to counsel. He was instead told that if he cooperates then he will be left to go home. That after making the statement they never read it back to him.
- [5] I have carefully reviewed the evidence from both sides during the trial within a trial. I have also critically analyzed the demeanors of both the prosecution witnesses and of A5. I have also considered the submissions of both learned counsel.
- [6] I found that the two Police Officers' evidence represented the truth. They were generally consistent and had remained firm despite protracted and serious cross-examination at the hands of learned defense counsel.
- [7] On the other hand, A5 struck me as a person who was desperate to distance himself from the truth of what actually had happened at the time. His evidence was a total denial giving an impression that the Police Officers did not know their work at all including the very basics. He even denied being arrested, but that he was told to talk to them and he would be allowed to go home.

To my mind, the evidence of A5 amounts to an incredible and unbelievable story given the fact that he is a Senior member of a well known International Bank, as a Branch Manager.

A5 impressed me as a person determined to deny everything regarding the recording of his statement after it had dawned on him afterwards the possible consequences of what he had stated to Mr. Marcus Jean and Caporal Dubel.

[8] As to whether or not he had legal counsel before the Magistrates Court during the 101 proceedings at the Magistrate Court, this does not necessarily mean that he had not been advised of his Constitutional Rights including the rights to Counsel before recording his statement under caution at the Police Headquarters by the two Police Officers.

[9] I also dismiss his assertions that he was told he would be allowed to go home if he cooperates with the Police. In any case to cooperate with the Police does not necessarily mean that he was told he must confess to the crime. He could cooperate by making a statement denying the crime.

[10] All in all, I find that the two Police Officers complied with the Constitution provisions as per *Article 18 (3) and (4)*, as well as the 'Judges Rules' as per *Practice Direction number 2 of 1971*.

I dismiss the accused's allegations raised during the trial within a trial as baseless and farfetched.

[11] In the premises, I find that the prosecution had proved beyond reasonable doubt that Mr. Marcus Jean and Caporal Maggie Dubel had complied with the Constitutional Provisions regarding the recording of charge and caution statement from A5 and Judges Rules.

[12] I accordingly overrule the objection by the defense and hold that A5 statement under caution is admissible.

Signed, dated and delivered at Ile du Port on 23 January 2016

B Renaud
Judge of the Supreme Court