IN THE SUPREME COURT OF SEYCHELLES

Reportable

CR68 /2021

In the matter between

THE REPUBLIC **Prosecution**
(rep. by Hermanth Kumar)

and

ANSEL LARUE **Accused**
(rep. by Clifford Andre)

Neutral Citation	*The Republic v Ansel Larue* (CR68/2021) delivered on 26 January 2024
Before:	Vidot J
Summary	Submission of No Case to Answer
Heard:	parties filed submissions
Delivered:	26 January 2024

RULING

VIDOT J

[1] The Accused stands charged of Aiding and Abetting another to import into Seychelles a controlled drug, namely cannabis resin contrary to section 15(1)(a) of the Misuse of Drugs Act 2016 (MODA), read with section 5 of the same Act and punishable under section 5 read with the Second Schedule of the said Misuse of Drugs Act. He pleaded not guilty to the charge. The person who was charged with importation of the controlled drug, a Mr. Ifendu, pleaded guilty of the offence and was accordingly convicted.

[2] At the close of the prosecution's case, Counsel for the Accused raised a submission of no case to answer. Basically, the defence is arguing that the Prosecution has not discharged

the burden of proof to the required standard of beyond reasonable doubt as they have failed to establish all elements of the offence. In fact, their submission is that the prosecution failed to produce an iota of evidence that connects the Accused to the offence. It was stated that in the circumstances a conviction will be untenable. Counsel for the defence drew attention to section 183 of the Criminal Procedure Code which states thus;

"If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him."

[3] A submission of no case to answer may be made out either if no case has been established in law or the evidence led is so unsatisfactory or so unreliable that the court should hold that the burden of proof has not been discharged. The principles to be adopted in deciding a submission of no case to answer was established in the case of **R v Stiven [1971] SLR 37**. These principles were adopted in many other cases such as **R v Olsen [1973] SLR 188, R v Marengo [2004] SLR 116** and **R v Matombe (No1) [2006] SLR 32.** These principles are;

1. There is no evidence to prove an essential element of the alleged offence; and

2. The evidence adduced by the prosecution has been so discredited as a result of cross-examination, or is so manifestly unreliable, that no reasonable tribunal could safely convict on it.

[4] Similar test was set out in **R v Galbraith 77 Cr. App. R 124 CA** as follows;

i. If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty - the judge will stop the case.

ii. The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

iii. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

iv. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

[5] In **R v Galbraith** (supra), Lord Lane CJ had the following to say;

How then should a judge approach a submission of 'no case'? If there has been has been no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. The difficulty arises when there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty upon submission being made, to stop the case. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there evidence upon which a jury come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury ..... There will of course, as always in the branch of the law, be borderline cases. They can safely be left to the discretion of the judge."

[6] Therefore at the stage of a submission of no case to answer, if the court was to rule that as a matter of law there is no evidence on which the accused could be convicted, the judge shall direct the jury to enter a verdict of not guilty or the Court sitting without a jury will make the declaration. In the case of **R v Hoareau (supra),** Chief Justice Twomey makes reference to **Green v R (1972) SLR 55** in which Sauzier J had the following to say in respect of what constitutes " *no evidence*" as provided for under section 294(1) of the Criminal Procedure Code;

"The considerations which apply at that stage are purely objective and the trial court is not asked to weigh the evidence. At that stage it is only necessary for it to find that a reasonable tribunal might convict."

[7] It is non-contentious that on 18th June 2021, the then Anti Nacorti Bureau Officers apprehended Mr. Ifendu at a Guest House, Ocean Terrace situated at Anse Royale. The officers had mounted an operation to arrest him. It was confirmed that he is a Ghanaian. In fact, police officers gave testimonies pertaining to the operation, and arrest of Mr. Ifendu, analysis of the drugs and recording of statements of Mr. Larue. The controlled drug was concealed in some cylindrical shaped bullets which Mr. Ifendu excreted at different intervals. The officers also seized a black Samsung phone from him. The drug was analysed by Government Forensic Analyst, Ms. Chettair and confirmed to be cocaine. The certificate of analysis was produced as exhibit. There were hardly any plausible challenges in respect of collection of evidence. I am of the view that police operated and followed the law and accepted protocol in that regard.

[8] Karine Pouponneau deponed that she is an ex-officer of the Financial and Crime Investigation Unit ("FCIU"). She was asked by SI Malvina to perform analysis of phone extraction. In all there were three Samsung mobile phones she had to carry out the analysis. She prepared a report of her findings which was admitted as exhibit. She testified that her conclusion of the analysis carried out that she *"... found that there was no direct contacts between Ifendu and Mr. Ansel. All the contacts were between, there was like a middle man in between the two parties involved, so basically Ifendu was not in the picture until he reached Seychelles. All involvement with Ansel and the middle man*

was regarding the bookings of hotel for stay for Ifendu in Seychelles, but there were no direct contacts I found in his phone extractions. All contacts were between the middle man and the man would relay the message to Ansel."

[9] Jeanne Charles was called as a witness by the prosecution. She is a business consultant. She states that in May 2021, she was approached by the accused who sought her services as he had a friend who wanted to do business in Seychelles. Then the accused had said that the person wanted to start a restaurant business. He wanted advice on procedures and logistics. When that person who wanted to do business in Seychelles did to come, she got her assistant *"go to the authorities"*. The assistant was informed that that person had arrived in Seychelles but had been arrested for illegal drugs related offence. She later learn that the accused too had been arrested.

[10] Section 15(a) of the Misuse of Drugs Act provides;

"A person who –

(a) Aids, abets, counsels, incites or procures another person to commit an offence under this Act;

(b) .....

(c) .....

commits an offence is liable to the punishment for the offence.

[11] MODA does not provide a definition for aiding or abetting and neither does the Penal Code. However, section 22 of the Penal Code reads;

"when an offence is committed, each of the following person is deemed to have taken part in committing the offence and be guilty of the offence, and may be charged with the actually committing it, that is to say –

(a) .....

(b) .....

(c) Every person who aids and abets another person in committing the offence;

(d) .....

This means that aiding and abetting, a person is considered to be a principal of the crime when;

(1) a crime is committed by another,

(2) the person knowingly advises, instigates, encourages, procures, or helps the other person commit the crime, *and*

(3) his or her actions or statements caused or contributed to the commission of the crime

[12] Simply put, aiding and abetting means, to help, assist, incite and /or encourage someone to commit the crime. It can be considered as a form of accomplice liability. Therefore, the aider and abettor is criminally liable to the extent as the person committing the crime. A charge of aiding and abetting has three requirements. Firstly, someone else must have committed a crime. Secondly, the defendant must have helped, assisted, incited and /or encouraged that person in the commission of the crime. Thirdly, the defendant must have had knowledge of that person's criminal intent or criminal plans. An individual will not be found guilty for accidentally assisting in a crime

[13] Having considered the evidence adduced before this court, I fail to find an iota of evidence that links the accused to the crime. Following from **R v Stivens** (supra) it is clear that the elements of the offence has not been established. It is clear from the testimony of Karine Pouponneau and the conversation that came from a third person allegedly having contacts with both the accused and Mr. Ifendu, centred on the latter wanting to establish business in Seychelles. Jeanne Charles corroborates the fact that the accused had sought her services to direct and advice Mr. Ifendu the logistics in commencing a business in Seychelles and it was stated that it would be a restaurant business.

[14] The evidence being so untenable, I am left with no option but to rule that indeed the prosecution has failed to establish a case against the accused. Therefore, the submission of no case to answer succeeds and the accused is acquitted of the charge.

Signed, dated and delivered at Ile du Port on 26 January 2024

SEAL OF THE SEYCHELLES SUPREME COURT

M Vidot J