IN THE SEYCHELLES COURT OF APPEAL

SALIM MOHAMED AKBAR APPELLANT

versus

THE REPUBLIC RESPONDENT

Criminal Appeal No: 5 of 1998

[Before: Goburdhun P, Silungwe & Ayoola, JJ.A]

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Mr. P. Pardiwalla for the Appellant
Mr. F. Ally for the Respondent

REASONS FOR DECISION OF THE COURT

(Delivered by Ayoola J.A.)

The appellant, Salim Mohamed Akbar, was tried by the Supreme Court, (Alleear, C.J.) and convicted of the offence of trafficking in a controlled drug contrary to Section 5 read with Section 26(1) of the Misuse of Drugs Act 1996 as amended by Act 14 of 1994 and possession of ammunition contrary to and punishable under Section 4(2)(a) of the Firearms and Ammunition Act. He was sentenced to 8 years imprisonment and six months imprisonment respectively for the offences. Sentences were made to run concurrently. On 13th August 1998 his appeal against conviction was dismissed with reasons to be given later. We now give our reasons.

In the early hours of 24th September 1995 at 5.30 am a team of police officers led by ASP Eugene Poris carried out a raid on the house of the appellant with the purpose of searching for controlled drugs. There were ten police officers on the raid. On gaining entrance into the house two of them WPC Jesta Vidot ("Vidot") and Constable Faure ("Faure") thoroughly searched the living room in the presence of the appellant.

From there they moved to the bedrooms. During the search of the third bedroom which was on the same level as the living room and occupied by the accused, Vidot, while looking under the bed, found a piece of dark substance underneath the said bed. She suspected the said substance to be dangerous drugs. Vidot knelt down again and continued searching under the bed. She found a small carton box containing bullets. She showed them to the appellant who identified them as bullets. There were in all ten 9mm bullet in the box. On analysis the dark substance was found to weigh 192g 160mg and be cannabis resin. The bullets were found to be live bullets.

Upon these facts the appellant was charged with the offences of which he was convicted. The prosecution in regard to the offence of trafficking relied on the rebuttable presumption which arose by virtue of he having been found in possession of more than 25 grammes of cannabis resin. The appellant did not deny that the controlled drugs and the bullets were found in his bedroom. His defence was that they were planted either by his neighbour, one Yvon Pool, who had resented the interest he had been showing in the latter's daughter, or by the police.

The prosecution led evidence on the raid on the appellant's house, the search conducted therein, the discovery of the resinous substance and bullets which were subject-matter of the charges and the handling of the resinous substance from the time the police recovered it from the appellant's house, through its delivery to the analyst, its return to police custody and its production in court. The defence led evidence to show that the appellant knew that his house had been under police surveillance and that he had known that a police raid was imminent, that the police had an opportunity of planting the materials in his bedroom and that there was a break in the chain of movement of the materials particularly, the resinous substance.

The learned Chief Justice after a review of the evidence led by the prosecution and by the defence came to the conclusion that it has been proved beyond reasonable doubt that the same substance which was retrieved and the same bullets were taken to experts for analysis and that there was no mistake about that. He rejected the defence that Yvon Pool was behind the planting of the drugs and had used police officers to accomplish that task. Being satisfied beyond doubt that the appellant had possession of the substance which proved to be cannabis resin and ten live bullets found underneath his bed in the bedroom, the learned Chief Justice found the appellant guilty of the charges, and convicted and sentenced him as earlier stated.

The appellant's appeal was all on facts. It was strenuously argued by counsel on behalf of the appellant that (I) the Chief Justice did not analyse the evidence of the defence properly and objectively and that had he done so he would have come to the conclusion that the defence case could reasonably be true and that the defence case "was lacking"; (ii) he did not translate several of his comments indicating dissatisfaction with the prosecution case into his judgment; (iii) the Chief Justice should have sought independent corroboration of the evidence of the prosecution witness all of them being police witnesses; (iv) he ought to have found that the evidence raised doubt as to whether what was analysed by the analyst was the same substance that had allegedly been found on the appellant's premises; and (v) the prosecution should have called as witnesses the two police officers who had been named as present at the search with opportunity of planting the drugs and bullets.

To put this line of argument in its proper perspective it is expedient once again to recount some of the views expressed by the Chief Justice in the course of his judgment on the major issues in the case. On discrepancies in the evidence he said:-

> "The defence has also pointed out the discrepancies in testimonies of the prosecution witnesses. In any given case it is normal to expect minor discrepancies between the testimonies of the prosecution witnesses. However, the court will be very loath to convict if there are major discrepancies in the prosecution evidence which cast doubt on the veracity and accuracy of the prosecution witnesses."

Having so directed himself, he said:-

> "In the present case, there are discrepancies but they are not material. They have not cast doubt on the veracity of the prosecution witnesses. The prosecution witnesses were deponing a long time after the incident which occurred in 1995."

He dismissed the suggestion that the police at the instigation of Yvon Pool planted the incriminating objects. He explained that if the police had wanted to frame the appellant they would not have waited for three months, that is to say from June 1995 when the appellant said they had mounted surveillance on his house to September 1995 when the raid took place, to do so, and that the fact that they kept watch over such a long period shows that the police had acted in good faith. He further dismissed the suggestion that the incriminating objects were planted during the raid by saying that "there was nothing sinister which happened during the said raid."

It is evident that on all controversial issues of fact the learned Chief Justice preferred the evidence led by the prosecution to that led by the defence. On this appeal learned counsel for the appellant painstakingly

combed the record, as it were with a fine comb, meticulously scrutinizing every detail of the evidence. It goes without saying, however, that this Court as a criminal court of appeal does not rehear the case on the record. The accepted approach to findings of fact which turn largely on the credibility of witnesses is to uphold such findings if they are supported by the evidence believed by the trial court and if there is nothing perverse in the trial ascribing credibility to such evidence.

In the present case the learned Chief Justice adverted to the aspects of the prosecution evidence on which the defence had laid much emphasis such as: the alteration in the case number ascribed to the substance sent to the analyst, the chain of evidence in regard to substance, the discrepancy in the evidence of the prosecution witnesses and the criticism of the conduct of the search of the appellant's house. At the end of the day, he was prepared to accept the evidence of the prosecution witnesses.

It has been argued by counsel for the appellant that the Chief Justice should have looked for corroboration because the prosecution witnesses were police officers. Reliance was placed on a passage in the judgment of Lord Hailsham LC in DPP v Kilbourne [1973] 1 All ER 440 where at p443 he said:

> "But side by side with the statutory exceptions is the rule of practice now under discussion by which judges have in fact warned juries in certain class of cases that it is dangerous to found a conviction on the evidence of particular witnesses or class of witnesses unless that evidence is corroborated in a material particular implicating the accused, or confirming the disputed items in the case. The earliest of these classes to be recognised was

> probably the evidence of accomplices 'approving' for the Crown no doubt, partly because at that time the accused could not give evidence on his own behalf and was therefore vulnerable to invented allegation by persons guilty of the same offence. By now the recognised categories also include children who give evidence under oath, the alleged victims, whether adults or children, in case of sexual assaults, and persons of admittedly bad character. I do not regard these categories as closed. A judge is almost certainly wise to give similar warning about the evidence of any principle witness for the Crown where the witness can reasonably be suggested to have some purpose of his own to serve in giving false evidence (cf People v Praker (1960) 1All ER 298 and R v Russel (1960) 52 Cr App. Rep 148.)"

It will be unwise to put police officers in a special category of witnesses whose evidence needs corroboration. Police officers giving evidence for the prosecution cannot be presumed to have some purpose of their own to serve merely because they are police officers. Where it is suggested that a police officer has some purpose of his own to serve, such suggestion should be raised at the trial and if the judge considers it reasonable he should give the appropriate warning as to corroboration. A fanciful or farfetched suggestion of such purpose should not provoke such warning. In the present case there was nothing reasonable to indicate that a warning as to corroboration of the evidence of the witnesses who were mainly police officers was desirable.

Upon a calm consideration of the submissions made by counsel for the appellant and for the respondent, we could not say that the Chief

Justice ought not have accepted the evidence on which he based his findings of fact or that such findings were perverse. In the result there was no reason why we should interfere with his findings on the verdict which he returned.

It was for these reasons that we dismissed the appeal.

Dated this 3rd day of ***December*** 1998.

H. Goburdhun	**A. M. Silungwe**	**E.O. Ayoola**
PRESIDENT	JUSTICE OF APPEAL	JUSTICE OF APPEAL