

IN THE INTERMEDIATE COURT OF MAURITIUS

Cause No.714/2009

In the matter of:-

Independent Commission Against Corruption

v

Sacheedanand Veeriah

JUDGMENT

The accused is charged with the offence 'Bribery by public official' in breach of section 4(1)(a)(2) of the Prevention of Corruption Act (the Act).

The prosecution avers that on 29 November 2004 at Souillac Traffic Centre, Savanne, the accused *"did, whilst being a public official, wilfully, unlawfully and criminally, solicit from another person, for himself, a gratification for abstaining from doing an act in the execution of his duties."*

The particulars are that *"whilst being a Police Sergeant in uniform performing vehicle check along Souillac Traffic Centre, he solicited a sum of Rs500/- for himself, from one Vayid Baukar, so as to avoid latter facing any legal consequences regarding his driving licence which according to Police Sergeant Veeriah appeared to be a fake one."*

He pleaded not guilty to the charge and was assisted by Mr G. Glover, S.C.

Mr R. Bhurtun, Mrs Paupoo and Ms P. Bisnauthsing, counsel appeared for the prosecution (in different sittings).

The case for the prosecution

The evidence for the prosecution is in essence that on 29 November 2004 Mr A. V. Baukur (W3) was driving private car DE323 on Royal Road, Souillac when a police officer/police officers stopped him. The accused verified his licence, called him aside and asked him for money telling him he was liable to be arrested, as his licence was a fake. He asked how much, and the accused showed his hand. He asked whether "Rs50/-" and the accused replied that he would not get a bottle of wine with it. He asked whether "Rs500/-" and the accused nodded. The police officer had given him a small form. The accused kept his licence, so he went to Souillac police station where officer Issimdar said he would get him his licence (Doc. B), but his brother said not to give a statement. They went to Chemin Grenier police station, but he did not give a statement, as what he said was not written (Doc. C).

In cross-examination W3 said that he is self-employed/owned a business/worked for a company. He denied that the police told him that there were errors in his licence and suspected it was fake, then said they/the accused told him the licence was a fake. He does not know if his licence had a false date of birth (DOB) and national identity card number (NIC) number. He denied that he got angry when they started talking to him, threatened them and drove off. He denied that/did not notice if it was PC Maghoo who gave him the PF3: he agreed that in his statement he said the accused issued it to him. He

does not remember if a police officer gave him a PF3 before or after the accused asked him for a bribe. He saw the accused raising a hand, but has forgotten which hand. He would have seen the hand, but would not have seen it when the accused raised it, as it was dark. The accused had his torch in his left hand and his licence in his right hand, but he saw the accused showing him five, but does not know which hand. He denied knowing the accused, although in his statement he said a police officer he knew as Veeriah signalled him to stop. When he was at Chemin Grenier police station, his brother was in the car: he did not remember having stated in his declaration of 01 December that his brother was near the counter. He does not know if he used his mobile phone to call PS Jhugroo, who worked at Chemin Grenier police station, when he was at Souillac police station.

According to DI Ramnauth (W1) when he recorded the statement of the accused, he put to him the version of W3 as contained in his declaration dated 01 December 2004 (OB2250/04). He was not aware of the declaration of offering bribe the accused made at Souillac Police Station on 29 November 2004 at 10.00pm and whilst recording his statement, did not ask him if he had reported a case against W3.

SI Audit (W2) produced two certified copies of Driver's Licence Card, one in W3's name and one in the name of Ahmad Adeel Noorsing and a photocopy of W3's driving licence (Docs. D, E and F). The file was sent from Central CID to the ICAC: it contained W3's declaration against the accused for 'soliciting bribe' and an OB opened by the accused for 'offering bribe' (Doc. G): he cannot say if Doc. F was in the file. There were discrepancies in Doc. F – NIC, DOB and stamps. Mr Ramsahye ordered that the licence be remitted to W3 after it had been secured by the accused. The carbon copy of a PF3 remains with the issuing officer (Doc. H).

Insp. Baureck (W5) produced a certified copy of the Duty Roster and Diary Book Entries of Souillac police station for 29 November 2004 (Docs. J and K).

CI Ramphul (W4) who was in charge of the licensing section in 2005, said that whilst the licences of W3 and Mr A. A. Noorsing were being processed at the Traffic Branch, they were interchanged so that the NIC of Mr Baukar was written on Mr Noorsing's licence and vice versa (see Docs. D, E and F) and that it was legitimate for the accused to have serious doubts about the genuineness of W3's licence.

The case for the defence

The defence statements of the accused as produced by DI Ramnauth (W1) and SI Audit (W2) (Docs. A and A1) are in a gist that on 29 November 2004 at 9.55pm he was doing vehicle checks in the company of PCs Maghoo, Beekhy and Fokeer and that he never solicited Rs500/- from Mr Baukur/W3. They were near the bus station at Souillac in a well-lit area. PC Maghoo, who had stopped W3's car, informed him that his licence looked doubtful. On examination he found irregularities about the DOB and NIC: W3 said he believed there were errors in his licence. He instructed PC Maghoo to give W3 a PF3. He secured the licence to verify the anomalies with the Traffic Branch, and told W3 to call at Souillac police station on the next day. W3 said the errors did not concern the police, asked for his licence back and then offered him Rs1000/- to return his licence and not to cause him problems. W3 also threatened to call Ramsahye and make them lose their jobs and drove off without their consent: he did not report it. In the case of suspected fake driving licence, the course of action is to secure the driving licence, to insert an entry in the Diary Book and keep the licence as exhibit. Upon verification with the Traffic Branch, he was told that the licence was correct and that there was a typing error concerning the DOB and NIC: he made an entry to that effect on 30 November 2004. The declaration he made was for the offence of bribery, an arrestable offence, but an arrest was not made, as he knew the identity of the person.

Deposing under oath, he reiterated the version given in his defence statements and confirmed that he has denied the allegation of bribery made against him. On 29 November 2004 at 11.00pm he put up a statement (Doc. G1). He secured W3's licence after the latter had asked why it had to be verified with the Traffic Branch. He did not meet W3 at Souillac or Chemin Grenier police station after that. In cross-examination he agreed that he might not have said in his statement that W3 refused to give his DOB and that the mention of the baby was only in the statement of 2 March 2005. W3 offered him Rs1000/- not to cause him any problems, and had also told him that he was arrogant and that he earned in one day what the accused earned in one year. He decided that a PF3 should be issued, and PC Maghoo issued it. The driving licence was highly irregular, but the purpose of issuing a PF3 was for W3 to produce it at the police station and the particulars thereof to be on record. W3 called Chemin Grenier police station after the PF3 had been issued to him and this is the reason it was secured. W3 started behaving in a bad manner, so he secured his licence. He denied that he asked W3 for money, told him he could be imprisoned "for that" (sic), showed his hand, W3 asked whether he meant Rs50/- and he said that he could not purchase a bottle of wine with Rs50/- and W3 asked whether it was Rs500/- and he agreed. He denied that he asked Rs500/- because he had told W3 that he could be imprisoned and for him to avoid any legal consequence.

Discussion

I have considered the evidence on record and the written submissions of both counsel. I note that counsel for the prosecution said at paragraph 3 of her submissions that defence counsel "has moved for a stay of proceedings": this is not the case.

The accused is prosecuted under section 4(1)(a)(2) of the Act, which reads as follows:

4. Bribery by public official

(1) Any public official who solicits, accepts or obtains from another person, for himself or for any other person, a gratification for –

(a) doing or abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;

...

(2) Notwithstanding section 83, where in any proceedings against any person for an offence, it is proved that the public official solicited, accepted or obtained a gratification, it shall be presumed, until the contrary is proved, that the gratification was solicited, accepted or obtained for any of the purposes set out in subsection (1)(a) to (e).

The prosecution bears the burden of proving beyond reasonable doubt the following elements:

1. the accused was a public official on 29 November 2004;
2. he was acting in the execution of his duties at the material time;
3. he solicited from witness Baukur/W3 a gratification – sum of Rs500/- – for himself;
4. he abstained from doing an act in the execution of his duties..

1. Was the accused a public official on 29 November 2004?

There is no dispute that the accused was a member of the Mauritius Police Force and was a Police Sergeant at the material time.

2. Was the accused acting in the execution of his duties at the material time?

There is ample evidence that the accused was doing vehicle checks in the company of other police officers, in the vicinity of Souillac bus station, and that in the course of such routine checks, W3 who was driving his car, was stopped by the police and was given a PF3.

I note that whilst W3 said that there were only three police officers after much tergiversation, the accused and PC Fokeer both said that there were four police officers on duty, checking vehicles at the material time.

There is also undisputed evidence that W3's driving licence contained erroneous information, such as his DOB and NIC, which would have raised questions on the part of a police officer, as acknowledged by CI Ramphul/W4.

3. Did the accused solicit a gratification – Rs500/- – from W3 for himself?

'Gratification' is defined at section 2 of the Act as follows:

- (a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration; and
- (b) includes -
 - (i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;
 - (ii) the offer of an office, employment or other contract;
 - (iii) the payment, release or discharge of a loan, obligation or other liability; and
 - (iv) the payment of inadequate consideration for goods or services;
- (c) the offer or promise, whether conditional or unconditional, of a gratification;

The solicitation of a sum of money, allegedly Rs500/- in the present case, would be tantamount to the solicitation of a 'gratification' within the meaning of the Act.

The case for the prosecution as to the accused's action of soliciting the gratification rests on the sole evidence of W3 and after having watched such witness and perused his testimony, I find that his evidence is doubtful. I do bear in mind that the offence is alleged to have been committed in 2004 and that the Court heard the testimony of W3 in 2013-2014, and that deposing in Court is not a test of memory, so that a witness cannot be expected to remember each and every detail. However, all throughout his examination-in-chief and cross-examination, W3's testimony was strained and he was either inconsistent in his relation of events or claimed forgetfulness when he was pressed for answers.

^{W.3} The accused was not sure how many officers signaled him to stop, saying that a man stopped him, then that three officers stopped him and almost immediately that two officers stopped him. It is to be noted that in the declaration he gave at Chemin Grenier police station – Doc. C – he said that there were four police officers when he had stopped his car. There is no explanation for the change in his testimony as to the number of police officers present at the time. Furthermore, he was uncertain about who exactly asked for his licence, saying at first it was another police officer and then that it was the accused.

He was also inconsistent about the police officer who issued him with the PF3: in examination-in-chief he said 'the' police officer gave him a small form, without specifying who and this was not cleared by the prosecution, whereas in cross-examination he denied that it was PC Maghoo who issued it to him, and later went on to say that he could not remember if it was that officer who did so, and still later, that he did not notice if it was that officer who issued it to him. Still in cross-examination, he then denied

that he had said in his statement that the accused issued the PF3 to him and at the same time said he did not remember.

He also could not remember if the PF3 was issued to him prior to the alleged soliciting of bribe, or subsequent to it, whereas both the accused and PC Fokeer said that the latter had issued him with a PF3 before any conversation with the accused.

W3 said at first that he could not remember what the accused said and then claimed that the accused had asked for money and indicated the amount by raising his hand, whilst at the same time saying that it was dark there and that he could not see which hand was raised. Since he also said that the accused had a torch in one hand and the licence in another, one wonders how the accused could have raised his hand to indicate five without dropping either item. W3 also said that at the time he was alone with the accused, but PC Maghoo maintained that he had been with the accused all along and he supports the testimony of the accused that he never asked any bribe from W3 at any time.

He denied knowing the accused, but said in his statement that he was stopped by a police officer who he knew was called Veeriah. It is possible that he learned the name of the accused between 29 November 2004 and the time he gave his statement, but there is no evidence to that effect and he said that he did not look at the officer's badge at the material time.

There is also the discrepancy about the presence of his brother, or not, inside Chemin Grenier police station when he was giving a declaration. According to the declaration he gave at Souillac police station on 30 November 2004 – Doc. B – his brother was near the counter at Chemin Grenier police station, but in Court he said at first that his brother was in the car and then that he could not remember if the brother was in the station at the time.

I also take into account that W3 gave a declaration on 29 November 2004 at 10.54pm and another one on 30 November 2004 at 12.30pm when he was accompanied by counsel, whereas the accused made an entry in the Occurrence Book (OB) of Souillac police station on 29 November 2004 at 10.00pm and put up a statement on 29 November 2004 at 11.00pm, wherein he said W3 offered him a bribe. There is only the version of W3 that PS Doolub was not writing what he was saying. It is to be noted that in Doc. C, W3 said he was driving his car along Royal Road, Souillac, around 9.55pm, and that in Doc. B, he said that he was doing so around 11.30pm.

The manner in which W3 deposed and the numerous inconsistencies in his testimony have adversely affected his credibility, and have not convinced me that the events of 29 November 2004 happened as he described them and that the accused solicited a bribe from him.

I am alive to the fact that the accused said that he secured W3's driving licence to verify it with the Traffic Branch and that in Court said that the reason for securing the licence was because W3 called Chemin Grenier police station and was behaving badly, and that PC Maghoo said that the intention was to secure the licence even though a PF3 had been issued. Still, I find that this does not establish that the accused solicited a bribe from W3, the more so that PC Maghoo said he was there and that the accused never did so, but that it was W3 who offered the accused a bribe. Even if the accused and PC Fokeer are not telling the truth, this does not distract from the fact that W3, upon who depends the case for the prosecution, did not either.

There is also a discrepancy in the testimonies of the accused and PC Fokeer about the presence of a baby in W3's car at the material time, but the fact that the latter did not see a baby is not sufficient to conclude that the accused is lying about his not having solicited a bribe.

On the issue of the accused not arresting W3 upon being offered a bribe, I find that this is irrelevant for the purposes of the present case.

In the light of the above it is not established that the accused solicited from W3 a gratification for himself.

4. Did the accused abstain from doing an act in the execution of his duties, that is, did he solicit a bribe to avoid W3 facing legal consequences regarding his driving licence?

Since I have found that the prosecution has not established that the accused solicited a gratification from W3, the fourth element of the offence would undoubtedly not be established either. However, for the sake of completeness, I shall consider it.

There is no dispute that the accused instructed PC Fokeer to issue W3 with a PF3 and this is the point at which W3's liability to face legal consequences started, depending of course of the outcome of the inquiry with the Traffic Branch. Therefore, it cannot be said that the accused solicited a bribe from W3 to avoid W3 suffering legal consequences.

It is also on record that the accused made an entry in the OB of Souillac police station and put up a statement on the same night of the incident, in which he relates W3's offer of a bribe to him and that PC Fokeer confirmed the offer in his statement dated 30 November 2004. There is evidence from DI Ramnauth that he was not aware of the accused's declaration when he interviewed the accused, which seems odd since both incidents appear to be intertwined. It is not known if any inquiry was done following the accused's declaration, and if any, its outcome.

Conclusion

For all the reasons given above I find that the prosecution has failed to adduce sufficient evidence to establish its case against the accused beyond reasonable doubt. I am of the view that the accused is at least entitled to the benefit of the doubt. I therefore grant to the accused the benefit of the doubt and dismiss the information against him.


W. V. Rangan
Magistrate
Intermediate Court (Criminal Division)

This 21 October 2014