

ICAC v Satyawan Kutwaroo & Anor

2015 INT 24

IN THE INTERMEDIATE COURT OF MAURITIUS

In the matter of :-

CN :1377/06

Pce

V

Satyawan Kutwaroo

Iswaraj Ghallu

Judgment

Accused No.1 stands charged under count I with obtaining a gratification from a person, for another person, in order to make use of his fictitious influence, to obtain a benefit from a public body, in breach of s 10 (4) of the Prevention of Corruption Act 2002. Under count II, he stands charged with soliciting a gratification from a person, for another person, in order to make use of his fictitious influence, to obtain a benefit from a public body, in breach of s 10 (4) of the Prevention of Corruption Act 2002. Accused No.2 stands charged under counts III and IV with whilst being a public official, accept a gratification, for doing an act which he induced a person to believe, he was empowered to do in the exercise of his duties, although as a fact such act did not form part of his duties, in breach of s 11 (a) of the Prevention of Corruption Act 2002. Accused No.1 pleaded not guilty to counts I and II and Accused No.2 pleaded not guilty to counts III and IV. They were assisted by counsel.

Accused No.1 is a draughtsman and Accused no.2 is an Inspector of Works. Both are posted at the Pamplémousses and Rivière du Rempart District Council. The District Council is a public body and both accused are public officials within the meaning of s 2 of the Prevention of Corruption Act 2002

PS Kissoodoyal (w 9) produced a receipt No.1766599, a building permit of MPI and a copy of a plan of construction, Doc D, E and F respectively which he secured in virtue of a search warrant from the office of Accused No.2 at Pamplémousses and Rivière du Rempart District Council.

Mr Keeranlallsing Santokee then Inspector of Works was present when ICAC officers carried out a search in the office of Accused No.2 by virtue of a search warrant issued by the Commission. The office was narrow accommodating 3 to 4 officers with desks and cabinets. Doc D, E and F were secured in one of the unlocked drawers found in the office. Mr Santokee

was very confused about whether the documents were secured in Accused No.2's presence or not.

Mr Rajcarran Ramjada, Chief Works Inspector deposed that in 2004, there was the planning section which processed applications for building and development permits. An Inspector would carry out visits and submit his recommendations to the Works and Planning Committee. When the recommendations were favourable, the application made was approved and a draft permit was then issued. This was sent by registered post to the applicant. Since the initial stage of the application for a permit until the time it was issued to the applicant, there was no fee which was applicable. The planning section and the works section are two separate sections at the District Council. He stated that on 6th July 2004, Accused No.2 was not posted at the planning section but was posted at the works section. The District Council issued only the Development permit whilst at a building permit was issued by the Ministry of Public Infrastructure. He produced Docs Au to AZ. Mr Appadoo Krishna applied for a development permit for the construction of a reinforced concrete residential building on 31.05.04 through his draughtsman, Mr Kutwaroo. It was Mr Baguant, Inspector who then visited the site. Mr Appadoo received by registered post his permit which was issued on 14.06.04. Mr Pascal Ombroisine submitted an application for the addition of the first floor to an existing building on 13.02.04 and it was Mr Baguant who visited the site and submitted a favourable report.

Mr Ramesh Heeramun was posted as Acting foreman at Pamplemousses/Riviere du Rempart District Council and he used to accompany Accused No.2 Mr Ghallu to perform site visits. On 06.07.04 he went along with Accused No.2 who informed him that he had to perform one such site visit at Tombeau Bay. But the visit turned out to be a private visit according to him, as Accused No.2 stopped somewhere near a football pitch and went to a house with another person, Mr Appadoo, who had been waiting for him, leaving him, Mr Heeramun, in the car. After some time, whilst Mr Ghallu was walking back to the car, ICAC officers came in a car and arrested Accused No.2 at the behest of Mr Appadoo who told the ICAC officers to take him away.

The main witnesses for the prosecution were Mr Gopal Krishna Appadoo and Mr Sylvain Nohur. Mr Gopal Krishna Appadoo was called with respect to counts I and II against Accused No.1 and count III against Accused No.2. Based on the particulars under count I, it is averred that Accused No.1 obtained from Mr Appadoo Rs 2500 out of Rs 5000 to be remitted to Iswaraj Ghallu, Accused No.2 to cause the development permit of Mr Appadoo to be approved by the District Council. Under count II, the particulars are that Accused No.1 solicited from Mr Appadoo Rs 50 000 to be remitted to Accused No.2 to cause the development permit of Mr Appadoo to be approved by the District Council. Under count III against Accused No.2 it is averred that Accused No.2 whilst being an Inspector of Works at the District Council, he made Mr Appadoo believe that he had approved his building permit and as such took Rs 2500 from Mr Appadoo.

Mr Appadoo stated that he owned a bungalow found at Tombeau bay and he wanted to build more bungalows at the same place. He knew Accused No.1 as someone who could draw plans at the District Council. Accused No.1 showed him some plans which he produced, Doc G, G1 and G2. Copies of the proposed reinforced concrete residential complex have also been

produced, Doc AA. There were 10 rooms to be built with three floors. In May 2004, he gave Accused No.1 an authorisation in writing to apply on his behalf for a development permit for a residential complex to the District Council, Doc X and J. Accused No.1 made the application on his behalf, Doc AD. He accompanied Accused no.1 to meet Accused No.2 at his office at Mapou in the beginning of the month of June for the purpose of obtaining the permit to proceed with the construction. They discussed about the possibility of putting up a three storey building and the plan. Accused No.2 made him believe that he had the power to make him obtain the development permit for the construction project as the plans had to be approved by him. The next meeting with Accused No.2 was scheduled on a Monday at the place of the declarant. There, Accused No.2 showed him a plan for a three storey building which he found he would be unable to construct.

He also stated that he gave Rs 10 000 to Accused No.1 in advance to get things moving. His statement he gave to the ICAC was put to him to the effect that Accused No.1 asked him Rs 6000 for the development permit application, out of which Rs 3000 was meant for TVA purposes and Rs 3000 for payment to the District Council, but his version was that there was no fixed amount which was finalized between him and Accused No.1 in order to get things moving; that the money was meant for him, Accused No.1.

With regard to the charge under count 1, Mr Appadoo stated that apart from those two sums of money Rs 10 0000 and Rs 6000 that he gave to Accused No.1, the latter asked for an unspecified sum of money to be given to Accused No.2. When his version which he gave to ICAC on 29.06.04 was put to him to the effect that "Mr Kutwaroo (meaning Accused No.1) also asked Rs 5000 to give to the Inspector of the District Council by the name of Ghalloo whom he had met in his office and that it was meant for the purpose of approving the application, the declarant stated that both versions were correct. He further contradicted himself by stating that even if the accused had asked him Rs 5000, he never told him for what purpose the money was needed. His version which he gave to ICAC was again put to him in which he had stated that apart from Rs 6000 that he gave to Accused No.1, the latter also asked for Rs 5000 to give to Accused No.2 to approve the application, this time he stated that his version to the ICAC was correct. When he was asked whether he remitted Rs 5000 to Accused No.1, he replied in the affirmative. His version he gave on 29.06.04 to ICAC was again put to him that he stated having remitted only Rs 2500 to Accused No.1, he stated that he gave him the sum of money he had asked. He also stated that since he had given his statement 9 years ago, he was not in a position to state exactly how much money he had remitted. But at one point in time, he also stated that that at no time either Accused No.1 or Accused No.2 asked for any specific sum of money, that he gave money time and again at the request of the accused.

In fact, both accused had come at his place on the same day, but separately. Accused No.1 came in the morning in June 2004 and Accused No.2 in the afternoon. Accused No.1 came to illtreat him about the fact that he was not giving him any money and left him to go and see the police. He followed Accused No.1 and when he went to the police station, the police arrested Accused No.1 and referred him to ICAC.

Although the charge under count II is against Accused No.1, Mr Appadoo's version was that Accused No.1 did not ask him any sum of money but that it was Accused No.2 who asked him Rs 50 000 per storey to be built when he came at his place at the time when he met Accused No.2 for the second time. Accused No.2 had phoned him earlier and had informed him that he would stop by his place during the course of a site visit he would make at Terre Rouge. As he had only Rs 2500 in his pocket when the Accused came, he gave that sum to Accused No.2. Then he stated that Accused No.2 asked him Rs 150 000 for the permit which he found was too much. Prior to that, he had photocopied Rs 500 bank notes (Exh 1) which he remitted to ICAC whom he called at his place after he had remitted those bank notes to Accused No.2 in the amount of Rs 2500. Accused No.2 asked for Rs 50 000 per storey to cause a permit that he required to be approved for three floors of the building. When the version he gave to the ICAC was put to him that it was Accused No.1 who asked Rs 50 000 on the phone for Accused No.2 he stated that both accused asked him different sums of money, Accused No.1 Rs 50 000 and Accused No.2 Rs 150 000. Whilst leaving his place, ICAC officers who were waiting for Accused No.2 arrested the latter with the money he had handed over earlier.

Under cross-examination, he stated that during the meeting held in the office of Accused No.2, the latter informed him that only after the plan had been approved by the engineer and the architect of the District Council that it can be submitted for approval by the District Council. He received by post the photocopy of a plan but according to him, it was not the same one which he had discussed about with Accused No.1.

He agreed that when Accused No.1 came at his place on 06.07.04, he reproached him of having done his part of the job but that he, the declarant had not done his as he had failed to pay him for the plan, that was the reason why he was going to report the declarant to the police. In Court, he stated that Accused No.1 told him he was a thief and swore at him, whilst in his statement he gave to ICAC on 06.07.04, he did not mention same to the officer who had recorded his statement. When it was put to him that at no time did Accused No.2 ask for money; that in fact it was Accused No.1 who asked money from him, he maintained that Accused No.2 asked for Rs 50 000 per floor; i.e. Rs 150 000 when he came at his place.

Mr Sylvain Nohar was called with respect to the charge under count IV against Accused No.2. It is averred in the information that Accused No.2 made Mr Sylvain Nohar believe that he could cause the development permit of his step son, Mr Pascal Noel Ombroisine to be approved and as such took Rs 12 000 from Mr Sylvain Nohar.

Mr Nohar deposed that he had consented to his step son Mr Ombroisine adding the first floor to an existing reinforced concrete residential building of which he was the owner and found at Cite Gokoolah. In January or February 2004, he met Accused No.2 when he went at the District Council and after they had discussed about the project, Accused No.2 agreed that he would draw the additional plan to the already existing ground floor of his house. He had to agree that in his statement he gave to ICAC in December 2004 which was put to him that Accused No.2 told him that he could make him obtain the development permit, draw the plan and do other things in order that he may start with the construction project. An application was made under the name of his step son to the District Council for a development permit, Doc AX, AY and

subsequently afterwards, a development permit was issued under the name of Mr Ombroisine, Doc AS.

A few days after that first meeting, Mr Nohur went to the District Council and handed over to Accused No.2 all the documents which the accused had requested from him. He agreed that in his statement he gave to ICAC, he had stated that in fact a few days later, the Accused phoned him and came to collect personally at his place all the documents. Then he stated that the accused never contacted him again. His version to ICAC was put to him anew whereby he agreed that the accused came at his place some 15 days later to show him a draft of the plan for the proposed first floor. When he asked the accused how much that would cost him, he stated that the accused told him that the plan would cost him about Rs 12 000, including everything else. In his statement he gave to ICAC, he agreed having stated that the accused told him it would cost him Rs 12 000 for the plan and that he would do the needful to make him obtain the development permit and building permit.

None of the accused adduced any evidence as they were perfectly entitled to. After a voir dire was held, this court delivered its ruling and held that the statement of Accused No.1 recorded on 07.07.04 by ICAC by CPL Soobrayen was not admissible. But other statements of the accused were produced as Doc AK, AK1, AL. Accused No1's unsworn version was that he knew Mr Appadoo since quite a long time and had worked with him at Ile de la Reunion. Mr Appadoo had agreed to pay him Rs 12 000 to draw a plan for the proposed construction and he gave to the accused a written authorisation to make the application in writing to the District Council on his behalf. He saw Mr Ghallu, Inspector posted at the District Council with the plan and on Mr Ghallu's recommendation, he amended the plan he had already drawn and informed Mr Appadoo accordingly. They went to the office of Mr Ghallu and he informed them that the permit would be ready in one week's time. Some ten days later, he collected a photocopied permit from Mr Ghallu as the original would be sent by post to the applicant. On the same day he met Mr Appadoo to whom he gave the permit and Mr Appadoo paid him Rs 9 500 out of Rs 12 000 that they had agreed upon. Mr Appadoo paid him for the work he had done. Later, Mr Ghallu and Mr Appadoo agreed to meet on a Friday. He did not know what happened afterwards. He denied the charge against him.

The version of Accused No.2 is found in his unsworn statements, Doc AM, AM1, AM2 and AR. He stated that in his capacity as Inspector of Works, his job consists of supervision of construction and repair of the road, renovation and repair of buildings of the District Council. He does not draw plans of buildings and has not drawn any plan for a proposed construction to be approved by the District Council of Mapou. It does not form part of his duty to perform site visits of buildings under construction. He knew Mr Kutwaroo who was younger than him and they became close when he met him anew at the Pamplemousses and Riviere du Rempart District Council where Mr Kutwaroo was posted as draughtsman. He did not deny that in early 2004, he met Mr Appadoo in presence of Mr Kutwaroo as his office at the District Council. But his version was that he informed them that Mr Appadoo was legally entitled to obtain the permit within a fortnight and that he had nothing to do with the 'planning section' when Mr Kutwaroo told him to cause the development permit of Mr Appadoo to be approved by the District Council. He did not meet them again. But subsequently afterwards, he received a phone call from Mr

Appadoo who thanked him for having made him obtain the development permit, but he told Mr Appadoo that he was legally entitled to be issued with such a permit. But when Mr Appadoo invited him at his place to thank him for what he had done, he immediately took along Mr Heeramun, the foreman with him and went to Tombeau Bay, near the football playground where he stopped his car. Earlier on that day on the phone an unknown person complained to him about a site at Tombeau Bay but he did not make any entry in the Occurrence Book regarding that complaint. But that prompted him to pay a visit to Mr Appadoo who also lived at Tombeau Bay. When he reached there, he called Mr Appadoo who came out and invited him to come inside his house where they both went, leaving Mr Heeramun behind. Mr Appadoo thanked him once again for the good job he had done and at the same time and upon the insistence of Mr Appadoo, he allowed the latter to put a Rs 500 note in his breast pocket of his shirt. He considered the money to be a gift from Mr Appadoo. When he went outside, two ICAC officers arrested him and seized the Rs 500 note from his pocket. When he was informed of the charge of bribery by public official, he replied that he had come to pay a visit to Mr Appadoo and that the latter gave him money to entrap him. He had agreed to help Mr Appadoo as he would have done for any other person but he denied having stated that he would cause the development permit to be approved. He stated that it was false that Mr Appadoo asked him whether he had received Rs 2500 which he had sent via Mr Kutwaroo. He denied that he asked Mr Appadoo Rs 50 000 for each floor to cause the building permit to be approved. Mr Kutwaroo has never given to him Rs 2500 on behalf of Mr Appadoo. He had not encountered any problem with Mr Appadoo in the past. He had never told Mr Kutwaroo to ask Mr Appadoo Rs 50 000 to approve the development permit of Mr Appadoo.

He denied having anything to do with the development permit of Mr Pascal Noel Ambroise. He denied that Mr Nohur came to see him for the development permit of Mr Ambroise. He also denied that he asked Rs 12 000 from Mr Nohur (1) to make a plan (2) for the approval of the plan and the development permit of Mr Ambroise and (3) for helping him obtain his building permit. At no time did he go to Mr Nohur's place where the latter gave him Rs 12 000. He has never got into trouble with Mr Nohur. He stated that he had helped him to obtain an authorisation for him and instead he finds himself involved with ICAC in return.

Mr Appadoo deposed 9 years after the event but there was no sign of bouts of memory loss. Instead, there were numerous contradictions in his version on the material issues at hand. Whilst in examination-in-chief he stated that Accused No.2 made him believe he had the power to make him obtain the development permit, under cross-examination he changed that version to state that the purpose of the first meeting with Accused No.2 at his office was to appraise him of the procedures which had to be followed in order to get the approval of the District Council for his application.

The particulars under count I are that Accused No.1 obtained from Mr Appadoo Rs 2500 out of Rs 5000 to be remitted to Iswaraj Ghallu, Accused No.2 to cause the development permit of Mr Appadoo to be approved by the District Council. However, the declarant was totally confused about the sum of money he had given to the accused and he did not even know the purpose for which he had given it.

The particulars under count II are that Accused No.1 asked from Mr Appadoo Rs 50 000 to be remitted to Accused No.2. But the evidence adduced by the prosecution is in total contradiction with the averment of the information. Mr Appadoo was adamant that it was Accused No.2 who had called in person at his place to ask not for Rs 50 000 for each storey for a proposed construction of three floor. Thus, Mr Appadoo's version was that Accused No.2 asked him Rs 150 000 which is in contradiction with the averment in the information where only Rs 50 000 is mentioned under that count. It is important to note that the inconsistent version of Mr Appadoo cropped up at a very early stage, during examination-in-chief itself. Whilst he stated that Rs 150 000 was meant for the approval of the proposed construction of a three storey building, he added that the sum was for the approval of the development permit, leaving much doubt about the sum and the purpose of the money.

With regard to the charge under count III against Accused No2, Mr Appadoo stated that it was at his invitation that Accused No.2 turned up at his place on 06.07.04 and he even allowed him to park his vehicle in his yard. However, he disagreed that he remitted Rs 2500 to Accused No.2 in order to lay a trap for Accused No.2 to be arrested by the ICAC. The evidence adduced by the prosecution under that count is in contradiction with the particulars provided under that count. The averment is that Accused No.2 took Rs 2500 from the declarant as he made him believe that he had approved his building permit, but the evidence led by the prosecution is that the declarant gave Rs 2500 to Accused No.2 who had asked Rs 50 000 per floor. There is even more. Mr Appadoo repeatedly gave evasive answers under cross-examination when part of his statement was put to him in which he had stated that he had lied and he told Accused No.2 that Accused No.1 had asked him Rs 75 000 (*mo fine cause menti et mo fine dire li* (meaning Accused No.2) *qui Kutwaroo fine demande moi Rs 75 000*). He finally had to agree that this is what he said in his statement and that he had lied to Accused No.2. This shows the propensity to lie by the witness rendering it utterly unsafe to act on his version.

In so far as Mr Nohur's testimony is concerned, at the early stages of the examination-in-chief, his version which he gave to ICAC in 2004 had to be put to him given that his version in court was inconsistent with that which he had told the ICAC. On the material issue at hand regarding the sum of money of Rs 12 000 which the accused asked from him, in court, he completely obliterated the crucial fact that it was asked for the development permit as can be gathered from his version which he to ICAC. Notwithstanding the fact that his inconsistent version was put to him, he went on by saying that he paid the accused Rs 12000 when the plan was ready, thus going back to his original version which he had given in court that the money was meant, amongst others, for the plan. In fact, he could not recall having told the ICAC that he gave to the accused the money on the following day as he did not have enough money with him on the day the accused asked him Rs 12 000. He again maintained that he gave Rs 12 000 to the accused for the plan. At the outset of his testimony, he pointed out that there was nothing much he had to say and this is reflected all along during his examination-in-chief as the prosecution had the painful task of putting his version he gave to ICAC all throughout after he gave brief answers on being questioned by the prosecution.

Mr Nohur genuinely admitted under cross-examination that when he was summoned as a witness by the ICAC at the enquiry stage, he deliberately led the ICAC astray by mentioning the name of a deceased person as being the person who dealt with the District Council for the development permit for the construction project and so at first, he did not mention the accused's name to ICAC. He thus in his first version he gave to ICAC in October 2004 denied having ever known both accused. He did so on purpose, so as to simplify matters for himself. The very fact that Mr Nohur mentioned a person who had passed away for his own sake shows how a dishonest person he can be. At the end of his cross-examination, he maintained his version that he paid Accused No.2 for the plan, and not for the development permit. The inconsistent and utterly unreliable version of Mr Nohur has gone to affect the root of the prosecution's case on the material issue at hand under count IV. His version is therefore rejected on that account.

The evidence led by the prosecution is fraught with contradictions, rendering it utterly unsafe to act on it. The prosecution having failed to prove its case against both accused according to the required standard, I hold that it has not proved its case beyond reasonable doubt against the accused parties. I therefore dismiss counts 1 and 2 against Accused No.1 and counts 3 and 4 against Accused No.2.

R. Seetohul-Toolsee

29th January 2015.