

ICAC v Seewoonarain

2019 INT 122

CN1648/13

THE INTERMEDIATE COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

Independent Commission Against Corruption

v/s

Seewoonarain Sattit Anand

JUDGMENT

The Accused stands charged with 01 Count of Bribery By Public Official, contrary to s. 4(1)(b)(2) of the Prevention Of Corruption Act 2002 (hereinafter referred to as POCA).

The Accused pleaded Not Guilty to the charge and was assisted by Learned Senior Counsel throughout the Proceedings.

Learned Counsel for the Prosecution conducted the case for the Prosecution.

The Proceedings were held partly in English and partly in Creole.

The Prosecution Case

It was the case the Prosecution that on or about 08-07-10, at Curepipe Police Station, in the District of Upper Plaines Wilhems, the Accused, then Police Corporal Departmental Number 3054, did whilst being a Public Official wilfully, unlawfully, and criminally, solicit from another person, for himself, a gratification for doing an act which is facilitated by his duties.

Particulars:

On or about the date and place aforesaid, the said Accused did, whilst being the Investigating Officer into a case at Curepipe Police Station, solicit the sum of Rs50 000/- from one Jacques Desire Marion (hereinafter referred to as W5) in order to exculpate latter who was a suspect in the said case.

The Defence Case

The Accused denied the charge in his 03 unchallenged solemnly affirmed out-of-Court statements (Docs. A, A1, and A2).

The Accused elected to exercise his Right to Silence in relation to his 04th statement (Doc. A3).

In Court, under solemn Affirmation, the Accused inter alia denied the charge.

Analysis

The Court has duly analysed all the evidence on Record and all the circumstances of the present matter, and the Court has watched the demeanour of the Prosecution Witnesses, and that of the Accused with the utmost care.

The Court has also given due consideration to the Submissions and written Submissions of the Prosecution (Doc. L), and to the Submissions and written Submissions of the Defence (Doc. M). The Court has also given due consideration to the Authorities referred to by both Learned Counsel.

In the present matter, the Prosecution bear the burden of proving beyond reasonable doubt the following 03 essential elements of the offence as per s. 4(1)(b) of the POCA:

- 1) That the Accused was a Public Official;
- 2) Who solicited from another person for himself a gratification;
- 3) For doing an act which is facilitated by his duties.

The Prosecution case rested essentially on W5's testimony.

The Court has duly considered all the articles of evidence produced in the course of the Proceedings:

- 1) Diary Book (hereinafter referred to as DB) Entries (Doc. B);
- 2) 01 Letter (Doc. C) from the Commissioner Of Police (hereinafter referred to as CP) dated 25-07-11;
- 3) 01 sticky note and envelope (Exhibit I collectively);
- 4) 01 true and certified copy of Occurrence Book (hereinafter referred to as OB) 3508/10 of Curepipe Police Station (Doc. D);
- 5) 01 true and certified copy of OB of Curepipe Police Station for 08-07-10 and 30-07-10 (Doc. E);
- 6) 01 true and certified copy of Duty Roster for 08-07-10 and 30-07-10 (Docs. F and F1 respectively);
- 7) 03 documents from MT (Docs. G, H, and J); and
- 8) 01 map from MT (Doc. K).

Not In Dispute

It was not disputed the Accused was a Public Official at the relevant time, which was also confirmed by the unchallenged Letter from CP (Doc. C).

It was further not disputed the Accused was on Duty at the Curepipe Police Station on 08-07-10 as per the unchallenged Duty Roster (Doc. F).

This was also confirmed by the Accused in his unchallenged solemnly affirmed out-of-Court statement (Folios 91002, 91016-17 of Doc. A).

It has therefore been established the Accused was a Public Official, as defined in s. 2 of POCA, at the relevant time, and was on duty on the relevant date, at the relevant time, and at the relevant place.

PI Guckool (hereinafter referred to as W4) confirmed the Accused was the Investigating Officer in case OB3508/10, in which W5 was a suspect, and this was not disputed by the Defence (Folios 91002-3 of Doc. A).

It has therefore been established the Accused was the Investigating Officer in the said case in which W5 was a suspect.

Identity

SI Koussa (hereinafter referred to as W1) confirmed that:

- 1) W5 had positively identified the Accused in the ID parade carried out in relation to the present matter; and
- 2) Eric Vincent Marion (hereinafter referred to as W8) had not identified the Accused during the ID parade.

This was also confirmed by the Accused in his unchallenged solemnly affirmed out-of-Court statement (Doc. A1).

W1 also confirmed that Marie Arlette Alexis (hereinafter referred to as W6) had said to the Police she would not be able to identify the Police Officer in question, and hence no ID Exercise was carried out in relation to W6.

ASP Coret (hereinafter referred to as W3) deponed along the same lines as W1, as regards the ID exercise in relation to W5 and W8.

In light of the above, coupled with the fact W5 unwaveringly identified the Accused in Court in the course of the Proceedings, the Court is of the considered view it has been established the Accused was the Police Office in question in relation to the present matter.

Sticky Note (Exhibit I)

Whilst conceding it was his phone number on the said sticky note (Exhibit I), the Accused initially denied having written same on the said sticky note (Exhibit I) (Folio 91020 of Doc. A). The Accused eventually admitted the handwriting was his (Folio 95487 of Doc. A2).

The Accused denied throughout having given the said sticky note (Exhibit I) to W5 or having written his phone number thereon to give same to W5 (Docs. A and A2).

Upon being asked how W5 would have known the said phone number on the said sticky note (Exhibit I) was his, when his version was to the effect he had not given the said sticky note (Exhibit I) to W5, the Accused replied that Aneerood Bussunt would be able to explain same, stating further that the said Aneerood Bussunt, who had been his Friend, had been paying him visits at his Office at the Police Station.

The following issues were however not canvassed in the course of the Prosecution case:

- 1) The link, if any, the said Aneerood Bussunt had with the Accused in relation to the present matter; and
- 2) Why, and for what purpose, since the said Aneerood Bussunt was meant to be the Accused's Friend, he would have pulled the strings.

These issues are analysed in more detail below, and in order to avoid repetition, are set out only below.

In light of all the above, the Court finds the Accused's said explanations unconvincing, including for the reasons given below, and is satisfied that the Accused gave the said sticky note (Exhibit I) himself to W5.

Who solicited from another person for himself a gratification

The Court has duly considered the testimony of W5, and the Court makes allowances for the passage of time, bearing in mind W5 was deponing in 2017 and 2018 in relation to events which had allegedly occurred in 2010, but also given the testimony of a Witness is not a memory test, as per the principle set out in the Authority of **Vythilingum v The State** [\[2017 SCJ 379\]](#):

Giving evidence in Court is not a memory test and failure to recollect with precision all the circumstances and details of an incident is understandable. What is important is for the Court to be satisfied that a witness is speaking the truth in substance.

The Court bears in mind Corroboration is not required, but merely desirable, in the present matter, and the Court also gives itself the Warning as to the danger of acting on the uncorroborated testimony of W5, bearing in mind in particular the present matter is based on W5's word against that of the Accused, given the Prosecution elected not to call W6 and W8.

W5 maintained throughout the Proceedings the Accused had asked him, on 08-07-10, at the Curepipe Police Station, for Rs50 000/- in order to exculpate him in the said allegation made against him, i.e. W5, by his Aunt. The Court is however of the considered view it would be unsafe to act on W5's sole uncorroborated testimony, for the reasons given below.

W5's testimony in Court as to the circumstances in which the said solicitation was made was to the effect that the Accused had requested to speak to him alone, asking W5's Son and Cousin

to stay at the Counter, following which the Accused and W5 went to another Office to speak, which was when the said alleged solicitation took place. The version which was put to the Accused in his unchallenged out-of-Court statement (Doc. A) was however to the effect the Accused took W5 and his Cousin to an Office to speak to W5 and to his Cousin, following which the Accused asked W5's Cousin to wait outside the said Office, as he had to speak to W5 alone, which was when the said solicitation took place.

Further, W5 stated in Examination-in-Chief that the Accused had not told him on the said day he had to give his statement in presence of Counsel in relation to the said allegation made against him by his Aunt. However, in cross-Examination, W5 admitted the Accused had told him on the said day he had to give a statement in presence of Counsel in relation to the said allegation his Aunt had made against him.

W5 went on to state that when he went to the ICAC, the ICAC told him he would have to go to the Station for his statement to be recorded, then that he told the ICAC he would go to the Station, as the Accused would from time to time be in front of his House, and would call him, so that he felt compelled to go.

Further, following a lengthy cross-examination, W5 in effect eventually stated he was of the opinion that the said allegation against him was false, and that it was the Accused, who had recorded the said statement in relation to the said allegation from his Aunt, who had in effect instigated his Aunt "(met sa dans la tête ou matante").

More significantly, the Court notes there is evidence on Record to the effect W5 had been to the ICAC on 23-07-10 and on 03-08-10, i.e. prior to the recording of his statement by the Accused on 09-08-10. Further, the Court bears in mind that had the Accused in fact met W5 for the first and only time on 09-08-10, when W5 was to give his statement in the case in which he was a suspect, there would have been no reason for W5 to go to the ICAC prior to 09-08-10. The Court however cannot ignore the fact that W5 may have had a purpose of his own to serve, by making such an allegation against the Accused, given the very fact the Accused was the Investigating Officer in the said case OB3508/10 in which W5 was a suspect. It also stands to reason, that had W5 in fact told his Counsel who was assisting him at the time of the recording of his statement on 09-08-10 in relation to said case OB3508/10, that the Accused had solicited Rs50 000/- from him in order to exculpate him in the very case for which he was to give his

statement, as deponed to by W5, Counsel would have been duty bound to ask for the said statement to be recorded by another Police Officer, and not by the Accused.

Further, the Court bears in mind the circumstantial evidence adduced in the course of the Proceedings, but finds that same is not sufficient to fill the gaps in W5's testimony, who did not strike the Court as a coherent Witness, his answering questions put to him in a haphazard manner.

The Court is of the considered view that all these factors taken together cast doubts on W5's testimony, and that it would hence be unsafe to act on W5's tenuous testimony, and in the absence of any cogent corroborative evidence.

For doing an act which is facilitated by his duties

Having found it would be unsafe to act on W5's sole uncorroborated testimony, as highlighted above, the Court does not address the issue of the presumption which applies pursuant to s. 4(2) of POCA.

Accused's Version

The Accused denied the charge in his 04 unchallenged out-of-Court statements (Docs. A, A1, and A2). The Accused elected to exercise his Right to Silence, as was his Right, in relation to his 04th statement (Doc. A3).

Having perused with care the said statement (Doc. A), it appears therefrom that the Accused would not indicate his movements in relation to, or his contacts with, W5's Aunt, in the DB Entry of the Curepipe Police Station or in his Police Pocket Notebook (Folio 91007 of Doc. A). No reason was given for same. It therefore stands to reason that the said DB Entries (Docs. F and F1) may not be completely accurate as regards the Accused's movements, but in the absence of any concrete evidence to the contrary, the said DB Entries (Docs. F and F1) are taken to be accurate, bearing in mind the application of the principle of the presumption of regularity.

There is no way to ascertain, by reliance on the said itemised bill (Doc. G), whether the Accused was in fact in the vicinity of the Curepipe Police Station on the day and at the time in question, given no calls were received by, or made to, the Accused's said phone between 09:25:59 and 12:11:00 (Itemised Bill of Doc. G).

The Court bears in mind the testimony of the Representative of Mauritius Telecom (hereinafter referred to as W11) inter alia to the effect that the location on the itemised bill (Doc. G) represents the antennae through which the call was channelled, and to the effect that the mobile is connected to the nearest cell.

In light of the above, it is clear that the Accused was not in the vicinity of Vacoas, which is served by base stations as mentioned on (Doc. H), but was in the vicinity of the Curepipe Police Station when the said 12:11:00 call was received, given same was relayed by Jan Palach 2 Antennae, which serves the region of Salaffa, Curepipe Market, Chasteauneuf Street, Commerson Street, Arcades Currimjee, and Royal Road Curepipe (as per the last page of Doc. G), although the DB Entry SN83 indicates the Accused left for Vacoas on Enquiry at 11h05 on the said day.

In light of all the above, the Court finds it safe to conclude that the Accused was in fact in the region of the Curepipe Police Station around 12:11:11, bearing in mind also that the Accused confirmed he was the only one using the said phone, and explained in Court that he was in the habit of leaving his phone at the Police Station when proceeding to Court. True it is that (Doc. F) evidences the Accused proceeded to the Curepipe Court on the said day. It however further stands to reason that had the Accused in fact left his phone at the Curepipe Police Station on proceeding to Court on the relevant day, the Accused would have collected his phone once he was back from Court (Doc. F), given the Accused's own explanation he was in the habit of leaving his phone at the Police Station when proceeding to Court. No suggestion was made that this was in fact not the case on that particular day, or that the said phone was not in the Accused's possession on the said day at all, or at any other time.

As regard the Accused's whereabouts at the relevant time on the relevant day, the fact the Accused was in the compound of the Curepipe Police Station at about 11h00 on 08-07-10 is evidenced by the unchallenged DB Entry (Doc. B) at Entries SN 82-83. It appears therefrom (Doc. B) that the Accused was in fact at the Curepipe Police Station on the said day, between 11h00 and 11h05, i.e. for a full 05 minutes, at the very time W5 said he was at the said Police Station on the said day.

The said DB Entry (Doc. B) concords with the DB Entry (Doc. E).

Further, the line of Cross-Examination adopted by the Defence is in total contradiction with the Accused's version given in his unchallenged out-of-Court statement (Doc. A).

In Cross-Examination, it was put to W5 that the Accused had informed him on the 08-07-10, i.e. the 01st time he had been to the Police Station, that his Aunt had made an allegation against him and that he was to give a statement in presence of his Counsel. However, the Accused, in his unchallenged out-of-Court statement denied having ever met W5 on 08-07-10, and even stated in categorical terms that the only time he had met W5 was on 09-08-10, when he recorded W5's statement in the case in which W5 was a suspect (Folio 91023 of Doc. A).

Further, the Accused's contention, in Court under solemn Affirmation, was at 01st that Aneerood Bussunt, who was the beneficiary of a Rs100 000/- SBM cheque, was "the string-puller" in his case. The Accused then stated in Court, still under solemn Affirmation, that the said Aneerood Bussunt, who had been his Friend, had been paying him visits at his Office at the Police Station. The following issues were however not canvassed in the course of the Proceedings:

- 3) The link, if any, the said Aneerood Bussunt had with the Accused in relation to the present matter; and
- 4) Why, and for what purpose, since the said Aneerood Bussunt was meant to be the Accused's Friend, he would have pulled the strings.

The only apparent link between the said Aneerood Bussunt and the present matter was adduced in the course of the Proceedings, when W5 stated that the said Aneerood Bussunt was present shortly after the Accused had told his Aunt to withdraw her Complaint against W5. All these items, which were not canvassed in the course of the Proceedings, appear to be a red herring.

All these factors clearly cast doubts on the Accused's version.

The Court does not address the following issues, given no evidence was adduced in the course of the Proceedings in relation to same:

- 1) issues relating to the Accused being convened to the ICAC for his 01st statement; and
- 2) calls made or received by W5.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter and all the factors highlighted above, the Court is of the considered view that there are disquieting features in both the Prosecution case and the Defence case, as highlighted above.

However, bearing in mind that the burden of proving its case beyond reasonable doubt lies squarely on the Prosecution, and that there is W5's testimony on the one hand and the Accused's denial under solemn Affirmation on the other, coupled with the doubts which remain in the Prosecution case, as highlighted above, the Court is of the considered view that the Accused is to be given the Benefit of the Doubt, and the case is therefore dismissed against the Accused.

(Exhibit I) to be forfeited.

Prohibition Order to lapse after delay of Appeal has lapsed.

[Delivered by: D. Gayan, Magistrate]

[Intermediate Court (Criminal Side)]

[Date: 12 June 2019]