

CN: 116/2020 [old CN: 1056/2018]

IN THE INTERMEDIATE COURT OF MAURITIUS [FINANCIAL CRIMES

DIVISION]

In the matter of: -

Independent Commission Against Corruption

v/s

Rakesh Kumar Sewsurn

JUDGMENT

Accused stands charged with the offence of wilfully and unlawfully making use of his position for a gratification for himself in breach of section 7(1) and 83 of the Prevention of Corruption Act 2002. Accused was assisted by counsel and pleaded not guilty to the charge.

Mrs Bhoojhawon produced a document to the effect that Accused has been working as police officer since 31st of October 2002. He was not cross-examined.

Mr M Seesunkur produced certain itemised bills from Mauritius Telecom. He was not cross-examined.

Investigator Mohamed gave evidence that Mrs Grande Oreille produced an electronic device from which 14 screen shots were retrieved. There was a hashing procedure which was complied with to ensure that the contents are preserved. He was not cross-examined.

SI Deepchand, the enquiring officer produced 3 statements of Accused in court. The gist of his testimony is that the recording on the CD was viewed by the main prosecution witness who identified Accused as the person on the photographs. He produced the CD in court. He was not cross-examined.



As per the testimony of CI Audit, an identification exercise was carried out on the 27th of October 2015 between Accused and Mrs Grande Oreille and Accused opted for a direct confrontation. Mrs Grande Oreille identified Accused as the person who gave her a sum of money. Accused replied that he did not do such an act and that he actually went to get some cakes and cigarettes. He was not cross-examined by defence counsel.

The gist of Inspector Ramnanan's testimony is that when a suspect is arrested, the officer in charge normally makes a recommendation in respect of bail by way of a police form "clearance for release of bail" which has to be signed by a gazetted officer. Only officers of the rank of ASP can waive an objection to the release of a suspect on bail. A suspect named Jean Fabrice Francisco Agamemnon was arrested on the 16th of October 2015 and the said suspect was remanded to police cell after the police objected to his release. He was detained in police cell at Flacq police station. He was not cross-examined.

Ps Bhugaloo gave evidence that on the 26th of October 2015, he was the supervising officer of the 3rd shift which was from t 23.15 hrs up to 7 hrs. Pc Seetul and the Accused formed part of the 3rd shift duties. Accused stated that he will be late for his 3rd shift duty due to personal problems. Ps Bhugaloo produced a diary book entry to that effect. He produced another the diary book entry to the effect that Accused called in for duty at 00.32.37. Accused was in fact detailed to perform sentry duties over cells from 3.00 to 7.30 hrs. and he was to relieve Pc Seetul. He added that an extract of a video recording was shown to him by Investigator Mohamed and he identified Accused as the police officer in the recording.

The main features of Pc Seetul's testimony are that on the 26th of October 2016, he performed 3rd shift duty at Flacq Police station. and called for duty at 23.15 hrs. and was detailed to perform sentry on cells up to 3.58 hrs. Pc Sewsum relieved him at 3.30 hrs. He identified Accused as the said Pc Sewsum. Accused was expected to remain near the cell is and visit the detainee every 15 minutes during the night. He was not cross-examined.

Mrs M B Grande Oreille, the declarant gave evidence that she has been granted immunity in connection with the present charge. The main features of her testimony are that on the 27th of October 2015, she received a call from a police officer to the effect that he can help to get her son released before 9 hrs but that it will cost 2000. She agreed and left the in

the company of her other son who had a tablet in his possession. She then met the police officer near the police station. She identified Accused as the same person. The latter approached her and asked her to keep walking. He asked her to buy cigarettes and some cakes which she did. Following that, he instructed her to put the money in the bag containing the cakes. When she asked him whether her son will be released, he answered in the affirmative and she was relieved. She maintained that she put Rs 2000 in the bag containing cakes and gave it to the Accused and that her son was filming. She then went back home. She added that when she informed her sister, the latter stated it is illegal but that she had not realized she had acted illegally. She was not familiar with the procedures and trusted the police officer. The tablet which was used for filming was produced to the ICAC and was examined as a result of which a report was prepared and a few photographs were retrieved. She added that when her son was filming the scene, he was in the back and was scared and thus he was unable to capture everything. She maintained that the money was given to help facilitate the release of her son. Under cross-examination, she stated that Accused did not say much to her before she gave him the money. She maintained that Accused called her earlier and that she recognised his voice. She agreed that she spoke to him only once on the phone. She stated that her son mentioned Rs 3000 but that Accused mentioned Rs 2000. When she was asked whether the money was for her son, she stated that Accused said that he would do some demarches. She agreed having mentioned that she will not be able to go to court since she has to work. When she saw Accused in uniform, she was sure it was not a prank. She maintained that he asked her to put the money in the bag containing cakes. She was confronted with a statement where she stated she put money in the cornet di pain but denied same. She maintained that she is telling the truth. In re-examination, she stated that both Fabrice and the police officer spoke to her on that day..

The main features of Mr Louis Alexandre Grand Oreille 's testimony are that on the 27th of October 2015, his mother went to see a police officer to give him a sum of money to facilitate the release of his brother following a conversation with the said police officer. He accompanied his mother and started filming the scene. His mother remitted the money to the police officer. He was standing at a distance of about 2 metres. He identified the photographs. He stated that the police officer asked her to put the money in a cake bag which she did. She then remitted the cake bag to him in his presence. He identified Accused as the same person. Under cross-examination, he stated that he filmed the main



scene. He recalled a video which shows his mother removing Rs 2000 from her wallet but he conceded that the photographs which have been produced do not reveal same.

The gist of Mr J F Agamemnon 's testimony is that on the 26th of October 2015, he was detained in police cell. A police officer was on duty on sentry at the Detention Centre. When he was asked why Accused can be seen with the mother on the photographs, he stated that they in fact met for cakes and cigarettes and a sum of money. He added that the sum of money was for his release on bail. When he was asked whether his mother came to drop cakes, he stated that she was going to come to court with the money. He denied that he met Accused at 23 hrs and added that he met him in the morning. He was confronted with a previous statement and agreed that he stated that he met a police officer at 23hrs who told him a "tracement" could be done and that it is the truth. He identified Accused as the same person. The latter told him that a "tracement" could be done to get him released and he asked for Rs 3000. When he was confronted with a previous statement in which he mentioned Rs 4000, he maintained that Rs 3000 is correct but then stated that he forgot and agreed that it was Rs 4000. He stated that Accused told him that he is related to a magistrate who could help him. When he was confronted with an inconsistent statement, he agreed that Accused told him that his brother-in-law works in Port- Louis court and that the said person could do a "tracement". He further deposed that in the morning, Accused lent him his phone to him so that he could call his mother. His mother eventually spoke to Accused and they arranged to meet. He then stated that he did not meet Accused again after he left. He was confronted with a previous statement and agreed that he mentioned that the police officer came back with bread and told him that his mother gave him Rs 2000 and that he will be released in 2 days. He agreed that it is true and added that he forgot what else happened. His memory was refreshed with leave of the court and he agreed that Accused showed him 2 notes of Rs 1000. Under cross-examination, he agreed that Accused was helping the detainees to buy coke and cakes and that he asked his mother to bring money in case he is released on bail. He denied that there was any "tracement" and added that when he spoke to his mother, he asked for money to be released on bail. He maintained that he asked his mother to bring money for his release on bail. He agreed that he has accepted whatever the police told him but later retracted from such version. In re-examination he stated that he would have been released on that day and would have been brought to court. He then hastened to dd that there was also a "ti tracement" connected to the release.

In his unsworn statements which were produced in, court. Accused has remained mute.

Submissions

Mr R Valyaden highlighted the various contradictions in the testimony of the prosecution witnesses and submitted that their versions cannot be relied upon. He further submitted that the photographs do not reveal any remittance of money

Mr Ponen submitted on the other hand that although previous inconsistent statements were put to witnesses 9 and 10, they withstood the test of cross-examination and that their credibility has not been impugned by cross-examination and their versions can be safely relied upon. He further referred to the rationale in the cases of **Andoo v R** [1989] MR 241. and **Annia v State** [2006].

Analysis and findings:

I have carefully considered the whole of the evidence on record.

The elements of the offence which the prosecution must establish are that Accused was a public official and that he used his position for gratification for himself.

A perusal of the court record reveals several material inconsistencies in the testimonies of Mrs Grande Oreille, Mr Louis Grande Oreille and Mr Agamemnon which render their versions unreliable.

Firstly, the declarant, Mrs Grande Oreille departed from her statement in respect of the sum of money which Accused allegedly requested. She gave various versions on this score and her version is in direct contradiction with that of witness Agamemnon that Accused requested Rs 4000. It is worthy to note that, as per the testimony of Mr Louis Grande Oreille who was present at the spot, the main scene had been filmed with the help of a tablet. He even recalled that there was a recording showing his mother putting money in a bag. On his score, the declarant's version that the whole scene could not be filmed since her son was standing at a distance of 4 m from the spot is in direct contradiction with



her son's testimony. The above inconsistency assumes great consequence when account is taken of the fact that the photographs which were produced do not reveal that the declarant put any money in any bag or handed over any bag to the Accused as alleged by her and puts into question her credibility. True it is that the photographs which are on record reveal that the declarant did meet the Accused outside the police station which is not in order, but they do not shed light on her version that she put any money in any bag and handed same over to the Accused.

As for the evidence of Mr Louis Grande Oreille, he was rather evasive and hesitant whilst deposing and I am unable to find credence in his version.

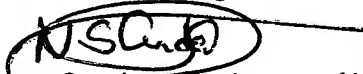
A key witness on whom the prosecution sought to rely is witness Agamemnon who is the detainee whom Accused allegedly proposed to help in return for a sum of money. A perusal of the record reveals that witness Ammageddon deposed in a haphazard and utterly unconvincing manner and that his version is seriously compromised by material discrepancies. The first material departure relates to the crux of the matter, i.e., the alleged conversation where the Accused proposed to witness Agamemnon that he would do a "tracement" in return for a sum of money. The witness plainly denied that Accused spoke to him during the night at 23hrs and stated that he only met him in the morning. It is only when he was confronted with a previous inconsistent statement that he agreed that he met Accused at 23hrs and that the latter proposed to do a "tracement" for him in return for a sum of money. The above departure is a disturbing feature to the extent that there is unshaken evidence that Accused called in for duty after midnight. The witness again departed from his statement in respect of the details of the alleged "tracement" when he stated that Accused said that he is related to a magistrate who could help. He further departed from his statement in respect of the sum of money which Accused allegedly asked. Another material departure relates to whether Accused came back afterwards and told him that his mother had given the money. It is expedient to note that he stated on 2 occasions that he did not meet Accused again after he had used Accused's phone and that the latter left. It is only when he was confronted with a previous statement that he came up with the version that Accused came back and told him that his mother gave Accused the money and that he will be released shortly. More still, his version was seriously shaken in respect of material issues in cross-examination. He stated at a certain point that he accepted everything that the police told him whilst they were recording his

statement although he later retracted from such version. He agreed under cross-examination that there was in fact no "tracement" and that he had in fact asked his mother to bring the money for his release on bail. This court cannot overlook the fact that even in examination-in-chief, he had mentioned that the money was for his release on bail and that his mother was going to bring the money to court. In re-examination, he reiterated that the money was for his release on bail but then shifted back to his version that a small tracement is included.

I find that the above departures which relate to material issues and the self-contradictions in the testimony of witness Agamemnon cannot simply be brushed aside on account of the lapse of time between the alleged incident and the testimony of the witness. It is indeed disquieting that he repeatedly gave answers which are inconsistent with his statement. If indeed he genuinely could not recall, he ought to have spontaneously said so. The several inconsistencies relating to the time and details of the alleged conversation he had with the Accused and the self-contradictions which came to light under cross-examination put into question whether Accused did speak to him in the first place about any "tracement" with regard to his release and whether Accused did use his position for a gratification.

For the reasons enunciated above, I am unable to agree with Mr Ponen's submissions that the credibility of the declarant and the supporting witnesses has not been impugned by cross-examination. As for the cases referred to by Mr Ponen, suffice it to say that the evidence adduced by the prosecution is not sufficiently strong and credible to support the charge. Hence, the rationale in those cases cannot be applied in the present case.

In view of the inconsistencies in the evidence of Mrs Grande Oreille who is a self - confessed accomplice who has been granted immunity, the fact that the photographs do not shed light on the version of the declarant, the inconsistency in the testimony of the declarant and her son and the dubious answers of witness Agamemnon who was a key witness in this case, I find that I cannot safely rely on the evidence adduced by the prosecution. I therefore conclude that the prosecution has failed to prove its case beyond reasonable doubt and I dismiss the charge against Accused.



[Delivered by Nalini Senevraya Gunden, Magistrate of Intermediate Court]

[Delivered on the 24th of May 2023]