P v Yeung

2019 INT 251

CN1145/13

THE INTERMEDIATE COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

Police

v/s

Yeung Yan Hoi Yeung Wai Ping also called Dr David Andrew Yeung

JUDGMENT

The Accused stands charged with one Count of Making False Disclosure, contrary to s. 49(1)(a)(6) of the Prevention Of Corruption Act (hereinafter referred to as POCA).

The Accused pleaded Not Guilty to the charge and was assisted by two Learned Defence Counsel for part of the Proceedings, then by one Learned Defence Counsel for part of the Proceedings, and conducted his own Defence for part of the Proceedings.

Learned State Counsel conducted the case for the Prosecution.

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

The Prosecution Case

It was the case for the Prosecution that on or about 10-09-04, at the ICAC Office, in the District of Port-Louis, the Accused did wilfully and unlawfully make a false disclosure, knowing it to be false, to an Officer that a Public Official had been involved in an act of Corruption, to wit: the

said Accused made a false Complaint to Mr. Dhaneshwar Doysuree (hereinafter referred to as W5), then Police Officer posted at the Independent Commission Against Corruption (hereinafter referred to as the ICAC), to the effect that on a day, in June 2003, two Inspectors of ADSU called at his cabinet for enquiry concerning Drug prescriptions issued by him and, that a certain moment, he saw one Mareemootoo (hereinafter referred to as W7) remitting a small bundle of bank notes to one of them.

The Defence Case

The Accused denied the charge in his unchallenged out-of-Court statement (Doc. A) and in Court under Oath.

Analysis

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

The Court has also given due consideration to the Submissions of Learned State Counsel and to that of the Accused, who was conducting his own case at that stage of the Proceedings.

The Accused was allowed to address the Court both in Law and on the facts at the close of the Defence Case, in light of the Authorities of **Hurnam v Paratian [1998] UKPC 2** and **Guness v Jankee** [2018 SCJ 87]. The Court is alive to the fact that the said two Authorities are Civil Matters, whereas the present matter is a Criminal Matter. The Court is nonetheless of the considered view that the reasoning and principles set out in the said two Authorities apply equally to the present matter, as they relate to the Accused's Constitutional Rights, bearing in mind that the Constitution is the Supreme Law of the Land.

For ease of reference, the Defence Witnesses called by the Accused will be referred to by their names, and will be numbered in the chronological order in which they deponed in Court.

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

1) The Accused's statement (Doc. A);
2) The Declaration made by the Accused to the then Complaints Investigation Bureau (hereinafter referred to as CIB) (Doc. B);

3) The Accused's statement to the CIB (Doc. C);
4) The Affidavit (Doc. D); and
5) The Accused's statement to the ICAC (Doc. E).

Amendment To The List Of Witnesses On The Information In The Absence Of The Accused

The Court has noted that a Motion to amend the Information in order to add the name of CI Cheung Yen as Witness 8 (hereinafter referred to as W8) was made in the absence of the Accused. Given one of the Learned Defence Counsel then appearing for the Accused was present in Court when the said Motion was made and took no objection to same, the Motion was granted.

The Court is of the considered view that, although this is not strictly speaking in order, the Accused was not prejudiced in any way in his Defence, given no objection to the said Motion was taken by Learned Defence Counsel then appearing for the Accused at the time the Motion was made, given the said W8 was not called by the Prosecution, given the Prosecution moved to amend the Information by deleting the name of W8 from the List of Witnesses, and given W8 was eventually called as a Defence Witness.

The Offence

The Prosecution bear the burden of proving beyond reasonable doubt that:

1) The Accused wilfully;
2) Made a false disclosure;
3) Knowing it to be false.

The Accused Wilfully

The Court has noted that although the Accused was not assisted by Counsel at the time his statement (Doc. A) was recorded, the Accused clearly stated therein that he would give his statement by himself, and that he had already been advised by his Legal Adviser (Folio 10 / 413311 of Doc. A). It is therefore clear that the Accused had been afforded the possibility of seeking and obtaining legal advice, and did obtain legal advice, before his statement (Doc. A) was recorded from him.

Further, from a careful perusal of the said statement (Doc. A), it is apparent the Accused inserted the Certificate at the end of the said statement (Doc. A) himself, in his own handwriting,

such that the voluntariness and veracity of the said statement (Doc. A) cannot reasonably be doubted.

PS 6489 Sookun now PI (hereinafter referred to as W1) explained that although the matter was referred from the ICAC to the Police in December 2008, he had to gather evidence in relation to the present matter, and had other cases to enquire into as well.
Further, the delay in recording the Accused's statement (Doc. A) was also caused by the Accused himself, as per W1.

It is trite Law that nothing short of inordinate delay will justify the Court in reaching the conclusion that the Accused's Constitutional Rights have been infringed. It is also well settled that it is primordial for the Court to assess the reason/s for such delay.

In the present matter, there is sufficient evidence on Record to establish that the delay was to a certain extent, caused by the Accused himself, as can be gathered from the very credible testimony of W1, who had a genuine outburst in Court, as to his frustration caused by the said delay occasioned by the Accused.

Also, the Defence attempted to amalgamate all the statements and Declarations given by the Accused to various Departments, i.e. the ICAC, the CIB, and the Police, and make same seem as one whole. This is not in fact the case as has been clearly explained by W1:

1) The Accused initially made a Complaint to the ICAC against ADSU Officers, which Complaint was enquired into by the ICAC;
2) The said file was then referred to the Commissioner of Police (hereinafter referred to as CP) for the Police to enquire into a suspected offence of Making False Disclosure against the Accused;
3) The CP then referred same to the CCID, in order for the Police Enquiry to be carried out; and
4) In the meantime, the Accused made a Complaint to the CIB against ADSU Officers.

It is therefore clear from the above that there was an initial Complaint made by the Accused to the ICAC against ADSU Officers, which was enquired into by the ICAC, and which case was eventually referred to CP, whereby a Police Enquiry started, as regards a suspicion that the Accused had made a false disclosure, and the Accused then made a Complaint to the CIB.

These three aspects of the present matter, though linked, are clearly distinct, and were enquired into by various Departments, as highlighted above, and cannot hence be amalgamated into one whole.

The Court is of the considered view that although there was some delay in recording the Accused's statement (Doc. A), the said delay was satisfactorily explained by W1, as highlighted above, and the Court finds that the said delay was in no way inordinate, and that there is no evidence on Record to establish that the Accused's Constitutional Rights were breached in any way and/or that the Accused was prejudiced in any way by such delay.

In the said unchallenged out-of-Court statement (Doc. A), the Accused confirmed that he had given the statement dated 10-09-04 (Doc. E) to the ICAC, the contents of which were true and correct (Folio 10 / 413312 of Doc. A).
Further, in Court, under Oath, the Accused confirmed that the said statement (Doc. E) was true and correct, and this unequivocal testimony of the Accused establishes beyond reasonable doubt that the Accused wilfully gave the said statement (Doc. E).

The Court has noted that at the end of the said statement (Folio 9618 of Doc. E), the date mentioned is 10-08-04, whereas at the beginning of the said statement, the date mentioned is 10-09-04 (Folio 9615 of Doc. E). W5 who recorded the said statement (Doc. E) from the Accused explained that it was a slip of the pen, and that the date on which the said statement was recorded was 10-09-04. The Defence also did not challenge the date on which the said statement (Doc. E) was recorded, and the Court finds no doubt as to the fact that the said statement (Doc. E) was in fact recorded on 10-09-04, and acts on that basis.

Mr. Kurrimboccus (hereinafter referred to as W4) confirmed that he recorded a Withdrawal statement from the Accused in relation to the allegation made to the ICAC by the Accused against ADSU Officers on 17-11-04, that is about two months after (Doc. E).

Pursuant to s. 2 of POCA:

> "officer"—
>
> (a) means an officer appointed under section 24; and
>
> (b) includes the Director of the Corruption Investigation Division, the Director of the Corruption Prevention and Education Division and the Chief Legal Adviser;

In the present matter, the said statement (Doc. E) was given to W5 and witnessed by Mr. Jayekurun (hereinafter referred to as W6), who were then posted at the ICAC. W5 as Recording Officer of the said statement (Doc. E) was hence an Officer for the purposes of the POCA.

Further, it was not disputed by the Defence that W5, to whom the Accused gave the said statement (Doc. E), was an Officer within the meaning of s. 2 of POCA.

It has therefore been established that the Accused made the said disclosure as contained in (Doc. E) to an Officer, i.e. to W5, who was an Officer within the meaning of s.2 of POCA.

Further, from a careful perusal of the said statement (Doc. E), the Accused related therein the circumstances whereby W7 allegedly remitted a small bundle of bank notes to one of the ADSU Inspectors who had called at his surgery for Enquiry purposes on a day, in June 2003 (Folio 9616/7 of Doc. E). The Accused therefore contended that one ADSU Inspector, whom it was not disputed was a Public Official within the meaning of s. 2 of POCA, was involved in an act of Corruption falling within the ambit of s. 2 of POCA, by taking money from W7.

In light of all the evidence on Record, and all the factors highlighted above, it has been admitted, and established, that the Accused, wilfully and in full knowledge, gave the said statement (Doc. E) himself, to an Officer of the ICAC, i.e. W5, to the effect that on a day in June 2003, at his, i.e. the Accused's, surgery, a Public Official, i.e. one of the ADSU Inspectors who called at his surgery for Enquiry purposes, was involved in an act of Corruption, i.e. by taking a small bundle of bank notes from W7.

In light of all the above, the Court finds that it has been conclusively established that the Accused wilfully made the said disclosure as contained in the said statement (Doc. E).

Made A False Disclosure

The Accused, as per the Information, alleged that W7 remitted to one of the ADSU Inspectors present at his surgery in June 2003, a small bundle of bank notes, which the said Inspector pocketed. However, in Court, whilst deponing under Oath, the Accused stated that the said act

of Corruption had occurred in 2002. This discrepancy as to the year in which the Accused contended the said alleged act of Corruption occurred has remained unexplained.

The Court bears in mind that W7 was deponing in 2016 as to the circumstances of the Identification Exercise, when the said Identification Exercise took place in 2003, and the Court therefore makes allowances for the passage of time.

The Court further bears in mind that the testimony of a Witness is no memory test, and "[w]hat is important is for the Court to be satisfied that a witness is speaking the truth in substance." (**Vythinlingum v The State** [2017 SCJ 379]).

W7 deponed inter alia to the effect that following his case in 2002, or thereabouts, he was taken by the Police to the Accused's surgery for Identification Exercise purposes, that he had been taken to the Accused's surgery for Identification Exercise purposes only once (W7 positively identifying the Accused in Court), and that he had positively identified the Accused as being the Doctor who had prescribed the said medication to him.
W7 unequivocally explained that once the said Identification Exercise was over, he was allowed to leave the said surgery and go back to his place of work.
Further, W7 was duly cross-examined, but no question was put to W7 as to his having remitted a bundle of bank notes to any of the ADSU Inspectors present at the Accused's surgery at the time of the said Identification Exercise, despite his having been duly cross-examined by Learned Defence Counsel then appearing for the Accused. This would have gone to the root of the Accused's contention as to the said act of Corruption involving W7 and two ADSU Inspectors.

Also, the allegation of the Accused was to the effect that a bundle of bank notes had been remitted to one of the said two Inspectors, in the course of the said Identification Exercise. It was however put to W7 in cross-examination that there was only one Inspector at the Accused's surgery at the time of the Identification Exercise, and this was confirmed by W7. At no point in time was it put to W7 that in fact there were not one, but two Inspectors, present at the Accused's surgery at the relevant time.

The attempt by the Defence to create a doubt as to the precise date of the said Identification Exercise did not succeed, for the following reasons.

The Defence attempted to establish that the said Identification Exercise had been carried out in 2002, and not in 2003, by referring W7 to his statement, wherein he stated that 02-03 days after his release on Bail in December 2002, he went to the Accused's surgery for the said Identification Exercise. W7 however stated several times specifically he did not remember too well the dates, but more significantly, the Accused himself, whilst being cross-examined, unambiguously accepted that the said Identification Exercise had taken place in August 2003.
It therefore follows that the said Identification Exercise could not have taken place in 2002, nor in June 2003, as contended by the Accused in his statement to the ICAC (Doc. E), during which Identification Exercise W7 allegedly remitted a small bundle of bank notes to one of the ADSU Inspectors.

Having watched the demeanour of W7 with the utmost attention, and having duly assessed his testimony in Court, the Court is satisfied that W7 was indeed speaking the Truth in substance, his deponing in a straightforward manner. Further, despite readily stating several times he did not remember the dates too well and inter alia that he did not remember having given a statement to the ICAC for instance, W7 nonetheless deponed cogently as to the circumstances of the said Identification Exercise carried out between he and the Accused at the Accused's surgery at the relevant time, and also W7's testimony was not challenged as to the fact he had been to the Accused's surgery for Identification Exercise purposes only once.

It follows from all the above that the date mentioned by the Accused on which the said alleged act of Corruption took place, was not true.

PI Chittoo (hereinafter referred to as W2) conceded he had only the word of W7 against that of the Accused that the said prescription came from the Accused. However, the Accused's own version as contained in his unchallenged out-of-Court statement (Folios 9615/6 of Doc. E) and under Oath in Court, was that he had issued the said prescription himself.
Further, the Accused confirmed that W7 had no reason to lie, and that W7 had identified him, i.e. the Accused, as his Doctor who had prescribed the said psychotropic Drugs to him, as per the prescription which was on his, i.e. W7's, name.

In light of the above, the Court finds that is has been established that the Accused himself issued the said prescription.

The Accused, in Submissions, mentioned that W7 had been given a more favourable treatment as compared to one Mr. Heerah, who was involved in a case with W7, inasmuch as a lesser charge was levelled against W7 and as W7 had spent less time in Jail as compared to the said Mr. Heerah. Be that as it may, this is only the word of the Accused, which has not been supported, or otherwise, by any independent evidence, and no questions in relation thereto were put to W7 himself, and/or to any of the Prosecution Witnesses. It is to be borne in mind that W1, W2, PS 2705 Saiboo (hereinafter referred to as W3), and W7 were duly cross-examined by Learned Defence Counsel then appearing for the Accused.

In light of all the above, the Court is of the considered view it has been established that W7 went to the Accused's surgery for Identification Exercise purposes only once, with ADSU Officers, in relation to a prescription issued by the Accused, and that W7 positively identified the Accused then as being the Doctor who had given him the said prescriptions. The Court is further of the considered view, in light of all the above, that there is no evidence whatsoever on Record from W7 to the effect that he, i.e. W7, remitted a bundle of bank notes to one of the ADSU Inspectors present at the Accused's surgery at the time of the said Identification Exercise.

W2 admitted he could not say whether there was any window in the Accused's surgery at the time of the Identification Exercise of 14-08-03.

W3 deponed to the effect that one could not see outside from inside the surgery, in relation to the Identification Exercise of 14-08-03.

W4 deponed unequivocally to the effect that when he effected a Reconstruction Exercise at the Accused's surgery on 30-09-04, he saw no glass panel from which one could see at the back of the surgery, as the "cabinet" was opaque, and one could not see outside. W4 further stated that there was no glass panel in the garage to see outside. W4 explained that the open garage itself had two walls, and if one were to consider the Accused's building, then the said open garage would have three walls.

Whilst cross-examining W4, the Accused at first put to W4 that an open garage had two walls, then that his open garage had three walls, and W4 stated that in order to see outside, one had to step into the garage.

The Accused put it to W4 that he had a closed garage for his car, and an open garage to accommodate people coming in emergency at night, and that he needed to know what was happening from his waiting room, which was why there was a glass panel between his waiting room and his garage. The Accused's version was then that the said open garage was not meant to accommodate Patients, but was meant to accommodate cars.

Senior Investigator Mrs. Sooben (hereinafter referred to as Defence Witness No. 6) deponed in Court as to the Reconstruction Exercise, and clearly stated that apart from having been to the Accused's surgery in company of W4 on 30-09-04, she remembered nothing of the said matter, as it was too remote in time.
The Court is therefore of the considered view that the testimony of the said Defence Witness in no way assisted the Defence case, and in fact contradicted the Defence case, inasmuch as the Defence Witness No. 6 maintained that she had been to the Accused's surgery for a Reconstruction Exercise with W4, which Reconstruction Exercise the Accused contended did not take place.

Mr. Manoj Maneeram (hereinafter referred to as Defence Witness No. 1) deponed to the effect that he had installed some window panels ("banne panneau vitrer" (sic)) in a wooden partitioning in 1998, in the Accused's garage, and candidly conceded he could not say whether the said window panels were still in place in 2003-2004.
The Court therefore finds that the Defence Witness No. 1's testimony in no way assisted the Defence case, inasmuch as the Defence Witness No. 1 clearly stated he could not say whether the said window panels were still in place in 2003-2004.

Mr. Kissoonauth Fowdar (hereinafter referred to as Defence Witness No. 2) stated in Court that in 2000, when he went to the Accused's surgery, there was a window panel from which one could see from the waiting room into the garage. Although the Accused did put to the Defence Witness No. 2 that in 2000 and September 2004, he visited his surgery, the Court is of the considered view that the said Defence Witness having such a vivid recollection of the layout of the Accused's garage and surgery is surprising, bearing in mind that the said Defence Witness allegedly last attended the Accused's surgery in 2004, and was deponing in Court in 2019, i.e. about 15 years later. Further, the said Defence Witness at no point in time deponed as to the presence or otherwise of the said window panel in 2003-2004, which is the relevant date for the alleged act of Corruption involving W7 and one ADSU Inspector. The Court therefore finds that

it would be most unsafe to act on the basis of the said Defence Witness's testimony as regards the said window panel.

The Court is of the considered view that Mrs. Marie Linda Boudot (hereinafter referred to as Defence Witness No.3)'s testimony, though to the effect that there was a window in the wooden partition in the Accused's surgery in 2003, does not assist the Defence case at all, for the following reasons.

It is on Record that the said Defence Witness first went to the Accused's surgery in October 2003. And the Accused called the said Defence Witness to establish the fact that there was a window in the said wooden partition in 2003. However, from a careful perusal of the Information, the Accused alleged that the said W7 remitted a small bundle of bank notes to one of the ADSU Inspectors in June 2003, i.e. before the date on which the said Defence Witness first went to the Accused's surgery. It therefore follows that the said Defence Witness would not be in a position to say whether there was a window panel in the said partitioning in June 2003 or not. The same reasoning would apply on the basis that the said Identification Exercise took place in August 2003, as eventually conceded by the Accused as highlighted above, given the said Defence Witness only attended the Accused's surgery for the first time in October 2003, i.e. after August 2003, and it therefore stands to reason that the said Defence Witness would not be in a positon to say whether there was a window panel in the said wooden partitioning in August 2003 or not.

Mr. Mohamad Reshad Denmamode also known as Farad Denmamode (hereinafter referred to as Defence Witness No. 4) deponed to the effect that there was a wooden partition with a window panel in the Accused's surgery. The Court however is of the considered view that the Defence case was not supported by the said Defence Witness for the following reasons.

Although specific mention was made of the years 1987, and 1997-1998, no specific questions were put to the said Defence Witness as regards 2003-2004, and more specifically as regards June 2003, which is the month during which the Accused alleged W7 remitted a small bundle of bank notes to one of the ADSU Inspectors at his surgery, or as regards August 2003, during which month the Accused conceded the Identification Exercise took place during which W7 allegedly remitted a small bundle of bank notes to one ADSU Inspector.

CI Chung Yen (hereinafter referred to as Defence Witness No. 5) deponed clearly to the effect that he had no knowledge of the Police Enquiry into the present matter, and that he swore an

Affidavit in relation to the ICAC Investigation when the Accused in the present matter was Complainant in the ICAC case. The said Defence Witness's testimony therefore did not shed any new light on the present matter.

There is therefore no evidence on Record to conclusively establish that there was a window panel in the wooden partitioning in the Accused's surgery in June or August 2003, through which the Accused could have seen W7 remitting a bundle of bank notes to one ADSU Inspector present at his surgery at the said time for an Identification Exercise.

From all the above, the Court is of the considered view that there is no evidence on Record to establish that W7 had given a small bundle of bank notes to one of the ADSU Inspectors present at the Accused's surgery at the time of the Identification Exercise taking place at the Accused's surgery either in June or August 2003, as contended by the Accused, and hence the only irresistible and reasonable inference to be drawn therefrom is that the disclosure as contained in (Doc. E) was to all intents and purposes, a false disclosure.

Knowing It To Be False

The Accused was duly represented by two Learned Defence Counsel at the time of W2's testimony, and although W2 was duly cross-examined by Learned Defence Counsel, no questions were put to W2 to the effect that W7 had remitted to him, and/or to W3, and/or to any other ADSU Inspector, a bundle of bank notes at the time of the said Identification Exercise.

W3 inter alia deponed as to the Identification Exercise carried out on 14-08-03 between W7 and the Accused, and confirmed that W2 was the only Inspector present at the time of the said Identification Exercise, but this was never put to W2 himself, despite his having been duly cross-examined by Learned Defence Counsel then appearing for the Accused.

At no point in time was W3 cross-examined, even remotely, as to W7 having remitted a bundle of bank notes to either W2, and/or to him, and/or to any other ADSU Inspector, despite the fact that the Accused was duly represented by Learned Defence Counsel at the time, who duly cross-examined W3.

The Accused submitted to the effect that W2 and W3 had concealed his statement of 14-08-03, and had lied in Court when they stated in Court that they had recorded no statement from him

on 14-08-03. No questions in relation thereto were however put to the said Witnesses, bearing in mind that the said Witnesses were duly cross-examined by Learned Defence Counsel then appearing for the Accused.

The Accused, for the very first time in Court, whilst deponing under Oath, in cross-examination, stated that W7 had remitted a small bundle of bank notes to W3, who pocketed same.
The Court finds the Accused's explanation that he only mentioned same in Court for the first time, as he had not been asked that question before, unconvincing. The Accused was assisted by Learned Defence Counsel for part of the Proceedings, and was so duly represented when W3 was duly cross-examined by Learned Defence Counsel then appearing for the Accused, but no questions in relation to W3 having allegedly pocketed the small bundle of bank notes remitted to him by W7, were put to W3.

Further, it was the contention of the Accused, all along, that W7 had remitted the said small bundle of bank notes to one of the ADSU Inspectors who had gone to his surgery in June 2003 for an Identification Exercise. And the Accused, in his statement (Doc. E) clearly mentioned two Inspectors (Folios 9616-7 of Doc. E). From a careful perusal of the List of Witnesses, of the Court Record, and of the Transcript, it is clear that W3 was all along a Police Sergeant, and not a Police Inspector. This therefore leaves only W2 as the ADSU Inspector on the spot at the time of the said Identification Exercise at the Accused's surgery. Bearing in mind the Accused's clear testimony in Court, under Oath, to the effect that it was W3 who had taken the said money from W7, this necessarily meant that W2 was not the ADSU Inspector who had taken the said money, and also meant that W3, who was an ADSU Inspector neither at the time of the alleged offence, nor at the time of deponing in Court, could not have been the ADSU Inspector mentioned by the Accused in Court for the first time. At any rate, no questions were put to W2 and/or W3 to that effect, bearing in mind that the Accused was duly represented by Learned Defence Counsel at the time W2 and W3 deponed in Court, and that they were duly cross-examined by Learned Defence Counsel then appearing for the Accused.

The Accused explained that he first mentioned, in Court, that W2 and W3 were the ADSU Officers present at the time of the Identification Exercise, and that the act of Corruption involved W3, given that it was as the Trial was unfolding that he got to know who W2 and W3 were, and further explained that he did not mention anything in his statement as he did not know their names exactly. The Accused, however, in plain terms, stated in his statement, that he could

identify the Inspector who had taken the small bundle of bank notes from W7 as well as the other Inspector who was not involved in the case (Folio 9618 of Doc. E). It therefore is surprising that the said issue was never canvassed, not even at the stage of the Proceedings when the Accused was assisted by Learned Defence Counsel, bearing in mind that at the time W2 and W3 deponed in Court, both were duly cross-examined by Learned Defence Counsel then appearing for the Accused, and nothing to that effect even remotely transpired from the line of cross-examination adopted by Learned Defence Counsel then appearing for the Accused.

PI Padaruth (hereinafter referred to as W10) deponed inter alia to the effect that he enquired into the Complaint made by the Accused against ADSU Officers, who were allegedly planning on framing the Accused, and the said Complaint was filed by the Superintendent of Police (hereinafter referred to as SP) then in charge of the CIB, as the said Complaint was a frivolous one based on hearsay, and explained that his enquiry with one Mr. Abi did not confirm the Complaint made by the Accused.

Mr. Abi (hereinafter referred to as Defence Witness No. 7) deponed in Court, and in examination-in-Chief, supported the Accused's version to the effect that some ADSU Officers were out to frame the Accused. In cross-examination, however, the said Defence Witness confirmed he had said at the time of the Enquiry in 2011, that he knew nothing about the said allegation of the Accused and that he did not know why the Accused had mentioned his name as Witness.
The Court finds the testimony of the said Defence Witness unreliable. Not only did the said Defence Witness give diametrically opposed versions to the Police at the time of the Enquiry in 2011 and in Court in 2019, but also failed to impress the Court as being a truthful Witness, his appearing to be telling a story he had learned by heart.

In Submissions, the Accused attempted to portray W10 as saying that there was no indication from the statement of Defence Witness No. 7 that the Accused was lying. Although W10 did say so, this is to be read in conjunction with the previous answer given by W10, to the effect that no question was put to the said Defence Witness as to whether the Accused was lying or not.

Further, had the Accused, in fact, been so warned by the said Defence Witness No. 7, not once, but twice, as to the fact the ADSU Officers were out to frame him, i.e. the Accused, the question remains as to why the Accused did not give a Declaration as a Measure of Precaution on the

very days the said Defence Witness so informed him. It is also to be borne in mind that had the Accused, in fact, been so warned by the said Defence Witness since August – September 2010, the Accused did not so inform his Defence Counsel (Folio 10 / 173375 of Doc. C), and no explanation was forthcoming as to why the Accused did not so inform his Learned Defence Counsel (Folio 10 / 173375 of Doc. C).

Also, the Accused's insistence on calling the said Defence Witness No. 7, to establish the Truth of the fact that ADSU Officers were intent on framing him, does not sit well with the Accused's clear denial under Oath that ADSU Officers had a grudge against him, and that this was why W7 had identified him and had paid one of the ADSU Inspectors at the time of the Identification Exercise.

The mere fact of giving several explanations as to why W7 had allegedly remitted a small bundle of bank notes to one ADSU Inspector, puts in doubt the said explanations.
At first, the Accused's contention was to the effect that W7 had remitted a small bundle of bank notes at the time of the said Identification Exercise to one of the ADSU Inspectors, who were out to frame him, in order to implicate the Accused in the said prescription case. The Accused then averred that the act of Corruption was due to the fact that W7 was caught on 10-12-02 at one Mr. Heerah's place, selling to the said Mr. Heerah psychotropic Drugs. And whilst both went to Jail, W7 was released on Bail on 16-12-02, i.e. 06 days after being arrested, whereas the said Mr. Heerah remained in Jail for three more weeks, until 07-01-03, so that the said act of Corruption was meant for W7's early release on Bail. This is a very flimsy explanation, given the very fact that W7 was already on Bail at the time of the said alleged act of Corruption, which allegedly occurred at the time of the Identification Exercise on 14-08-03, and had been for about 08 months, given W7 was released in December 2002, and the said Identification Exercise took place, as eventually conceded by the Accused, in August 2003. Also, given the very fact that the Accused confirmed that he was W7's Doctor, and that he had prescribed the said medication to W7 on the said prescription, there was no doubt as to W7's identity as the Accused's Patient, nor was there any doubt that the Accused was W7's Doctor. It was therefore not essential for W7 to identify the Accused as his Doctor and to pay the ADSU Inspector, in order for W7 to secure his early release on Bail. Further, the Accused denied that the version contained in his statement (Doc. E), to the effect that the alleged act of Corruption was because the ADSU Officers had a grudge against him, and in order for W7 to identify him, i.e. he Accused, was true.

The Accused, who in the first instance, prided himself in his memory, as regards the dates of the various incidents in relation to the present matter, in particular as regards the dates of the arrest and release on Bail of W7, suddenly had difficulty in remembering the exact date on which the said alleged act of Corruption occurred in his surgery, explaining that he was very busy at the time, as he was preparing for his presentation of his artificial lung in Budapest, for which he received a prize in May 2004. This was also the Accused's explanation for his delay in reporting the said matter to the Authorities.

The Court finds it very peculiar of the Accused to suddenly have difficulty in remembering the dates of incidents which had a direct impact on him, such as the alleged act of Corruption, and the date of the Identification Exercise, when he readily remembered the dates for instance, on which W7 was arrested and released om Bail. Also, the Accused's chariness in reporting the said alleged incident, which according to the Accused was specifically meant to harm him, raises serious doubts as to the veracity of the said alleged incident, in particular bearing in mind that the Accused was given a prize for his artificial lung in May 2004 in Budapest, and only reported the said matter, which the Accused contended occurred in June 2003, to the ICAC in September 2004, i.e. more than a year later.

The Accused did maintain throughout the Proceedings that he had been called at the Medical Council to give explanations before, and that this was not the reason why he had made the said Declaration against ADSU Officers.
One of the Accused's own answers in Court, however, was to the effect that he reported the said matter to the ICAC in September 2004 after being convened to give explanations at the Medical Council. This admission of the Accused suggests the said matter was reported to the ICAC in retaliation for his being convened to the Medical Council for explanations in relation to the prescription given to W7, as highlighted above.

The said Declaration and statement (Docs. B and C respectively) concern an alleged incident occurring in 2010-2011, i.e. more than 06-07 years after the present matter, which allegedly occurred in 2003-4.

The Accused attempted to justify his withdrawal of his Complaint at the ICAC (Doc. E) by the fact that he was very scared of the ICAC Officers (Folio 10 / 413312 of Doc. A), and to

substantiate his claim that the ADSU Officers were out to harm him, the Accused's version was to the effect that his statement (Doc. A) was recorded on 21-01-11, as a retaliation to the said Declaration and statement (Docs. B and C) which he gave on 12-01-11, i.e. about 09 days earlier.

The Court is of the considered view that the said Declaration (Doc. B) and the said statement (Doc. C) had no bearing on the present matter, for the following reasons.

Firstly, the delay in recording the Accused's statement (Doc. A) has been, in the Court's view, satisfactorily explained by W1, as highlighted above. Secondly, had the ADSU had a grudge against the Accused since 2000, as contended by the Accused in his statement (Folio 9618 of Doc. E), which the Accused confirmed was a true and correct statement as highlighted above, the question arises as to why the Accused would have waited until 2011 to make a Complaint at the CIB (Docs. B and C), the more so as the present matter, involving yet again ADSU Officers, had allegedly occurred in 2003-4, and that he had allegedly been warned by Defence Witness No. 7 since August – September 2010, that the ADSU Officers were allegedly planning to frame him (Docs. B and C). And thirdly, from a careful perusal of the said Declaration and statement (Docs. B and C), the names of one Bashir, one Dussoye and one Mr Tokee are mentioned therein. The said names do not, however, appear on the List of Witnesses in the present matter as per the present Information, nor were any of the said names mentioned in the present Proceedings. The Court therefore fails to see the link the said Declaration and statement (Docs. B and C respectively) had with the present matter, save that the said 03 persons were mentioned as being ADSU Officers in the said Declaration and statement (Docs. B and C), and that the present matter allegedly involved two ADSU Inspectors.
The Court also notes that the said Declaration (Doc. B) mentioned the date of 11-01-10 as being the eve of the day on which the said Declaration (Doc. B) was recorded in the body of the said Declaration (Doc. B), whereas the said Declaration was in fact recorded on 12-01-11 (Doc. B).

In light of all the evidence on Record, all the circumstances of the present matter, and all the above, the Court is of the considered view that it was precisely because the Accused knew that the said allegation was false, and that hence the said Witnesses would not support his version, that no questions were put to W2, W3, and/or W7, in relation to W7 having allegedly remitted a small bundle of bank notes to W2 and/or W3 on the relevant date at the Accused's surgery.

Having assessed all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, and having assessed the demeanour of the Prosecution and Defence Witnesses, and that of the Accused with the utmost care, the Court finds that it has been established that the Accused knew that the said allegation was false, and hence that the said disclosure as contained in (Doc. E) was false.

Other Issues

Accused

The Court places it on Record that the Court, through inadvertence, did not ascertain from the Accused whether he would be addressing the Court, and the Accused proceeded to call five Defence Witnesses, and only then did the Accused inform the Court he would address the Court in his Defence. And the matter was adjourned in order to enable the Accused to secure the attendance of his two other Defence Witnesses. At the following Sitting, the Accused deponed first, and then called his two other Prosecution Witnesses.

The Court is of the considered view that although the usual practice is for the Accused to address the Court first, and to then call his Defence Witness, if any, no prejudice was caused to any of the Parties to the present Proceedings, given the Defence Witnesses called by the Accused prior to his deponing under Oath did not depone as to the central issues of the present matter.

In Submissions, the Accused explained that he had two Health issues, one being his hearing impairment, and the second one being that he "suffered several trenched episodes lasting ten minutes to one minute of vertigo and a sort of blackout. And these two minor handicaps affected [his] performance in court either when [he] was examining witnesses or standing as witness".

First of all, the Accused being himself a Medical Practitioner, ought to have produced relevant evidence, documentary or otherwise, to that effect. None was forthcoming. Second, the Accused did mention at several of the Sittings, that he had a hearing impairment. The Court did take this into account, and asked for questions and/or answers to be repeated for the Accused

to hear same properly, and the Accused was even at some stage, given some time to fix his hearing aid which had suddenly stopped working in the course of one of the Sittings. Third, the Accused never mentioned to the Court that he suffered from vertigo and/or blackout, whether at the time the Accused was duly assisted by Learned Defence Counsel and/or when the Accused was not so, and only mentioned same for the first time at the stage of Submissions.

Be that as it may, at no stage did the Accused say that he was not feeling well, and/or that he needed a break, bearing in mind the Accused was very outspoken and at ease in the course of the Proceedings, the Court Record and the Transcripts of the Proceedings speaking for themselves in that regard.

The Court is therefore of the considered view that the Accused was in no way hampered in the conduct of his Defence at any stage of the Proceedings.

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 the Prosecution has proven its case against the Accused beyond reasonable doubt, and the Accused is therefore found Guilty as charged.

[Delivered by: D. Gayan, Magistrate]
[Intermediate Court (Criminal Side)]
[Date: 12 December 2019]