JAHANGEER A. S. K. v THE STATE & ORS

2025 SCJ 98

Record No. 9231-3/62/18

THE SUPREME COURT OF MAURITIUS

In the matter of:

Ahmud Shakeel Khan Jahangeer

Appellant

v.

1. **The State**
2. **The Director of Public Prosecutions**
3. **The Independent Commission Against Corruption**

Respondents

JUDGMENT

This an appeal from a judgment of the Intermediate Court whereby the appellant was found guilty and convicted under 6 counts, for breaches of sections 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 ("FIAMLA"). The Court sentenced the appellant to 3 months imprisonment which was later converted to a Community Service Order following a favourable report. The appellant pleaded not guilty to the charges and was represented by Counsel during the trial.

Grounds 1, 2, 4, 5 and 6 challenge the findings of fact made by the trial Magistrate whereas ground 3, refer to the corroboration warning.

During the enquiry by the Independent Commission Against Corruption (hereinafter referred to as "ICAC"), the appellant was arrested under the Prevention of Corruption Act and after the charges were explained to him, he exercised his right not to give a statement. He stated that it would be in Court that he would make any statement about the documents being shown to him.

It was the prosecution's case that the appellant received property which, in whole directly represented, the proceeds of crime, or that he had reasonable grounds for suspecting same. The evidence before the trial court was that there was an application for a loan made to the Development Bank of Mauritius (DBM) and that the loan was obtained in favour of one Nagen Veeren[1] on the basis of forged documents. Anand Goburdhun[2] was an owner of a plot of land which was used as guarantee for the loan and that the value of this land was fraudulently inflated to obtain the amount of the loan. All of this, it is contended, was orchestrated by the appellant.

After the loan was obtained, five disbursements were made to Nagen Veeren by way of crossed cheques issued by the DBM which were handed over to Nagen Veeren. These were then deposited by Nagen Veeren into his own account at the State Bank of Mauritius (SBM). On one occasion, Mr. Bakwally[3] (referred to as Mr. Bakurally in Document Q referred to later in this judgment) collected a cheque from the DBM and left it with the appellant.

Nagen Veeren withdrew sums from his account on various occasions and directly handed these over to the appellant and these remittances are the subject matter of the 6 counts for which the appellant has been convicted. The dates and amounts are as follows:

- **Count 1**: 16 November 2007 – Rs. 300,000
- **Count 2**: 19 November 2007 – Rs. 300,000
- **Count 3**: 21 November 2007 – Rs. 258,000
- **Count 4**: 4 December 2007 – Rs. 250,000
- **Count 5**: 12 December 2007 – Rs. 300,000
- **Count 6**: 13 December 2007 – Rs. 325,000

[1] Referred to as witness no. 11 in the judgment under appeal and in the appeal brief.
[2] Referred to as witness no. 12 in the judgment under appeal and in the appeal brief.
[3] Referred to as witness no.14 in the judgment under appeal and in the appeal brief.

On each of these occasions, the appellant received the amounts in cash from Nagen Veeren.

Nagen Veeren gave evidence that he was 'made' to make the application for a loan by the appellant. He withdrew the amounts from his SBM account and handed same over to the appellant in cash.

It was the prosecution's case that Nagen Veeren was an employee of the appellant, he was a manual worker and was not fluent in reading or writing although he could write. He had studied up to Form 1. His actions were all under the instructions of the appellant and he did not know the difference between a loan and a guarantor. Nagen Veeren was not someone who could have been the mastermind of the events, which are now the subject of the information.

It was also the prosecution's case that Anand Goburdhun also implicated the appellant and that the real value of the land used as guarantee before the DBM was Rs. 400,000[4] and not Rs. 2.7 million as per the forged evaluation report of Mr. Ramlakhan.

Before the trial court, officers from Mauritius Revenue Authority testified that Document A1, a single Good Declaration Form, was a false one. There was also evidence that a purported SICOM document (Document A2) was not one emanating from it. A SWIFT message document from the Mauritius Commercial Bank was also stated not be a real one (Document A6). The evaluation report allegedly from one Mr. Ramlakhan (Document A7) was denied by him under oath as having been prepared by him and affirmed that same was forged. This last document stated that the value of the land was at Rs. 2.7 million.

We observe that Mr. Bakwally testified that he was given a letter of authorisation by the appellant. This letter (Document Q) dated 23 November 2007 is signed by Nagen Veeren and in which the former's name is written as "Bakurally". Mr. Bakwally gave evidence that he collected the cheque from the DBM and returned to the office of the appellant where he left it with the latter.

[4] Page 371 of brief.

On the very day that Nagen Veeren would withdraw amounts from his SBM account, the identical amount would be deposited on the same day, into the account of GOB Company Ltd. GOB Company Ltd had as Director, the appellant and his wife in August 2006[5]. On 30 October 2006 the appellant ceased to be a director and shareholder. However, he still remained the authorised signatory for the bank account of GOB Company Ltd. It was the prosecution's case that this was a money laundering scheme.

It was the prosecution's case that the mastermind controlling the finances of GOB Company Ltd, was the appellant. Nagen Veeren was an employee and his version was that he was beholden to the appellant and he lived on premises provided by the latter. He was supposed to look after vehicles under the control of the appellant.

The grounds of appeal are reproduced:

1. The learned magistrate was wrong in law to have found that appellant was personally in receipt of cash of tainted origin when such cash had admittedly been paid by witness no. 11 (Nagen Veeren) to the company GOB Co Ltd for the purchase of vehicle accessories.

2. The learned magistrate was wrong in law to have found that the appellant guilty as charged as he was one of the 2 co-signatories of the 6 cheques drawn by the company GOB Co Ltd in favour of witness no.12 (Anand Goburdhun) and of one Khalil Society.

3. The learned magistrate failed to give to herself the required warning in the required form namely that it was unsafe to act on the uncorroborated evidence of witnesses nos. 11 and 12 as they were suspects.

4. The learned magistrate failed to consider the material contradictions and inconsistencies between the evidence of witnesses nos. 11 and 12 as to what had in fact occurred at the DBM when the loan documents were being executed.

5. The learned magistrate was wrong to have found that the appellant had the required *mens rea* under each of the 6 counts of the information.

6. The learned magistrate was wrong to infer that the deceased officer of the DMB late Rafick Khodabucchas was acting upon the instructions of the appellant or in order to further appellant's objectives.

[5] Page 373.

We shall deal with grounds 1, 3 and 6 together as they are interlinked, given that the learned Magistrate relied upon the evidence of Nagen Veeren and Anand Goburdhun to find the appellant guilty of the charges. Under ground 1, learned Senior Counsel for appellant in his written submissions stated that this ground is "fact sensitive" and depended on the weight given to 7 invoices delivered by one Mr. Bhantoo to Nagen Veeren[6]. He is relying on invoices from GOB Company Ltd which were signed by Mr. Bhantoo (and not the appellant) showing purchases of vehicle accessories by Nagen Veeren to submit that it was the latter dealing with GOB Company Ltd and not the appellant.[7] He also emphasised that the appellant had ceased to hold the office of director of GOB Company Ltd as at 30 October 2006 and had also transferred all his shares to one Arshad Saroo. He alludes to the evidence given by Nagen Veeren that he "strenuously denied having purchased any equipment from GOB Company Ltd (page 387) but was unable to explain why his signatures appeared on the 7 invoices (pages 220-226)."[8]

Learned Senior Counsel for appellant cross-referred this Court to his extensive oral submissions before the trial court and at page 354 of the brief which is reproduced verbatim, we see the following: "*the funds were put to that use and payments were affected to GOB Company Ltd. So, in so far as the evidence of Nagen Veeren is concerned, it is my humble submission that we need a very careful direction when approaching his evidence that is someone who has participated in a fraud to the prejudice of the DBM and is now trying to shift the blame to the accused. This is the main tenor of the defence and we are also contending on the basis of the available evidence that there has been collusion on* [and] *the possibility of collusion. The possibility will suffice."* He went on to submit that corroboration would be required. This is the crux of the submissions on behalf of the appellant under grounds 1 and 3.

With respect to ground 3, it is the contention of learned Senior Counsel for the appellant that the warning as to the danger of acting upon uncorroborated evidence of the accomplices was inadequate[9]. He relied on the authorities of **Chandursing & Anor v Regina [1953 MR 1]**, **Sheriff v The State [1994 SCJ 232]** and **Mahadeo S. v Independent Commission Against Commission (ICAC) & Anor [2017 SCJ 295]**.

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[6] Paragraph 4 of written submissions of appellant.
[7] Paragraph 5 of skeleton arguments of appellant.
[8] Paragraph 6 of written submissions of appellant.
[9] Paragraph 12 of skeleton argument of appellant.

We have considered the extract relied upon by learned Senior Counsel from the case of **Sheriff**[10] and we have included the consecutive paragraph of the extract he referred to and we reproduce same:

> "*The principles applying to the uncorroborated evidence of accomplices are clear. An accomplice, by the very fact of his being an accomplice, is himself liable to be prosecuted for the offence in respect of which he is called to give evidence in a prosecution against another person involved in the commission of the offence or some other connected offence. Such an accomplice is always a competent witness for the prosecution except when he is both charged and tried with that other person. There is, however, an established practice that the Courts have a discretion whether to exclude or disregard the uncorroborated evidence of an accomplice where there is an obvious and powerful inducement for the accomplice to ingratiate himself with the prosecution or the Court. And where his evidence is nevertheless to be relied upon, it is essential that the trial court should direct the jury or, where the Court is sitting without a jury, should direct itself adequately on the danger of relying on that kind of evidence in the particular circumstances of the case.*
>
> *It is not advisable to prescribe or adopt any formula in the nature of a litany regarding the caution that the trial court should give to itself. It is not the words but the substance which matter."*

The learned Magistrate analysed the evidence after setting it out in detail, she gave herself the warning as to the need to treat the evidence of Nagen Veeren and Anand Goburdhun with "*utmost caution"*, although it is very brief, this is sufficient in our view. Especially in light of the findings made by her and her assessment of the evidence of Nagen Veeren and Anand Goburdhun.

From the evidence of Mr. Bakwally, the learned Magistrate found that it "*established a direct link between accused and the said loan obtained by w 11* (Nagen Veeren)". Mr. Bakwally gave evidence that the appellant remitted him the letter (Document Q) authorising him to collect a cheque which was then remitted to the appellant. The learned Magistrate found that this supported the evidence of Nagen Veeren to the effect that he remitted money obtained from the loan to the appellant. She stated that there was no suggestion that Mr. Bakwally was conniving with Nagen Veeren and/or Anand Goburdhun to implicate the appellant in the transactions, or in order to exonerate themselves.[11]

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[10] Sheriff v The State [1994 SCJ 232]
[11] Page 14 of her judgment.

We find that the learned Magistrate was fully alive to the care with which she had to treat the evidence of Nagen Veeren and Anand Goburdhun. A close reading of her judgment shows that she considered the quality of their testimony, their personalities and made an assessment.

We find it apt to reproduce from page 16 of her judgment the following:

> *"The accused endeared himself to W11 (Nagen Veeren), by giving witness no.11 and his mother, a house in GRNW to live in, and in return witness no.11 kept an eye on the accused's car business. This was done in order to establish a relationship of trust and in order for witness no.11 to feel indebted to the accused. The accused then asked witness no.11 to stand as Guarantor for one his friends, one Anand Goburdhun, that is he placed witness no.11, who was unsuspecting, in a situation where witness no.11 felt he was in position to help, and in a way, repay his dept, to the accused. The accused availed himself of the said situation, given witness no.11 was not too educated, and not too savvy about the ways about the ways of the world."*
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> *The accused wheedled his way into witness no.12 (Anand Goburdhun) Life and House, over years, and at the first opportunity, persuaded witness no.12 he could obtain a buyer for his land, and asked for all the relevant papers, for instance the deed of sale and witness no.12's National Identity Card, for the purported purpose of looking for potential buyers for the said land. Witness no.12 also deponed in a clear and coherent manner how the accused told him to come to the Jardin de la Compagnie, in Port Louis, as he had found a client to buy his, that is, witness no.12's, land, whereupon meeting the accused, the latter merely informed him he had taken a loan with the said land as guarantee as his showroom was in financial difficulty. Although witness no.12 eventually agreed to go ahead with the said scheme, as he was assured he would get his Rs40000/- back, which was he value he wanted to get for his said land, this further supports the fraudulent basis of the said loan".*

It is clear from a reading of the judgment that the learned Magistrate concluded Nagen Veeren was manipulated by the appellant.

In relation to ground 6 that late Rafick Khodabuccas "was acting upon the instructions of the appellant or in order to further appellant's objectives", it is clear that she believed Nagen Veeren and Anand Goburdhun although they were alleged accomplices. She was entitled to make the aforesaid inference.

We are dependent on the assessment of facts by the trial Magistrate. Evidence given during a trial before a Judge or Magistrate cannot be compared with a reading of words on a page. The learned Magistrate has the irreplaceable advantage of seeing and hearing the witnesses testify in Court which cannot be reproduced for assessment on appeal. We do not find anything disturbing in the finding of the trial Magistrate after considering evidence on record and conclude that there is no perverse finding on her part.

Upon a consideration of the above, we find no merit in grounds 1, 3 and 6 which are accordingly dismissed.

Ground 2 again challenges the finding of fact of the learned Magistrate. We find no criticism as to the learned Magistrate comparing the signatures on the cheques and in reaching the conclusion that there was a striking resemblance. This is well within her functions as a Magistrate and it is well established that even if there is a report from a handwriting expert, it is not binding and that the trial court can reach its own conclusion. We endorse the following statement from **Sunnooman v R** [1984 SCJ 228] that *"It was quite proper for the trial court to consider all the evidence before it on this issue. Whatever experts may say and whatever valuable assistance they may give to the Court, it is the Court which in the last resort determines the issue".* We find that this ground is without merit.

As regards ground 4, we reproduce the contradictions which the appellant is alluding with respect to this ground from the skeleton arguments:

> 16. There were material contradictions between the evidence of witnesses nos. 11 and 12. Firstly, the words "Good for the sum of …" endorsed by witness no.11 on the loan agreement. In XX witness no.1 said that he wrote the words at the dwelling house of the appellant in Plaine Verte (pp201-202). On the other hand, witness no.12 said that witness no.11 endorsed same in his presence at the DBM[12]
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> 17. Secondly, when cross examined witness no.11 said that the appellant had accompanied him to the upper floor of DBM (p204). Witness no 12 admitted in the course of XX that in his out of court statement his version was that appellant was waiting outside DBM on the pavement and was not present within the premises of the DBM at the time the loan agreement was being executed. In court witness no.12 changed his version: he said that appellant was present o the premises of the DBM when the loan agreement was being executed, but that it was his wife who had told him so, and he could not remember[13]
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> 18. Witness no.11 said that he first met with witness no.12 at the DBM[14]. Witness no.12 said that he knew witness no.11 through his daughter who worked for the appellant and he had previously met witness no.11 at appellant's showroom.[15]

Learned Counsel for respondents nos.1 and 2 have countered with the following submissions as set out in their skeleton argument at paragraphs 18 and 19 which are as follows:

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[12] Page 268 of skeleton argument of appellant
[13] Paragraph 271-272
[14] Page 207
[15] Paragraph 274-275

18. Witness No.11 struck the Court as a reliable and credible witness. Witness No.12 struck the Court as being honest, his speaking the truth as to the essential aspects of the present matter, and his readily admitting he had forgotten some things.

19. As far as contradiction referred to by the Appellant, these are not material and can be explained through lapse of time. The Court considered the fact that the time lapse between the incidents and the witnesses deposing in Court was 10 years. The case of **Vythylingum v The State [2017 SCJ 379]** was cited in the judgment of the Learned Magistrate to explain that it is trite law that a witness's testimony is not a memory test, but it is crucial to be satisfied that the "witness is speaking the truth in substance."

We agree with learned Counsel for respondent no.3 that the learned Magistrate had the opportunity to assess the behaviour and demeanour of witnesses nos. 11 (Nagen Veeren) and 12 (Anand Goburdhun) who struck her as being "*reliable, honest and credible witness, who [were] speaking the truth as to the substance of the present matter".* We find no substance in this ground of appeal, which is accordingly dismissed.

With respect to ground 5, in his skeleton arguments, learned Senior Counsel referred to the evidence adduced during the trial. He submits that the learned Magistrate relied on the testimonies of witnesses nos. 11 (Nagen Veeren) and 12 (Anand Goburdhun) which contained material contradictions and inconsistencies and the learned Magistrate wrongly relied upon the evidence in question. Also, he submits that the proceeds of the DBM loan whenever disbursed, was subsequently banked at the MCB in the GOB bank account. The total amount banked was Rs.1.4 million. Finally, he submits that the appellant was not involved in the loan transaction, nor did he benefit from the proceeds of the DBM loan, and that the evidence was dubious and therefore the trial Court erred in finding that the appellant had the required *mens rea* and that suspicion has been wrongly equated with guilt.

Learned Counsel for respondent no.3 in his skeleton arguments submitted that the learned Magistrate rightly took into consideration the testimonies of Nagen Veeren and Anand Goburdhun. He set out in some detail the various evidence and documents in paragraphs 29(a) to (i), 30 and 31 of his skeleton arguments. Again, this ground is seeking to overturn the findings of facts of the learned Magistrate. This very point is submitted upon by learned Counsel for respondents nos. 1 and 2 where he refers to the extract from **Mootaloo v The Queen [1958 MR 333]** which we endorse and follow: "*it is well known that an appellate court should not lightly reverse the finding of the trial judge on the question of fact unless there are sufficient indications are that on trial, the facts have not well been appreciated.*"

We are far from being convinced that in the present case the findings of fact of the trial Magistrate were in any manner wrongly appreciated, perverse or disturbing. This ground of appeal also fails.

For all the reasons given above, we conclude that none of the grounds of appeal should succeed and the appeal is dismissed with costs.

R. Teelock
Judge

M. I. Maghooa
Judge

14 March 2025

Judgment delivered by Hon R. Teelock, Judge

For Appellant	**:**	**Mr. V. R. Luchmaya, Attorney at Law** **Mr. A. Domingue, Senior Counsel**
For Respondents Nos.1 & 2	**:**	**Mr M. Lallah, Chief State Attorney** **Mr. P. Harrah, Acting Assistant Director of Public Prosecutions**
For Respondent No.3		**Mr. S. Sohawon, Attorney at Law** **Mr. M. Roopchand, together with** **Mr. H. Jeeha, both of Counsel**