DOWLOT D. v INDEPENDENT COMMISSION AGAINST CORRUPTION & ANOR

2025 SCJ 216

Record No. 9284

THE SUPREME COURT OF MAURITIUS

In the matter of:

DOWLOT Danesh

Appellant

v.

1. **The Independent Commission Against Corruption (now The Financial Crimes Commission)**
2. **The State**

Respondents

JUDGMENT

Lalldeo Moosanah (then accused No. 1) was charged under count I of an information while the appellant (then accused No. 2) was charged under count II of the same information for the offence of Public Official using his position for gratification in breach of section 7(1) of the Prevention of Corruption Act ("POCA") before the Intermediate Court. The present case concerns only the appellant. He pleaded not guilty to the charge, but was found guilty and following conviction, he was sentenced to 9 months' imprisonment which was suspended and he was subjected to 150 hours of Community Service Order.

The appellant is appealing from the judgment of the Intermediate Court under 7 grounds. All of the grounds relate to the conclusions reached by the learned Magistrate in relation to the evidence adduced. Ground 7 challenges the Magistrate's finding regarding the *mens rea* of the appellant.

It was undisputed that at the material time, the appellant was an employee of a statutory corporation, namely the National Transport Authority ("NTA") and he qualified as a public official. At the relevant time, his work as a vehicle examiner consisted of examining motor vehicles to confirm their roadworthiness in compliance with the law. This included the physical inspection of motor vehicles, filling in and signing Vehicle Examination Reports which is a prerequisite for the issue of certificates of fitness in respect of vehicles.

It is the prosecution's case that the appellant had filled in a Vehicle Examination Report for vehicle registration No. 1539 ZB 90 without examining it for the issue of a fitness certificate, for gratification. It is not in dispute that vehicle registration No. 1539 ZB 90 referred to in the particulars of count II of the information, was in fact not examined by the appellant. The appellant admitted that he filled in and signed the Vehicle Examination Report for the vehicle registration No. 1539 ZB 90. It is the appellant's defence that he made "*a mistake in filling out the Vehicle Examination Report because of the sheer amount of work he had on that day*."

He explained that he did not remember examining vehicle registration No.1539 ZB 90 as two vehicles were brought for examination by Lalldeo Moosanah on that day. He was working on his own when usually the work is carried out in pairs in an examination bay and he examined about 25 vehicles on that day and, by noon, he had examined 15 to 20 vehicles.

The appellant stated that before that day "*it had not happened that*" he had not filled in a Vehicle Examination Report for a vehicle that he had not examined.

Grounds 2, 5, 6 and 7 are considered consecutively.

Ground 2 reads as follows:

> *"The learned Magistrate erred in taking into account the alleged immediate reaction by the appellant after his identification by Mr Lalldeo Moosanah as the Appellant was only cautioned after the alleged reaction as confirmed by witness No.7 (Chief Inspector Rampadaruth)."*

Importantly, there is a misapprehension on the part of the appellant as in his skeleton arguments. At paragraph 26, the following is reproduced as being from the judgment of the learned Magistrate: "*Witness No. 6's testimony remained unchallenged, and the court takes it into account solely as to what accused No. 2 said*". The judgment of the learned Magistrate is typewritten and signed by her. The certified copy and the judgment in our brief shows that the word "unchallenged", has been crossed out by hand in pen and initialled by the learned

Magistrate. We have called for the original file and judgment and confirmed this. Therefore, the sentence reproduced above should read as follows: "*Witness No. 6's testimony remained and the court takes into account solely as to what accused No. 2 said*". We therefore consider grounds 1 (see later) and 2 on this basis.

Lalldeo Moosanah identified the appellant as the person who issued him with the fitness in a corridor at the NTA compound at Forest Side. The reaction in question of the appellant, was that he uttered the following words before he was cautioned: "*He, to pas ti dire moi, to pou amene machine la? Mo ti croire to fine amene machine la".*

We observe that this impugned reaction firstly is not an admission of guilt of the offence by the appellant, at most it reveals that the appellant thought the vehicle was being brought or had been brought for examination. It is then left for inference what is meant by the words. Secondly, when the said words are read in context, it is clear that the learned Magistrate did not set out these words and state that she relied on them to make the finding of guilt.

However, we find that the words uttered after the caution *"mo finne juste rende ene service moi"* were incriminating insofar as it reveals that a favour was done.

We agree with the skeleton arguments of respondents when they emphasise that even if the words are pronounced by the appellant before caution, they are admissible. The learned Magistrate was entitled to rely on the words which both witness No. 6 and witness No. 7 said the appellant uttered after caution even though he has denied saying the impugned words. We are of the view that other available evidence on record supports the finding of guilt. Finally, on this ground, as conceded in the skeleton argument of appellant, we note that witness No. 6 was not cross examined on this issue nor were submissions made before the trial court that the answer given before caution could not be taken into "*account*" or what weight should be given to them. Ground 2 is therefore, dismissed.

Ground 5, which was argued with diffidence reads as follows:

> "*The learned Magistrate failed to address her mind to the fact that the appellant was not informed of the circumstances of the offence, especially the element of gratification and the person for whom it was intended, at enquiry stage."*

It takes issue with the fact that the element of gratification was not brought to the appellant's attention formally during the police enquiry and that the appellant was not informed

that he might be prosecuted for an offence of corruption under the POCA. In the appellant's skeleton arguments, it is not denied that he was informed that vehicle registration No. 1539 ZB 90 was granted a fitness certificate without being examined. It was submitted that this was only part of the offence and that he was not informed of the element of gratification and for whom it was intended. Learned Counsel for appellant in his skeleton arguments, submitted that this was made a live issue during the trial.

It is of note that the respondents' skeleton arguments were prepared in the absence of those of the appellant which are dated only four days before the present appeal was heard. Learned Counsel for respondent No. 1 took the diametrically opposite view in his skeleton arguments that the question of the appellant not being informed of the circumstances of the offence, especially the element of gratification and for whom it was intended, was neither made a live issue during the cross examination of witness No. 2 nor during the defence case.

Learned Counsel for respondent No. 2 also argued that the circumstances of the offence not being put to the appellant was not made an issue during the trial. He underlined that the submissions at trial stage in fact focussed on the effect of the charge not being put to the appellant at the enquiry stage.

We agree with the submissions of learned Counsel for the respondents that the question as to whether the appellant was informed of the circumstances of the offence was not made a live issue during the trial. It is clear from the court record that the appellant was fully aware of what he was reproached of at various stages of the enquiry. We refer with approval to the extract from the judgment of **Seetahul v The State** [2015 SCJ 328] relied upon by learned Counsel for the Director of Public Prosecutions which is reproduced below:

> *"There is no provision in our law which imposes a duty on the police to actually put the charge to the accused at the enquiry stage. Section 5 of the Constitution relates to the rights of the person who is arrested or detained to be informed of the reasons for his arrest or detention, to be afforded reasonable facilities to consult a legal representative of his own choice and to be brought without undue delay before a Court. Section 10(2) of the Constitution provides that every person who is charged with a criminal offence shall be informed as soon as reasonably practicable, in a language that he understands, and, in detail, of the nature of the offence.*
>
> *….*
>
> *In the present case, the version of the prosecution witness was put to the appellant and he had denied being in the yard of Mr Purmessur. It was not incumbent at the stage of*

> *the enquiry to put each and every element of the offence to the appellant. It suffices that the version of the complainant was put to him so that he was made aware of the case against him and the evidence on which it is based so as to enable him to prepare his defence."*

As rightly submitted by learned Counsel for respondent No. 2, it was sufficient to confront the appellant with the version available to the investigative authorities at the time of the enquiry and such an exercise was carried out in the present case.

Ground 5 is without merit and is dismissed.

Grounds 6 and 7 were dealt with together by learned Senior Counsel for the appellant in the skeleton arguments and we deal with these together. Ground 6 relates to the explanations given by the appellant in his out of court statement about the mistake in the examination of the motor vehicle registration No. 1539 ZB 90 and ground 7 raises the issue that the *mens rea* of the appellant was not proved beyond reasonable doubt. Learned Senior Counsel for the appellant emphasised that the version of the appellant was consistent whereas the learned Magistrate found that different versions of what occurred were given by him, and that there was therefore a perverse finding. We disagree.

The learned Magistrate examined the version of the appellant as found in the unsworn statement and this obviously had to be weighed in the light of the prosecution's evidence. It is worth mentioning that the learned Magistrate discarded some of the evidence adduced by the prosecution and that the defence did not adduce any evidence. The learned Magistrate characterised the defence of the appellant as different explanations and we set out the sequence in which the appellant gave his explanations. In his statement dated 4 March 2009, the appellant stated that he did not recall whether he examined motor vehicle registration No. 1539 ZB 90 before preparing the Vehicle Examination Report pertaining to the said vehicle. He explained that he was working on his own and examined 25 vehicles on that day. He, at one point, stated that he has never filled in a Vehicle Examination Report previously without a physical examination of a motor vehicle. It is only after he was informed that the gate register showed that the vehicle did not even enter the premises that he said he may have made a confusion ("*faire ene confusion")* and that vehicle registration No. 1539 ZB 90 did not in fact enter the vehicle examination bay. The explanation of volume of work was then re-iterated by him.

Together with this, the reply he made after his caution is also telling. The learned Magistrate was perfectly entitled to reject the appellant's version in the light of the above. This ground overlaps with ground 7 as the evidence partly relied upon, reveals that the incontrovertible inference was that the appellant was aware he had not examined the motor vehicle and that he was doing a favour in issuing a test certificate which was illegal.

As rightly pointed out by learned Counsel for the respondent No. 2, there could be no mistake or confusion which led to the issuance of the Vehicle Examiner's Report without examining the vehicle registration No. 1539 ZB 90. The Insurance Certificate must be given to the appellant and he must look at the said certificate to know which vehicle he is to examine. He must have looked at the Insurance Certificate and ascertained the registration number to identify to which vehicle it pertained. Even if the bonnet was open, he must have seen the engine number and following the examination, the certificate of fitness must be handed over to the driver whose vehicle has been examined, so that the question of mistake could not have arisen.

In the circumstances, the learned Magistrate's finding that the *mens rea* was proved by the prosecution cannot be impeached. We do not find any substance in these two grounds and they are dismissed.

Learned Senior Counsel for the appellant dealt with grounds 1 and 3 together in his skeleton arguments. We shall do likewise.

Under ground 1, it is the appellant's contention that the learned Magistrate's analysis of the evidence of witness No. 6 is unintelligible while under ground 3, it is alleged that the learned Magistrate erred in not setting out her findings in relation to the testimonies of witnesses Nos. 6 and 7.

These grounds are based on the misconception that the word "unchallenged" is part of the learned Magistrate's judgment. As stated above when considering ground 2, this word has been crossed out in the judgment.

It is appropriate to set out the extract of the learned Magistrate's judgment which analyses the evidence of witness No. 6, DPS Kissoondoyal, and which learned Senior Counsel for the appellant has included in his skeleton argument. He described it as unintelligible.

"*DPS 4879 Kissoondoyal (hereinafter referred to as W6) deponed how he reached Le Forum, Forest Side, at about 12h00 noon on the day in question, when A1 identified and pointed to A2, stating he was Mr Dowlot who had given him the said Fitness for the said 02 vehicles. Following which A2 inter alia stated, he was Danesh Dowlot, Vehicle Examiner at the NTA Forest Side, and stated to A1, he had told him he would bring both cars, and thought that A1 had brought both cars, and upon being cautioned, A2 stated he had done a favour.*

W6's testimony remained unchallenged, and the court takes it into account solely as to what A2 said"

[The underlining is ours]

We have duly considered the above extract. We do not agree that the learned Magistrate's analysis is unintelligible.

Although the above extract is not a model of drafting, it is amply clear when one reads it carefully that the learned Magistrate disregarded the testimony of witness No. 6 in so far as what was stated by accused No. 1 is concerned and that she took into consideration the reply given by the appellant, who, in essence, admitted having done a favour.

Now, the evidence on record shows that witness No. 6 stated that, before being cautioned, the appellant stated the following to accused No. 1:

"*You had told me that you would bring both cars. I thought that you had brought both*."

And, witness No. 6 also stated that, after he was cautioned, the appellant stated:

"*I have done a favour*."

As regards witness No. 7, he stated that, on being cautioned, the appellant stated the following to accused No. 1:

"*I thought that you brought the vehicle, did you not tell me that you would bring the vehicle?*"

Witness No. 7 also stated that the appellant said:

"*I have done a favour*."

We do not agree that the learned Magistrate's analysis of the evidence of witness No. 6 was unintelligible or that she did not make any finding regarding the testimony of witnesses Nos. 6 and 7. In her judgment, the learned Magistrate stated that there was a variance between the words which the appellant allegedly stated to accused No. 1 when one considers the testimony of witness No. 6 and that of witness No. 7, but that the variance was not significant as the

essence of the statement remains the same, that is, that the appellant stated that he had done a favour. She was perfectly right in arriving at the above conclusion when one considers the testimony of witnesses Nos. 6 and 7. It is clear that the learned Magistrate's findings in relation to the testimony of witnesses Nos. 6 and 7, whom she expressly stated she believed, was that the appellant stated that he had done a favour.

We find that there is no merit in grounds 1 and 3 which are dismissed.

Under ground 4, the appellant contends that the learned Magistrate erred in finding the vehicle bearing registration No. 1539 ZB 90 not be roadworthy after she had discarded the evidence of witnesses Nos. 9 and 10.

The issue for determination was whether the appellant physically examined vehicle registration No. 1539 ZB 90 before filling in and signing the Vehicle Examination Report and in doing so he misused his position as vehicle examiner at the NTA for a gratification to another.

It was undisputed that the appellant filled and signed the Vehicle Examination Report without examining vehicle registration No. 1539 ZB 90. The learned Magistrate also accepted as true the testimony of witnesses Nos. 6 and 7 that the appellant stated that he had done a favour.

There was therefore sufficient evidence for finding that the appellant had misused his position for a gratification. There was strictly no need for the learned Magistrate to consider whether the vehicle was roadworthy or not.

This ground is without merit and is dismissed.

All of the grounds of appeal having failed, this appeal is dismissed with costs.

R. Teelock
Judge

K. D. Gunesh-Balaghee
Judge

23 May 2025

Judgment delivered by Hon R. Teelock, Judge

For Appellant	**:**	**Mr. P. Thandarayan, Attorney at Law** **Mr. G. Glover, Senior Counsel together with** **Mr. L. Balancy, of Counsel**
For Respondent No. 1	**:**	**Mr. S. Sohawon, Attorney-at-Law** **Mr. H. Ponen together with** **Mr. Nulliah, both of Counsel**
For Respondent No. 2		**Mrs. D. Dabeesing Ramlagun, Principal State Attorney** **Mr. M. I. A. Neerooa, Senior Assistant DPP together with** **Ms. V. Dawoonauth, State Counsel**