CHUTTOO P v THE ICAC

2025 SCJ 330

IN THE SUPREME COURT OF MAURITIUS

SCR 8925
In the matter of:-

Praveen Chuttoo

Appellant

v

1. The Independent Commission Against Corruption (ICAC)[now the Financial Crimes Commission][1]
2. The State

Respondents

JUDGMENT

1. The appellant stands convicted by the Intermediate Court of the offence of bribery by a public official in breach of sections 4(1)(a)(2) and 83 of the Prevention of Corruption Act 2002 [PoCA] and was sentenced to 12 months' imprisonment. A second co-accused [since deceased] was charged with the same offence in a second count.

2. The appellant was a police officer who was part of a Special Patrol Team [SPT] at Terre Rouge Police Station. The prosecution against him was essentially based on the version obtained from Rajkumar Bholah [Bholah], who stated that on the 4th of December 2009 at 3 00 p.m., the appellant and other officers of the SPT checked his video club. At some point, the appellant got into Bholah's car where he negotiated a bribe of Rs 35, 000 which he received after Bholah withdrew the money from the bank. The appellant denied that version in his defence statement and maintained under oath that he was in a vehicle with his colleagues at the material time.

3. Three weeks after that first raid, on the 22nd of December 2009, the SPT searched a second video club belonging to Bholah where incriminating articles were this time secured. Bholah allegedly tried to bribe and molest the police officers before he managed to flee the scene. It was however Bholah's version that on the 21st of December 2009, accused no. 2 came to ask him for more money but he refused to give in as he had already paid a bribe on the 4th of December 2009.

[1] Proclamation No.10 of 2024

4. According to Bholah, that was why the SPT raided his video club on the 22nd of December 2009. He reported the case to the Independent Commission Against Corruption [ICAC] on the 23rd of December 2009 in order to stop police officers from further harassing him.

5. On the 13th of April 2016, the learned Magistrate of the Intermediate Court convicted the appellant and he was sentenced to undergo 12 months' imprisonment on the 15th of April 2016.

6. This appeal is against conviction and sentence. Mr G Glover SC informed us from the outset that this appeal had been heard before a different bench [and had to be heard anew because of the demise of one of the learned Judges][2] and that he had already intimated that he was not insisting on grounds 7, 8 and 10[3]. The remaining grounds are as follows.

Ground 1: The conviction is unsafe and undetermined by the investigative failures of the enquiry that cast reasonable doubt on the allegations of witness no. 6, R. Bholah, more particularly, in the light of the evidence of (a) witness no. 1, Khoosa and (b) witness no. 9, Mr Ramsamy.

Ground 2: The learned Magistrate erred in her consideration of the evidence with respect to a material element of the offence against accused no. 1, whereas the gist of the defence was tantamount to the defence of an alibi that was never disproved by the prosecution to the required standard of proof.

Ground 3: The learned Magistrate erred in her appreciation of the whole evidence on record, in the light of accused no. 1's evidence and that contained in his out of court statements, particularly when she held that:-

> *"(….) since Count 1 of the information was amended and the words for himself were deleted, there is no burden on the prosecution to prove who was the recipient of the gratification, and the question whether Accused No 1 was talking to Accused No 2 or not on 4 December 2009 is not material."*

Ground 4: Because the sentence passed upon the appellant (then accused no. 1) is manifestly harsh and excessive in the circumstances.

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[2] Pg 787 of volume 2 of the brief and hearing of 2nd May 2022.
[3] P. 761 of the brief.

Ground 5: The learned Magistrate erred when she failed to distinguish the evidence which was led under count 1 and count 2 respectively.

Ground 6: The learned Magistrate erred was she found that the only inference that could be drawn from the withdrawal of Rs 35, 000 by the complainant was that it corroborated the latter's version when there were other co-existing facts which were never taken into consideration.

Ground 9: The Learned Magistrate erred when she believed the story spun by Rajkumar Bholah regarding the delay in reporting the case against the Appellant.

Ground 11: The Learned Magistrate untruly (*unduly*) failed to address her mind to the consequences of the bookings of 22nd of December 2009 which led to the deposition at ICAC on the 23rd of December 2009.

Preliminary Objections by Respondent no. 1

7. We shall first address the preliminary objections raised by respondent no. 1 regarding grounds 2 and 5 of the appeal, which, it is contended, are insufficiently precise to constitute arguable points since the appellant had not clearly defined their scope.

8. We have considered respondent no. 1's arguments and we are of the view that as far as grounds 2 and 5 are concerned, although couched in vague terms, they adequately convey that the learned Magistrate erred (i) in failing to properly consider the defence of alibi raised by the appellant, and (ii) in not making a distinction between the evidence adduced in respect of accused no. 1 and accused no. 2, thereby relying on the evidence under both counts to convict the appellant.

Grounds 1, 2, 3, 5, 6, 9 & 11

9. In relation to grounds 1, 2, 3, 5, 6 and 11, their soundness mostly depends on the learned Magistrate's evaluation of Bholah's credibility, as challenged under ground 9 of this appeal.

10. Our first observation with regard to the above is to reaffirm that a trial court is always in a better position than an appellate court to determine issues of fact, especially when the trial court's findings of fact are based on its own assessment of a witness's credibility.

11. This was very recently confirmed in **Savurimuttu S. v The State [2025 SCJ 19]**, where it was restated that "*A trial Court is in a much better position to carry out such an assessment since it has the undeniable advantage of seeing and hearing the witnesses.*"

12. In **Savurimuttu**, Lord Reid's judgment in **Benmax v Austin Motor Co Ltd (1955) 1 All E.R. 326**, was extensively quoted, namely where he stated that "*the trial judge has seen and heard the witnesses, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence…*", with the effect that "… *it is only in rare cases that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness*."

13. In the same decision[4], reference is made to **Henderson v Foxworth Investments Limited and Another [2014] UKSC 41**, where it was held that "*in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge* ***only if it is satisfied that his decision cannot reasonably be explained or justified***."

14. We have thoroughly reviewed the learned Magistrate's assessment of Bholah's evidence. She made a clear finding that he was a credible witness after he maintained his version in spite of "*lengthy and searching cross-examination*"[5] and after she highlighted having "*carefully listened and seen* [him] *depose and assessed his evidence*." We find that the learned Magistrate correctly addressed the inconsistencies in Bholah's version and found that they did not affect his credibility before she relied on his evidence.

15. A careful examination of the judgment clearly indicates that the learned Magistrate considered all the material elements put before her and that, after a meticulous analysis of all the relevant issues, she rightly determined that Bholah was a truthful witness. We therefore find that the learned Magistrate's findings regarding Bholah's credibility are unimpeachable.

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[4] **Savurimuttu**.
[5] P. 359 of the brief.

16. Insofar as the appellant's specific complaints under grounds 1, 2, 3, 5, 6 and 11 are concerned, we shall address them in turn.

17. The "*investigative failures*" complained of under **ground 1**, namely the discrepancies in the timeline and chronology of events, the alleged weaknesses in the enquiry with regard to camera footage, phone records and phone calls, and the circumstances surrounding the money withdrawal, were all thoroughly considered by the learned Magistrate who found them to be minor issues which did not alter her appreciation of Bholah's credibility as a witness.

18. The grievance raised under **ground 2** also has no merit, based on the same reasoning as above, since the learned Magistrate did not believe the appellant's version to the effect that he was in a vehicle with other police officers and since she did not find PC Vernet to be credible for the well-articulated reasons given in her judgment. Once the learned Magistrate chose to believe the main witness for the prosecution as a truthful witness, the alibi raised by the appellant was disproved beyond reasonable doubt by the prosecution.

19. As regards the complaint made under **ground 3**, namely the significance of the version that the appellant had communicated with his co-accused over the phone on the day of the offence, we agree with the learned Magistrate that this was no longer material once the information was amended, so that the prosecution was relieved of the burden of proving who the recipient of the gratification was. Bholah's credibility could not therefore be impeached based on an issue which ceased to be relevant to the trial court.

20. In relation to **ground 5**, the appellant essentially relies on a single sentence in the learned Magistrate's judgment as being illustrative of her approach, namely:

> "*In the light of the above I find that the evidence adduced by the defence does not rebut the case for the prosecution that Accused no.1 obtained a gratification from RB on 4 December 2009 not to report a criminal case against him, and that Accused no.2 solicited a gratification from RB on 21 December 2009 for not having reported a case against him on 4 December 2009, and that the search on 22 December 2009 was not as described by the defence, but as described by the prosecution witnesses.*"[6]

[6] P. 362 of the brief.

21. The appellant's objection under that ground is misconceived. The above extract sufficiently conveys that the learned Magistrate considered each of the 2 counts where the two accused parties were charged as distinct and separate offences. We are of the view that the cited passage cannot be taken out of its proper context. The remainder of the judgment plainly shows that there was no doubt in the mind of the learned Magistrate that she was dealing with 2 separate counts, notwithstanding the fact that the two accused parties had to answer similar charges arising out of the same set of facts. Ground 5 therefore has no merit.

22. **Ground 6** finds fault with the inference drawn by the court that the withdrawal of Rs 35, 000 from the bank corroborated Bholah's version without considering other co-existing factors. We again find this complaint to be unjustified since the learned Magistrate found that the money withdrawal was made on the material date at 3. 31 p.m., on the 4th of December 2009, and that the Rs 35, 000 was exactly the sum that Bholah had stated was requested by the appellant. She further found that this timeline tallied with the time at which Bholah reached the police station.

23. The learned Magistrate further considered the evidence regarding other substantial money withdrawals by Bholah but concluded, as she was entitled to do, that this element did not undermine Bholah's credibility and that it was odd that he would have decided to withdraw that particular sum of money at a time when his video club was being checked by police and while he was on his way to a police station. She consequently drew the justified inference that the money must have been withdrawn to be remitted to the appellant after they had agreed that no case would be reported against Bholah and that his films would be returned in exchange for the payment of Rs 35, 000. For these reasons we find that ground 6 has no merit.

24. As for **ground 9**, the merits of which have already been partially dealt with[7], where the appellant complains that the learned Magistrate erred in believing Bholah's explanations for the delay in reporting the case against him, we reiterate that the learned Magistrate had the advantage of seeing the witness depose. We found nothing in her judgment which could lead us to decide that she reached her conclusions based on a wrong assessment of the evidence.

[7] See paragraphs 9 to 15 of this judgment.

25. The issue under reference was properly addressed in the judgment when the learned Magistrate accepted as true the evidence that Bholah did not report the matter earlier because it was only when he was again asked for money and he realized that he would continue to be the subject of harassment by the police that he was triggered into reporting the matter to the ICAC.

26. We find that the learned Magistrate's findings on that score are unimpeachable, especially after she concluded that she could treat Bholah as a credible witness.

27. Regarding the late mention of witness Oree by Bholah, and the possibility of concoction on their part, especially since the witness did not turn up at the ICAC until the 29th of December 2009 in company of Bholah[8], this was addressed by the learned Magistrate when she explained that she accepted as true that it was the police raid of the 22nd of December 2009 which had brought about the late reporting of the offence to the authorities[9]. She also clarified why she found Oree to be an independent witness and added that there was no evidence that he had a reason to lie, so that she found that his version could be believed.[10]

28. Insofar as the appellant's argument that the learned Magistrate failed to treat the evidence of Bholah with caution as it was that of a "*self-confessed accomplice*"[11] is concerned, the appellant concedes that the learned Magistrate "*was alive to this fact*" in his arguments. It can therefore hardly be argued that she made her assessment of Bholah's credibility in ignorance of his potential status as a willing '*particeps criminis*'. The judgment also shows that the court carefully analysed every aspect of Bholah's testimony, so that it cannot be said that the learned Magistrate failed to treat Bholah's evidence with caution.

[8] Para. 48.ii of the appellant's skeleton arguments
[9] P. 363 of the brief.
[10] P. 360 of the brief.
[11] Para. 48.iii of the appellant's skeleton arguments.

29. As for the "*appropriate warning*" referred to in the appellant's submissions, we need only refer to what was said in **Clelie L. J. & Others v R** [1982 MR 6], namely that "*This Court has, time and again, said that there is no need for Magistrates to use any magic formula when dealing with the uncorroborated evidence of an accomplice yet it is necessary that their judgment should leave no doubt that they realise that they are acting on the uncorroborated evidence of an accomplice and that they should further say, at least for the benefit of the Appellate Court, the reasons which prompt them to act on such uncorroborated evidence. … .*"

30. In the present instance, and as recognised by learned Senior Counsel for the appellant in his skeleton arguments, the learned Magistrate was conscious of Bholah's status as an accomplice and her judgment clearly reflects that his evidence was approached with the utmost caution before his version was relied upon to convict the appellant.

31. We shall now address **ground 11** of this appeal, where the appellant avers that the learned Magistrate failed to address her mind to the consequences of the "*booking*" of the 22nd of December 2009. The appellant's arguments in that respect are that the raid effected by the police on Bholah's video club on the 22nd of December 2009 and the resulting booking for various offences, triggered the complaint made against the appellant to the ICAC. It is submitted that, as a result, Bholah was motivated by revenge and that this undermined his credibility as a reliable witness.

32. In that respect, the learned Magistrate clearly accepted Bholah's version when she explained in her judgment that she found credible his evidence that he only reported the matter to the ICAC after the events of the 21st and 22nd December 2009 unfolded because he then realized that he would continue being harassed by police officers unless he went to report the matter to the authorities. In the light of her clear reasoning on that point, and based on her conclusions that Bholah was a credible and reliable witness, we again find that the learned Magistrate's findings cannot be faulted.

The sentence

33. **Ground 4** avers that the sentence imposed is manifestly harsh and excessive and the appellant argues that a community service order would have met the ends of justice. It is highlighted that the appellant has been part of the Police Force since May 2002, that he has a clean record and a family, and that the offence was committed in December 2009, whilst conviction and sentence were handed down in April 2016. Reference was made to the Privy Council decision in **Boolell v. The State [2006] UKPC 46**.

34. There is no contest that considerable delay has occurred in the present matter and that this must now have a bearing on the sentence of 12 months' imprisonment initially imposed by the court of first instance on the appellant following his conviction.

35. In **Elaheebocus Haroon Rashid v State of Mauritius [2009 MR 323]**, paragraph 39 of the judgment in **Boolell** was referred to, where it was held that it was unacceptable that a prison sentence be put in operation 15 years after the offence was committed "*unless the public interest affirmatively required a custodial sentence, even at this stage.*"

36. The court in **Elaheebocus** however found that the case involved "*altogether greater criminality than Boolell"*. It observed that 12 years had passed since the commission of the offence and considered that it would not be right to set aside the four-year sentence whilst bearing in mind the injustice that this would represent in the eyes of the appellant's co-conspirators. The Board therefore held that a *modest reduction* in the sentence should be made to mark the constitutional breach and substituted the four-year sentence for one of three and a half years' penal servitude.

37. In the light of the above pronouncements, we recognise that the delay incurred since the appellant committed the offence, and for which he remains convicted, must be reflected in a reduction in the original sentence imposed by the learned Magistrate.

38. We nonetheless endorse the trial court's view that the offence committed by the appellant, who was at that time engaged in official duties as a member of the Police Force, is a serious one, and that he "*breached the trust that* [his] *position conferred*", so that, by his acts, he contributed to sap "*the faith that the public has in the police*"[12].

39. As can be culled from the proven facts, the appellant was engaged in official law enforcement duties and was part of a special team of police officers when he chose to breach the oath he took as a police officer to accept a bribe.

40. In the light of all the above considerations and the principles referred to, we find that a sentence of 6 months' imprisonment will serve the ends of justice and at the same time act as a firm deterrent for public officers who may be tempted to engage in similar criminal activities during the execution of their duties.

41. For all the reasons given, we set aside grounds 1, 2, 3, 5, 6, 9 and 11 of this appeal and uphold the appellant's conviction.

42. We however quash the initial sentence of 12 months' imprisonment imposed by the Intermediate Court and substitute therefor a term of imprisonment of 6 months to be served without delay.

43. In the circumstances of this appeal, and the appellant having been partly successful, we make no order for costs.

N. F. Oh San-Bellepeau
Judge

V. Kwok Yin Siong Yen
Judge

This 1 August 2025

Judgment delivered by Hon. N. F. Oh San-Bellepeau

[12] P. 365 of the brief, p. 2 of the learned Magistrate's sentence.

For Appellant	**:**	**Mr P Thandarayan, Attorney-at-Law** **Mr G Glover, Senior Counsel &** **Mr L Balancy, of Counsel**
For Respondent No. 1	**:**	**Ms D Nawjee, Attorney-at-Law** **Mr M Roopchand & Mr T Naga, of Counsel**
For Respondent No. 2	**:**	**Ms K Parson, Principal State Attorney** **Mr S Boodhoo, Principal State Counsel**