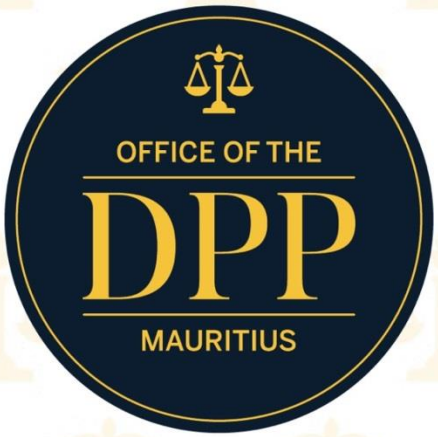


Office of the Director of Public Prosecutions

'To No One Will We Sell, To No One Deny or Delay Right or Justice'
Chapter 40,Magna Carta 1215

E-newsletter - Issue 116 **September 2021**

In this Issue

Editorial Team

The views expressed in the articles are those of the particular authors and should under no account be considered as binding on the Office.

Editorial

Anusha Rawoah
Principal State Counsel

Dear Readers,

Welcome to the 116th issue of our monthly e-newsletter.

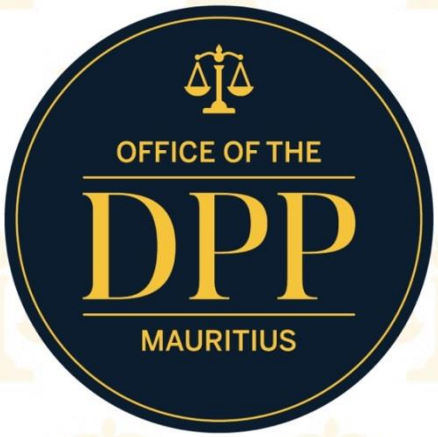
In our Podcast for the month, the Director of Public Prosecutions, Mr Satyajit Boolell, SC, speaks on section 10 of the Constitution, a crucial constitutional guarantee aimed at ensuring protection of the rights afforded to an accused in criminal proceedings.

This Podcast can be accessed through the following link: https://youtu.be/--saaTUSquw

Following the recent jury trial in the murder case of *State vs Meerhossen (SCS 4/19)* at the Assizes, whereby the accused has been sentenced to penal servitude for life, we have included in this issue, a review of the case. Furthermore, a full day online sensitisation workshop was organised by the Institute for Judicial and Legal Studies ('IJLS') on the 6th August for Barristers and Attorneys on Gender Based Violence issues with around 100 participants. A review of the workshop as well as the salient features of the discussions are also included in this issue.

In our Quick Facts section, we provide you with an overview of a few provisions of the 'Piracy and Maritime Violence Act 2011'. Finally, readers will get the opportunity to go through the recent judgments of the Supreme Court.

We wish you a pleasant read.



ODPP PODCAST

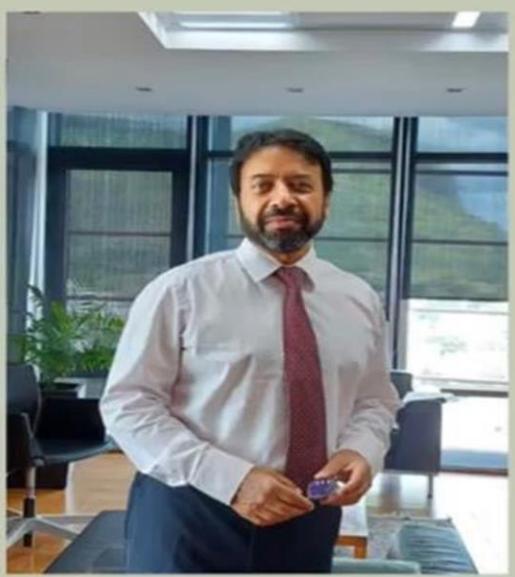
E-newsletter - Issue 116 **September 2021**

Click on the link below to listen to the Podcast:
https://youtu.be/--saaTUSquw

LA POUDRIÈRE VOICE

ENTRETIEN AVEC LE DPP

SECTION 10 : LE PLAT DE RÉSISTANCE



SATYAJIT BOOLELL SC

DIRECTEUR DES POURSUITES PUBLIQUES

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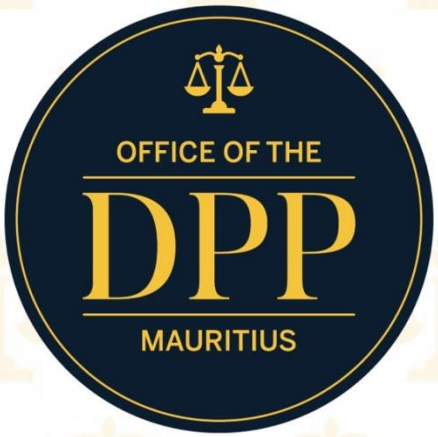


ARTICLES

E-newsletter - Issue 116 **September 2021**

State vs Meerhossen

Penal servitude for life

Mr Jean Michel Ah-Sen, ADPP *(right),* Mrs Meenakshi Gayan-Jaulimsing, Ag. ADPP *(middle),* and Ms Anusha D. Rawoah, PSC *(left).*

'***GUILTY, MY LORD***' – This was the unanimous verdict of the 9 jurors in the murder trial of **State vs Meerhossen (SCS 4/19)** on 14th September 2021 at 21hrs. The accused, one Salib Meerhossen, stood trial for the murder of one Lara Bianca Rijs, a South African national, which he committed in the night of 13th August 2017 at her residence, Residence de Luxe Apartment G3, Pereybere. Of note, accused was the security guard of that complex and was assigned to ensure the security of the residents.

The Prosecuting team consisted of Mr Jean Michel Ah-Sen, Assistant DPP, Mrs Meenakshi Gayan–Jaulimsing, Ag. Assistant DPP and Ms Anusha D. Rawoah, Principal State Counsel. The Prosecution called around 24 witnesses to depose on its behalf, and to prove its case. Most of them were police officers and there were 3 expert witnesses.

In the afternoon of 14th August 2017, the victim's body was found at her apartment G3, with a deep slashed cut at the neck, lying in a pool of blood on her bed. The victim was sexually assaulted before she was brutally and violently murdered on that fateful night.

Ms Lara Rijs was a young promising South African lady in her thirties who moved to Mauritius to work. She reached Mauritius on the 29th of April 2017. She joined Geneva Management Group on the 1st of May 2017 as Operations Executive. She was a young successful professional and an "*incredible human being*", to use the words of her mother. She did not elect to die in Mauritius and yet the fate of that young lady is such that she is now buried in our little paradise island known as Mauritius. Little did she know that the place called Appartment G3 "*Residence de Luxe*" in Pereybere which she chose as her home would have been the place where she was murdered - murdered by someone who was supposed to provide her security at the apartment, the watchman, Salib Meerhossen.

During the trial, defence counsel tried to challenge the forensic evidence as well as put forward the possibility of cross-contamination, and same was successfully rebutted by prosecution's police and expert witnesses. The forensic witnesses explained the manner in which the DNA is collected from a scene of crime and the procedures adopted in Mauritius to carry out the analysis of DNA as well other samples.

State vs Meerhossen - Penal servitude for life

The Police Medical Officer, Dr. Gungadin, gave a detailed analysis of all the wounds found on the victim's body, including the defence wounds, which were inflicted on the victim while she tried, in vain, to defend herself.

We may pause here to note that in the year 2018, the **Judicial and Legal Provision (No.2) Act 2018** amended the **Supreme Court (Jury Lists and Panels) Rules** and the relevant provisions, relating to the preparation of list of jurors, now read as follows:

"*3. The Master and Registrar shall with the assistance of the Electoral Commissioner, the Registrar of the Civil Status and the Commissioner of Police draw up a list of persons qualified to serve as Jurors.*

4. Any person who is registered as an elector of an electoral area may on good cause shown, apply in such form and manner as the Chief Justice may approve to the Magistrate of the District in which he resides to have his name removed from the list of persons qualified to serve as jurors."

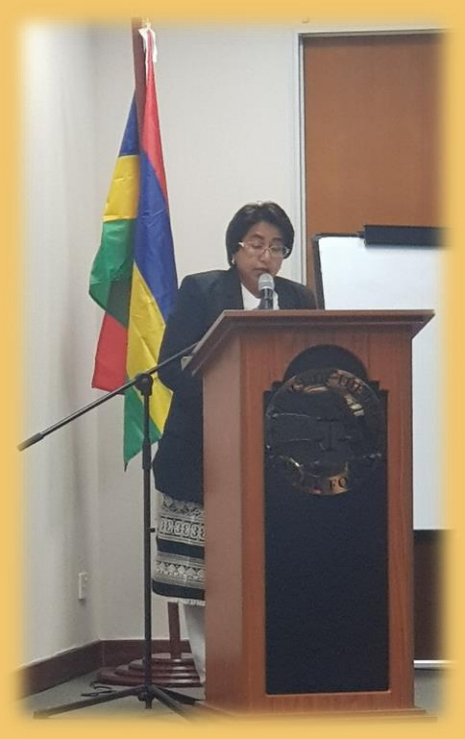
Therefore, the list from the Electoral Register is now used and from which persons are randomly selected for jury service in jury trials in the Supreme Court. The effect of this is that Mauritian citizens from all walks of life have a chance to get to become a member of jury and have a say on the guilt or otherwise, of a person charged with some of the most serious offences of the land. From this broader pool of potential jurors, only 9 jurors form a jury panel. Broadening the pool is meant to achieve a more representative cross section of our society in jury trials, as the electoral list is an indiscriminate list. This also means that the rights of the accused to fair trial, as enshrined in our Constitution, is reinforced.

The Judge, His Lordship Mr L. Aujayeb, in his very succinct summing-up, gave directions in law to the 9 jurors to assist them. Following the unanimous verdict, and after considering all the aggravating factors, including the brutal manner in which the victim was murdered, the Learned Judge then imposed a sentence of penal servitude for life on the accused under **section 222(1)(a)** of the **Criminal Code**. The Learned Judge also concluded that there were no exceptional circumstances in the case to warrant a lesser sentence, that is, a penal servitude not exceeding 60 years.

Justice is a noble cause, if not the most noble cause. It is not every day that one gets to do justice and members of the jury were given the noble task of doing justice to the family and friends of Ms Lara Bianca Rijs.

Rest in Peace Lara.

The Prosecuting Team



Pareemala Devi Mauree
Principal State Counsel

Sensitisation Workshop for Barristers and Attorneys on Gender Based Violence issues

A full day online sensitisation workshop was organised by the Institute for Judicial and Legal Studies ('IJLS') on the 6th August for Barristers and Attorneys on **Gender Based Violence** ('**GBV**') issues with some 100 participants.

Ms Mauree, Principal State Counsel at the Office of the Director of Public Prosecutions ('ODPP') and Me Moolna, Barrister, were Masters of Ceremony throughout the training. Ms Mauree started the workshop by welcoming all of the participants. Ms Mauree gave an overview of the programme and stated that this workshop was in line with the National Strategy and Action Plan on the Elimination of Gender Based Violence.

Session 1: Definition of GBV concepts and International Perspective

The first speaker was Mr Jason Meyer, International Consultant to the High Level Committee on Gender Based Violence. Mr Meyer gave an introduction to GBV and the concepts and terminologies used in both GBV cases and domestic violence cases. The concept of Gender Equality is not about giving women and men the same treatment but rather giving women and men the necessary tools, resources and other means to reach their full potential. This is achieved by recognizing that men and women have different needs and therefore require policies, programmes and other frameworks to enable them to participate on an equal level playing field. Mr Meyer mentioned that Mauritius became the 7th country to ratify the **International Labour Organization's** ('**ILO**') **Violence and Harassment Convention 2019** (**No. 190**). However, he maintained that laws, conventions, policies, etc, do not end intolerance, prejudice and discrimination in workplaces, communities or society and there is a need to educate and promote a shared understanding of the benefits of gender equality while maintaining survivor-focused approaches and holding perpetrators accountable.

The second speaker was Ms Anjalee Beegun, Human Rights Consultant, who addressed the issue of GBV from an LGBT Perspective. She referred to the **Council of Europe Convention** on preventing and combating violence against women and domestic violence, also known as the **Istanbul Convention**. This Convention gives a complete definition to GBV. It expands the definition of gender

as including sexual orientation and/or identity. Ms Beegun explained that the term '**SOGIESC**', although rarely used, gives a new dimension of GBV. '**SO-GIE-SC**' stands for "**Sexual Orientation**", "**Gender Identity and Expression**" and "**Sex Characteristics**". She stressed the fact that transgender persons do not have much of a presence in our law nor do they have any form of legal recognition. There is no specific legislation addressing homophobic and transphobic violence and hate speech. Ms Beegun mentioned the Convention on the **Elimination of All Forms of Discrimination Against Women** ('**CEDAW**'), more specifically **General recommendation No. 28**. This recommendation says that State parties must legally recognize such intersecting forms of discrimination and their compounded negative impact and prohibit them as well as adopt and pursue policies and programmes designed to eliminate such occurrences. Finally, Ms Beegun talked about ways in which GBV issues can be remedied amongst LGBTQIA+ persons.

The last speaker for Session 1 was Mrs Shirin Aumeeruddy-Cziffra, Chairperson of the Public Bodies Appeal Tribunal who gave an international perspective of GBV. Mrs Cziffra started by stressing the need for large community of citizens to be committed to eradicating violence as it is on the increase. She went through the various treaties and instruments that are in existence, such as the **International Covenant on Civil and Political Rights** ('**ICCPR**'), the **International Covenant on Economic, Social and Cultural Rights** ('**ICESCR**'), the **CEDAW** or even the **Beijing Declaration and Platform for Action**, amongst others. Mrs Cziffra stated that it is not the practice in Mauritius to domesticate treaties. Given that international norms are just norms and are not legal as such, there is a need to domesticate treaties which may or may not be a good thing. She also mentioned that Mauritius ratified the **Optional Protocol** to the **Convention on the Rights of the Child** on the sale of children, child prostitution and child pornography. She ended her presentation by sensitising the attorneys and barristers on the need for each of them to be committed to the fight against GBV and how they can contribute as trained legal persons in order to improve the system.

Session 2 : GBV reform with Multi Stakeholder perspective

It started with a presentation from Ms Mauree, Principal State Counsel at the ODPP, about the GBV Reform. Ms Mauree started with the situation prior to the reform in 2019 where there was social outcry for reform for effective protection of victims and to render perpetrators

accountable and also for rehabilitation. Ms Mauree went through the different legislations already in place in Mauritius against GBV and domestic violence and talked about the mandate of the High Level Committee.

She explained that domestic violence is a priority of the ODPP, which has published various informative leaflets on the subject as well as organised trainings, conferences and workshops. In October 2020, the Gender Caucus was created in the ODPP to give support to the GBV reform taking place. Ms Mauree then summarised the conclusions of the report of the ODPP on GBV sent to the High Level Committee and gave an overview the work and activity of the ODPP in the sub strategies 2 and 3 in the fight against GBV.

The second speaker was Mrs Swapnah Hurry, Coordinator at the Ministry of Gender Equality and Family Welfare. Mrs Hurry's presentation was on the Perpetrators Rehabilitation Programme which the Ministry is envisaging to come up with. She went through the objectives of the programme and stressed the importance of the Perpetrator's Rehabilitation Programme which is a key factor to deter incidences of violence in a domestic setting. Currently, the **Protection from Domestic Violence Act** ('**PDVA**') does not allow the Court to refer people to the rehabilitation programme but only provides for referral to counselling upon consent of both parties. She ended her presentation with the implementation of the programme which has been designed to be delivered in modules, each with a specific focus of attention.

Mrs Sylvia Rajiah, Police Chief Inspector spoke on the Police Perspective of the GBV Reform. Mrs Rajiah started by explaining how gender inequality is a reality in the Mauritius Police Force ('MPF') as it is viewed as an organisation for men. She went through the other services provided by Police Family Protection Unit ('PFPU') and the changes in the Police Culture in addressing GBV and domestic violence cases at police stations. She stated that a more responsive culture could be attained through training and gave the number of cases, alerts and genuine cases that the MPF have received through their mobile application '***LESPWAR***'. She explained how LESPWAR works and the possible actions available to police officers. She ended her presentation on how the MPF could improve their service to victims of GBV.

The last speaker for the second session was Dr Peedoly from the Mauritius Research and Innovation Council ('MRIC'). He talked about

the Gender Based Observatory. He stated that the setting up of an Observatory for GBV is high on the Government's agenda. The MRIC has been chosen to house this Observatory, with the support of the Ministry of Gender Equality. He gave an overview of the MRIC and went through their different schemes. The main objectives of the Observatory is to be the coordinating body for the compilation and centralization and analysis of data on all forms of GBV and to make evidence-based recommendations and proposals to improve the services and facilities offered by public institutions and civil society in the area of GBV.

Session 3: Access to Justice to Victims of Domestic Violence

Mrs Ramano, Barrister-at-law and Chairperson of the Independent Review Panel, spoke about the role of Barristers to bring justice to victims of domestic violence within the criminal justice system and how their role is capital as agents. She addressed the difficulties faced by the victims when they decide to engage with enforcement agencies. These are: lack of communication and experience, absence of representation, having to give oral evidence in court and various court postponements. All these difficulties may exacerbate the trauma of the victims. She went through problems that barristers and the court may face, such as the spouse being unreachable which causes immense delay. She also spoke about adherence to the **Code of Ethics for Barrristers** and their role in a case of DVA and how to assist proactively by not taking unnecessary points of law to delay proceedings. She laid emphasis on the **DVA Rules** made by the Chief Justice ('CJ') which gives leeway to district courts for prompt disposal of a case of DV. Finally, she ended by saying that barristers should adopt a multi-stakeholder approach and victims should feel that they have been properly advised and taken seriously.

Mrs Teeluckdharry, Barrister-at-law, gave a critical analysis of the access to justice to victims of domestic violence. She explained the steps involved in obtaining justice, which includes going to the Police, FPU, the hospital to fill PF58, then the Court. She gave the criteria for victims to be eligible to legal aid, which takes 2 to 4 weeks and puts victims at a disadvantage as it causes delay. Perpetrators can also apply for legal aid too but the administrative process is too long when compared to the one for victims. Mrs Teeluckdharry expressed concern of the fact that domestic violence cases are not given priority in Court and the victims have to wait. As for the Police, there needs to be better assistance given to victims of domestic violence. She ended her

presentation explaining how better assistance can be provided to domestic violence victims at Court level and the duty of barristers and attorneys, especially when a child or an elderly person is involved.

Session 4 : Role of NGOs in the fight against GBV

Session 4 was the final session for the workshop. It dealt with the role of NGOs involved with GBV. The first speaker, Ms Pertaub, Barrister-at-law represented NGO Dis-Moi. She started with giving an overview of Dis-Moi and the services provided and the statistics on GBV by UN Women. She stated that our society is patriarchal, and that the starting point for men and women are not the same. She gave an overview of the international perspective and the definition of gender, gender discrimination, gender mainstreaming as well as the difference between gender and sex and gender equality v. gender equity. Ms Pertaub highlighted some of the best practices seen internationally to prevent GBV and for creating a GBV free society. She ended her presentation by giving some examples of cases on gender-based discrimination and briefly discussed GBV in cyberspace.

The next speaker was Ms Jagessur, Empowerment Coordinator at Passerelle. She gave an overview of the work which is done by Passerelle and how they work for the welfare of victims of domestic violence. Enforcement authorities consider shelters as a dumping area, they forget about the victims and no follow-up is done afterwards. She addressed the difficulties faced by both victims and shelters, such as custody, divorce and recovering personal belongings. There is also a lack of support from Ministry and a lack of budget and a lack of a proper structure when it comes to handicapped victims. Finally, she explained how a needs assessment is performed before the shelter accepts victims. She urged barristers to aid shelters by training the staff and volunteers on the law, which is complex, in order for them to improve the service that they provide to the victims.

The third speaker was Ms Evodie Moutou, Administrative Assistant from SOS Femmes. She gave an overview of SOS Femmes. Their objectives include carrying out prevention and senstitisation campaigns on women's rights in order to create a society which would have zero tolerance of violence against women in order to change the attitude and behaviour of every citizen. They do a needs assessment to address the victim's problem and take a holistic approach, including liaising with the children's school and accompanying the victim to the police station, hospital, Court or other institution. They also have a psychologist and a legal advisor and are an integrated shelter where the victim has access

to any service she might need. For victims who are addicted to drugs or alcohol, they are referred to other appropriate NGOs. Most importantly, SOS Femmes does a follow-up after the victims leave the shelter.

The last speaker for the session and workshop was Ms Anushka Veerasawmy, Director of Gender Links. Ms Veerasawmy talked about the way NGOs are working and how they can work together with legal professionals to ensure that they are doing their work in the best possible way. She addressed the role of NGOs in Mauritius and abroad in the fight against GBV, including NGOs working closely with the Judiciary to reinforce Judicial Activism. This is an area in which Mauritius lags behind. Judicial policy activism promotes the cause of social change or articulates concepts such as freedom, equality, or justice which are other abstract concepts. She illustrated judicial activism with a case law from the Madras High Court and '***Clare's law***' or the **Domestic Violence Disclosure Scheme** ('**DVDS**') in the UK. Ms Veerasawmy believes that having something which is similar to Clare's Law or DVDS in Mauritius can prevent a lot of feminicide and help police carry out different checks. She also explained how counsel and attorneys can help police and the Court to assist survivor of domestic violence and the need for a multi-sectorial and coordinated approach to GBV. Finally, she looked at The Directory of Women's Sources which was produced in 2004 and provides a list of contact details of women across diverse themes and the need to have a new one.

At the end of each session, there was Q&As which was very interactive. Overall, the workshop was very interesting with new and interesting perspectives on the issue of GBV. It is the first of its kind in gender sensitisation for the legal profession. It has generated a lot of interest. It is hoped to make it a yearly feature for the benefit of the legal profession. Rapporteurs reports will be soon uploaded on the IJLS website as well as an audio recording of the whole workshop for those who could not attend.

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QUICK FACTS

E-newsletter - Issue 116 **September 2021**

Quick Facts

DID YOU KNOW?

THE PIRACY AND MARITIME VIOLENCE ACT 2011

Penalty on conviction for the offence of <u>hijacking and destroying ships</u> [Section 4]

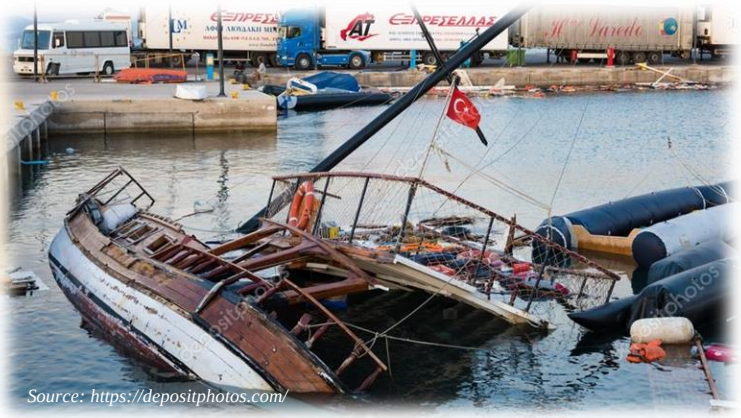
Penal Servitude for a term not exceeding 60 years

S 4 (1) - Subject to subsection (4), a person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it, shall commit the offence of hijacking a ship.

Source: https://assafinaonline.com/

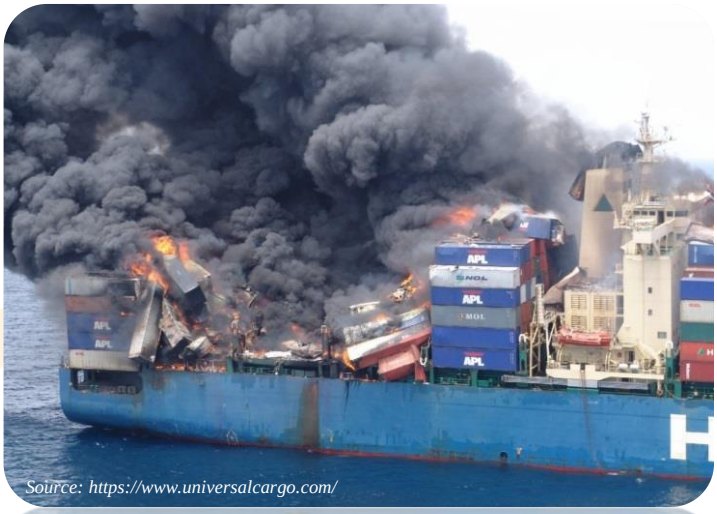
S 4 (2) - Subject to subsection (4), a person shall commit an offence where he unlawfully and wilfully –

(a) destroys a ship;



Source: https://depositphotos.com/

(b) damages a ship or its cargo so as to endanger, or be likely to endanger, the safe navigation of the ship;

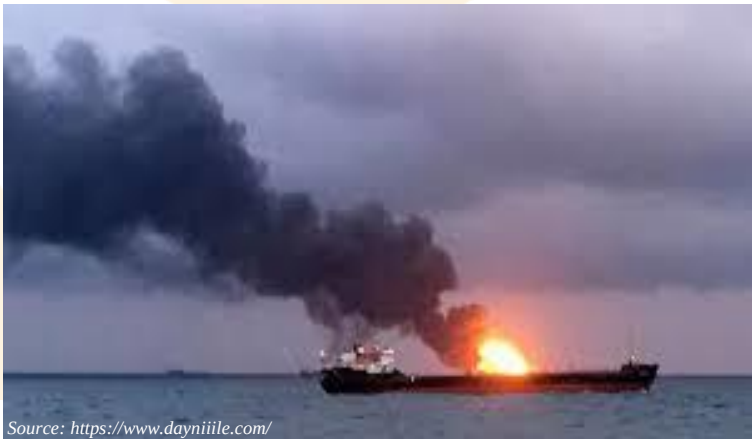


Source: https://www.universalcargo.com/

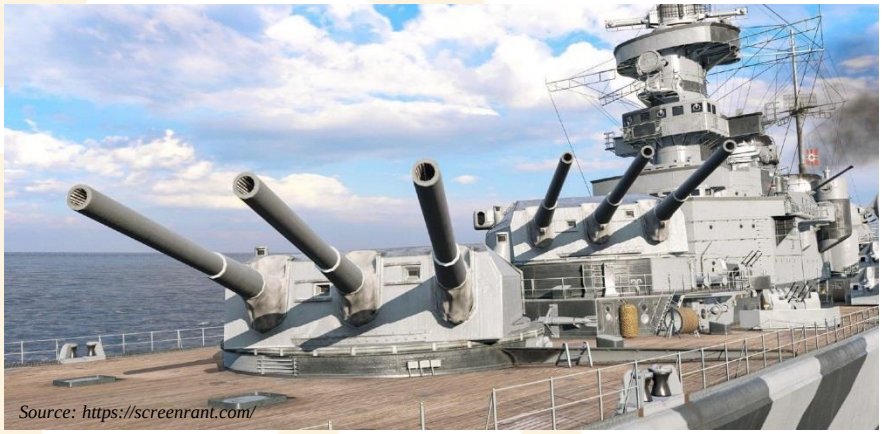

Source: https://www.dailystar.co.uk/

(c) does, on board a ship, an act of violence which is likely to endanger the safe navigation of the ship; or

(d) places or causes to be placed on a ship any device or substance which is likely to destroy the ship or is likely to so damage it or its cargo as to endanger its safe navigation.


Source: https://www.dayniiile.com/

S 4 (4) – Subsections (1) and (2) shall not apply in relation to any warship or any other ship used as a naval auxiliary or in customs or police service, or any act committed in relation to such a warship or such other ship, unless -



Source: https://screenrant.com/

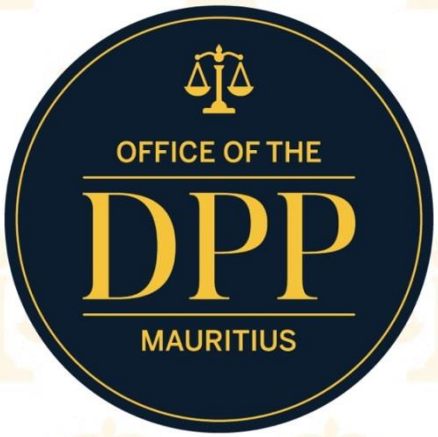
(a) the person seizing or exercising control of the ship under subsection (1) or doing the act under subsection (2), as the case may be, is a Mauritius citizen;

(b) the act is committed in Mauritius; or

(c) the ship is used in the service of the Mauritius Police Force, in Mauritius.

/

Pooja Domun
Legal Research Officer



SUPREME COURT JUDGMENTS SUMMARY

E-newsletter - Issue 116 **September 2021**

SUMMARY OF SUPREME COURT JUDGMENTS:
August 2021

BOOJHAWON B. v THE STATE OF MAURITIUS 2021 SCJ 275

By Hon. Puisne Judge, Mrs R. D. Dabee and Hon. Puisne Judge, Mrs M. J. Lau Yuk Poon

Assault - Cross-examination - Corroboration – Right to silence

This is an appeal against the judgment of the learned Magistrate of the District Court of Moka convicting the appellant for a charge of assault committed on 01 November 2012 upon the person of one Mohamad Jameel Tengur in breach of **section 230(1)** of the Criminal Code. The learned Magistrate sentenced the appellant to pay a fine of Rs 3,000 and Rs 100 as costs.

The appellant is now appealing against his conviction and he has advanced three grounds of appeal which read as follows:

"*1. Because the Learned Magistrate was wrong to conclude that the prosecution has proved its case against the Appellant (the Accused) as the evidence on record falls short of establishing the charge beyond reasonable doubt.*

2. Because the Learned Magistrate failed to and/or to properly consider that in the absence of a PF 58 and the declarant's deposition, the charge could not be proved beyond reasonable doubt.

3. Because the Learned Magistrate erred in considering that the case of the prosecution was "strong and unshaken" and made undue inference on the Appellant's (then Accused) right to silence".

The case for the prosecution rested on the sole testimony of Police Sergeant Chokupermal (witness No.2), an eye witness, who saw the appellant assaulting the alleged victim who did not depose in Court and no PF 58 was produced before the trial Court. The defence did not adduce any evidence and the version of the appellant was to be found in his unsworn statement that he gave to the police.

Regarding the first ground of appeal, Learned Counsel for the appellant submitted that the Learned Magistrate was wrong to conclude that the prosecution had proved its case beyond reasonable doubt inasmuch as there was not a shred of evidence from Mr Tengur who did not depose before the lower Court and the learned Magistrate did not have the opportunity to assess the demeanour of the complainant. The only evidence which the prosecution relied upon to substantiate the charge was that of witness No.2.

The latter saw the appellant dealing a kick at the belly of the complainant but under cross examination, witness No.2 could not describe how the appellant kicked the complainant so that the learned Magistrate erred when he found that he could safely rely on the version of witness No.2 to convict the appellant.

After having duly considered the submissions of learned Counsel appearing on both sides, the Appellate Court agreed with the submissions of learned Counsel for the respondent that the learned Magistrate had the benefit of watching the demeanour of witness No.2 and was in a better position to assess his credibility for him to be satisfied that he saw the appellant kicking the alleged victim on the stomach. Quoting the case of **Boojhawon B v The State** [**2013 SCJ 111**], the Appellate Court reiterated that *'cross examination is*

not a memory test exercise' so that the failure to recall an incident with precision the time at which it had taken place for instance would not automatically discredit a witness.

In relation to the second ground of appeal, Learned Counsel for the appellant submitted that the prosecution did not adduce any other evidence to prove the charge despite the fact that there were several persons present on the locus at the material time.

It was put to the appellant in his unsworn statement that when the appellant kicked the alleged victim, witness No.2 intervened and appellant pushed witness No.2 and he also strangled PS Saulick. As such, learned Counsel for appellant construed the evidence of witness No.2 to be tainted with improper motive.

The Appellate Court held that the fact that the witness No.2 had any improper motive to depose was neither put to him nor made a live issue before the lower Court so that the learned Magistrate cannot be faulted for having found that he could convict the appellant on the sole evidence of the witness No.2.

Lastly, with regards to the third ground of appeal, Learned Counsel for the appellant submitted that the inference made by the learned Magistrate on the appellant's right to silence was wrong and contrary to the constitutional provisions.

The Appellate Court quoted the case of **Andoo v The Queen** [**1989 MR 241**], which reiterates both the constitutional right of an accused party to remain silent and the corollary duty of the prosecution to prove its case beyond reasonable doubt. However, where the prosecution adduces evidence which is strong and credible enough to support the charge, it would be open to the trial Court to act on that evidence unless the accused party adduced such evidence so as to satisfy the trial Court that it should not act on the prosecution evidence.

As set out in the case of **Ando**o (**supra**) the appellant exercised the right to remain silent at his own risk and peril. The learned Magistrate simply remarked that the appellant had '*elected to exercise his right to silence*' and a reading of his judgment shows that he was alive to the relevant principles set out in the case of **Annia v State** [**2006 SCJ 262**] which he duly cited.

All the grounds of appeal being devoid of merit, they cannot be upheld.

For the reasons given above, the present appeal is dismissed with costs.

THE STATE v PURYAG P 2021 SCJ 276

By Hon. Judge, Mrs K.D. Gunesh-Balaghee

Cultivation – Contemporaneous notes – Verballing – Evidential integrity of exhibits – Police misconduct – Police brutality

The accused is charged in an information containing 3 counts. Under the first count, he is charged with having on or about 6 October 2015, at Route des Pamplemousses, Ste Croix wilfully, unlawfully and knowingly cultivated 340 cannabis plants weighing 122.1 grams in breach of **section 30(1)(e)(i)**, **sections 41(3)** and **(4)** and **47(2)** and **(5)(a)** of the **Dangerous Drugs Act** ("***the Act***"). Under the second count, he is charged with being, on the same day and at the same place, in possession of 165.1 grams of cannabis seeds for the purpose of cultivation in breach of **section 30(1)(f)(i)** and **sections 41(3)** and **(4)** and **47(2)** and **(5)(a)** of the **Act**. Under the third count, he is charged with unlawfully and knowingly holding equipment for use in connection with the production of dangerous

drugs, namely a hand sprayer, an electronic scale and a hose in breach of sections 33(a) and **47(5)(a)** of the **Act**.

It is also averred in respect of the first two counts that, having regard to all the circumstances of the case, it can be reasonably inferred that the accused was engaged in the trafficking of drugs. The accused has pleaded not guilty to the three counts and was assisted by Counsel.

Learned defence Counsel submitted that the case for the prosecution was flawed because-

(a) there were no contemporaneous notes of the "verballing";

(b) the manner in which the exhibits were handled compromised their evidential integrity;

(c) the ADSU officers failed to preserve the CCTV footage of the camera;

(d) there was police misconduct;

(e) there was police brutality;

(f) the enquiry was not fair;

(g) the prosecution has not proved the case beyond reasonable doubt.

Contemporaneous Notes

On the issue of contemporaneous notes, quoting **State v Rome & Ors 2011 SCJ 319**, the Appellate Court held that in the UK, unlike in Mauritius, statutory provisions have been made under **Code C** of the **Code of Practice of the Police and Criminal Evidence Act**, commonly referred to as the anti-verballing provisions of **Code C**, to address "*the evil of police officers falsely attributing incriminating statements to persons in custody*".

But it is interesting to note that, even in the UK, where there are anti-verballing provisions, it has been held that "*not every breach or combination of breaches of the Code will justify the exclusion of interview evidence under **section 76** or **section 78** .... They must be significant and substantial. If this were not the case, the courts would be undertaking a task which is no part of their duty: as Lord Lane CJ said in **Delaney** [**88 Cr. App. R. 338**]: It is no part of the duty of the court to rule a statement inadmissible simply in order to punish the police for failure to observe the **Code of Practice***."

Whether an oral statement made on being arrested by an accused has to be further verified to ascertain the correctness of the statement will obviously depend on the content of the said statement and on the particular facts of each case. At the end of the day, it is for the Court, after taking into consideration all the circumstances of the case, to assess whether the police officers are to be believed or not.

Notwithstanding that there were no contemporaneous notes regarding the "*verbaling*", the Court can rely on the oral statement made by the accused.

Exhibits

Concerning the exhibits, there was two types of hose which were present on the locus. It was argued on behalf of the defence that there is no photograph of the water point showing that the hose was connected to it and it would not be safe to suggest that the striped hose could be the one which was connected to the water point. Photo D5 shows that there were two types of hose on the locus: a striped one and a plain one which was connected to a sprinkler. The hose that was produced in Court was plain and was connected to a sprinkler (exhibit 2). The above would buttress the prosecution's version that only part of the hose was produced in Court and that part must have remained on the spot.

Regarding the fact that no fingerprint or DNA sample was taken from the hose or the hand sprayer to

connect the accused to them, the case for the prosecution was that the accused was caught red-handed while uprooting cannabis plants and, on being cautioned, admitted having cultivated same.

If the version of the prosecution is to be believed, the question of finding other evidence to connect the accused to the hose or the hand sprayer would therefore strictly not arise.

Regarding the scale, Defence Counsel highlighted that there were three versions as to how it was handled. Even if no cannabis had been found on the electronic scale, I am of the considered view that it can be inferred from all the surrounding circumstances that the scale was being used in connection with the production of dangerous drugs.

Defence Counsel also argued that the police failed to comply with **section 58** of the **Dangerous Drugs Act** concerning conservation and sample-taking. After duly considering the evidence of the police officers, the Appellate Court did not find that there was any failure to comply with the provisions of **section 58**.

CCTV Camera

The version of the defence was that CI Seebaluck was informed by the accused that there were CCTV cameras at his place and he asked the accused from where the CCTV footage could be viewed. However, he failed to secure the CCTV footage so as to prevent the accused from relying on a defence which was open to him since the CCTV footage would have disculpated the accused. After thoroughly considering the evidence before her, the Learned Judge found that the version of the accused regarding the CCTV camera is not worthy of belief and accordingly reject same.

Police Misconduct

Learned Counsel for the defence argued that the Court should infer that there was police misconduct because the statements of PC Kisto and PC Aubert were similar. In the light of the evidence on record, the similarity in style and the recurrence of similar mistakes in the statements, does not necessarily lead to an inference of fabrication on the part of the officers.

In the circumstances, the Learned Judge did not find that there was any misconduct on their part.

Police Brutality

The allegation of police brutality against the police officers was made for the first time when the accused deposed in Court, that is some 5 years after the alleged assault took place. After having carefully considered the evidence before her, the Learned Judge had no hesitation in rejecting the version of the accused regarding police brutality as being untrue.

Fairness of the enquiry

It was submitted by defence Counsel that the enquiry was not fair taking the attitude of the police officers cumulatively: the manner in which the interview of the accused was conducted that is by avoiding questions which would allow the accused to put forward his version, the unsigned verballing, the absence of any investigation on Powdram, the "*plagiarism*" committed by PC Aubert and Kisto in putting up similar statements, the failure to recover the home CCTV, conducting the reconstruction exercise prior to the interview of the accused and non-compliance with the **Dangerous Drugs Act**. It was also argued that the prosecution has failed to prove the case against the accused beyond reasonable doubt.

After having carefully watched the prosecution witnesses and the accused while they deposed, the Learned Judge held that witnesses Aubert, Kisto and Seebaluck came up with a version which is true and reliable rejected the version of the accused.

The versions of CI Seebaluck, PC Aubert, and PC Kisto were thoroughly tested during cross examination but remained unimpeachable as regards the material parts.

Taking into consideration the evidence, the Learned Judge found the accused guilty as charged under all three counts.

"When something is important enough, you do it even if the odds are not in your favour."

–Elon Musk

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MAURITIUS

"TO NO ONE WILL WE SELL,
TO NO ONE DENY,
OR DELAY RIGHT OR JUSTICE"

Chap 4, Magna Carta 1215