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IN THE SEYCHELLES COURT OF APPEAL

MARC LESPOIR

APPELLANT

v/s

THE REPUBLIC

RESPONDENT

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CRIMINAL APPEAL NO. 8 OF 1989

Mr Renaud for the Appellant  
Mr Derjacques for the Respondent

JUDGMENT

The Appellant was charged in the Supreme Court of Seychelles with having on the 16th October 1988 in the district of Mont Fleuri had unlawful carnal knowledge of [REDACTED] without her consent (Breach of Section 131 Penal Code). Appellant pleaded not guilty and was represented by Counsel. He was tried by Mr Justice E F Georges on the 8th, 9th and 13th June 1989. Judgment was delivered on the 28th June 1989. The appellant was found guilty of the offence charged and was ordered to be imprisoned for five years consecutive to any sentence he was then serving.

This appeal is against both conviction and sentence.

At the hearing Counsel for the Appellant abandoned the first ground of appeal,

The other grounds of appeal read as follows:-

2. Given the evidence that the main road was lit and that motor vehicles went up and down the road it is impossible for Appellant not to have been seen marching the Complainant at knife point.

seen together before the alleged crime was not given sufficient consideration.

4. The evidence that the Complainant and the Appellant were dancing together was not given sufficient consideration.
5. The learned trial judge was wrong to have found corroboration in the evidence of the Complainant and if there was any corroboration it is insufficient.
6. The learned trial Judge was wrong to have accepted the evidence of the Complainant given its serious discrepancies.

On the very night of the occurrence the Appellant was arrested and he has ever since maintained that he had not used any force, and that he had sexual relations with the Complainant with the latter's consent.

Therefore the sole issue which the learned Judge had to decide was whether the sexual relations took place as a result of force used by the Appellant or with the consent of the victim.

Grounds 2, 3 and 4 deal with issues of facts which learned Counsel for the Appellant readily agreed had been thoroughly considered by the learned trial Judge. We agree with him.

The learned trial Judge found the required corroboration in the evidence of Sgt. Philippe Cecile of P.C. Marcelin Asba and of Dr. Toulton Tenzin who saw the complainant in the hours which followed the commission of the alleged offence and who reported that she was distressed and depressed, was very sad and wanted to cry. When examined by the doctor she was in tears.

Further we agree with the learned trial Judge that the discovery of the knife underneath the mattress on which the offence allegedly

and confirms in a material particular the complainant's evidence.

We pass on to Ground 5. Our finding is that the learned trial Judge did not ignore them. Far from it, he commented thereon, gave us his views and indicated why he nevertheless chose to accept her evidence as true. We can find no reason to differ.

All the grounds of appeal on conviction therefore fail.

Mr Derjacques has informed the Court that the previous conviction for rape against the accused was not produced. He however, very frankly said that the court could not have been unaware that the Appellant was serving a sentence for a previous conviction of rape.

We are of opinion that the facts of the present case called for a severe sentence, that a sentence of five years to start at the end of any sentence the Appellant may now be serving was not in any way harsh and/or excessive.

The appeal against conviction and sentence is dismissed.

Dated this 27<sup>th</sup> day of October 1989.

*A. Mustafa*  
..... A. MUSTAFA (PRESIDENT)

*C. D'Arifat*  
..... C. D'ARIFAT (JUSTICE OF APPEAL)

*T. Georges*  
..... T. GEORGES (JUSTICE OF APPEAL)