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IN THE SEYCHELLES COURT OF APPEAL

BRIAN LARUE

APPELLANT

V.

THE REPUBLIC

RESPONDENT



Cr. App.No. 3 of 1994

Mr. F. Bonte for the appellant

Mr. S. Fernando for the Republic

JUDGMENT OF THE COURT

The appellant was charged before the Supreme Court with having committed the offences of (1) affray contrary to section 87 of the Penal Code and (2) manslaughter contrary to section 192 of the Penal Code.

The appellant pleaded not guilty and was defended by Counsel.

Evidence was heard and the learned trial judge dismissed the charge of affray and convicted the appellant of manslaughter and sentenced him to 12 months imprisonment.

He is appealing against his conviction and sentence.

The appellant is challenging the findings of fact of the learned trial judge.

The incident which led to the death of the victim took place on 27th July 1992, one day after the elections and supporters of two different political parties were involved in it.

The prosecution call their eye-witnesses in support of its case.

The first witness was one Brian Victor. His evidence was to the effect that on 27th July 1992 the appellant was taken to task by supporters of a political party for tearing off a political poster. The appellant belonged to a different party. As a result a fight between one Francois Victor and the appellant started. One Alain Tirant intervened to separate the fight. Francois Victor ran away and the appellant hit Alain Tirant - the victim in this case - with a beer bottle on the back of his neck. As a result Alain Tirant fell down and died. There were some 200 persons in the area where the incident took place. The whole place was packed with people who were moving about. The second witness called by the prosecution was Marlene Rusjadon. She testified that she was sitting and talking to supporters of ~~her~~ party when the appellant came and tore a poster of her party. The appellant belonged to another party. One of the supporters, Francois Victor, asked the appellant for an explanation, whereupon the appellant and Francois Victor started fighting. Alain Tirant, the deceased, intervened to stop the fight. She saw the appellant giving a punch to Alain Tirant. The blow landed between the chin and the neck. Alain Tirant dropped and died. Witness said she was 20-25 feet away from the scene of the incident. According to her there were only some 25 persons on the road. In cross-examination she admitted there were other people fighting but she did not know who they were. A little later in her re-examination she changed her account and said "in the fight there were only the appellant and Francois Victor." There was a group of people surrounding the fight. To a leading question by counsel for the prosecution to the effect whether she did witness any one else than the appellant hitting Alain Tirant, she replied, as expected, no!. Such evidence is of little value. This witness made no mention of any beer bottle. The third witness Willy Fred said the appellant and Francois Victor were fighting. Alain Tirant intervened to stop the fight. The appellant hit Alain Tirant with a bottle and as a result Alain Tirant fell down and died. Witness admitted there



were many people moving about at the scene of the incident.

The appellant in his statement to the police said that the victim came rushing at him and he pushed him with his hands and he fell down backwards. He confirmed his statement in Court as being true. None of the 3 prosecution witnesses are independent witnesses. They are politically motivated. Built in bias cannot be ruled out.

The learned judge found that the evidence of these 3 prosecution witnesses was devoid of contradictions. With respect we disagree. Two of the witnesses - Brian Victor and Willy Fred - said they saw the appellant hitting Alain Tirant with a bottle on the back of his neck whereas the third witness Marlene Rusjadon said she saw the appellant punching Tirant between the chin and the neck. She made no mention of any bottle. The discrepancies in the evidence are not minor but important rendering their evidence suspect the more so as the three witnesses belonged to the same political party and the appellant to a different party.

The learned judge further found the evidence of the three prosecution witnesses consistent with the admissions of the appellant contained in his statement to the police. The admissions of the appellant were "qualified admissions". He admitted having pushed the victim but he said he did it in self-defence. Such an admission is not divisible. It must be taken as a whole. The part which is advantageous to the prosecution and disadvantageous to the maker of the statement cannot be excised and used to bolster the prosecution case.

The learned judge found that it was a blow on the left side between the chin and the neck of the deceased that caused Alain Tirant to fall backwards and suffer a fatal injury. The learned judge has not analysed the evidence of the three prosecution witnesses and explained why he has preferred the version he found as above and discarded the version of the witnesses who said the appellant struck the


victim with a bottle on the back of the neck.

All witnesses called by the prosecution are tendered as witnesses of truth. On the evidence on record we find that it cannot be ascertained with the degree of certainty necessary in a criminal case that it was a blow by the appellant as found by the learned trial judge that caused the victim to fall backwards and suffer a fatal injury. We are of the opinion that the appellant was entitled to at least the benefit of doubt.

We accordingly allow the appeal and set aside the conviction and sentence passed on the appellant by the learned judge.

Dated this 25<sup>th</sup> day of November, 1994.

..........(President)

.......... (Justice of Appeal)

.......... (Justice of Appeal)