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IN THE SEYCHELLES COURT OF APPEAL

1. DANIEL ALLAIN MEIN
2. JASON ALCINDOR

APPELLANTS

V.

THE REPUBLIC

RESPONDENT

Criminal Appeals Nos. 12 and 13 of 1995

Before Goburdhun, P., Silungwe and Ayoola, JJA.

Mr. J. Renaud for the appellants

Mr. C. Lablache for the Respondent

JUDGMENT OF THE COURT

Both appellants were jointly charged with Robbery with violence, contrary to section 281 as read with section 23, and separately charged with Rape, contrary to sections 130 and 131 of the Penal Code.

It was alleged on the first count that on May 13, 1992, at Victoria, the appellants had jointly robbed Jovinella Isnard of a wrist watch and jewellery; and on the second count, that each appellant had raped Jovinella Isnard on the date and at the place above-mentioned. Having pleaded not guilty to both counts, the appellants were tried and convicted as follows: the first appellant was convicted as charged on the first count; and was convicted of neglect to prevent commission of a felony, contrary to section 380 of the Penal Code, on the second count; but the second appellant was convicted as charged on both counts. The first appellant was sentenced to prison terms of 5 years on the first count and 6 months on the second count; whereas

submitted that common purpose must be pre-arranged but that there was no such evidence in this case.

In his treatment of the issue of common purpose, the learned trial judge said in his judgment:

"Even though it may be argued that this accused did not physically rob P.W.4, still, as per evidence quoted above, he is the one who incited and encouraged or counselled the theft to be carried out. As per section 22(c) and (d) of the Penal Code, he would still be a principal offender. He has been charged under ss.281 together with 23. As stated earlier, he is rightly charged. He is, therefore, guilty of the offence of Robbery with violence and he is convicted accordingly."

Section 23 of the Penal Code provides that -

"23. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

On the facts, of this case and considering the provisions of section 23 of the Penal Code, there can be no doubt that common purpose was here established and consequently, the criticism levelled against the learned trial judge's finding on the point at issue is unjustified. The first appellant's (own) revelation of his mind was clear testimony that he was not an innocent bystander, but a participant in the commission of the offence of robbery with violence, contrary to sections 281 and 23 of the Penal Code. It is erroneous to argue that common purpose entails a pre-arranged plan. We agree with Rault, C.J., who said in the Mauritian case of Paniapen v. The Queen 1981 M.R.224, at p. 255, that:

physical injuries and mental trauma. In his submission, the complainant's injuries as described by the doctor were as a result of the offences of robbery with violence and rape.

Section 30 of the Penal Code on which the compensation order was grounded is in these terms:

"30. Any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence. Any such compensation may be either in addition to or in substitution for any other punishment."

The rationale behind compensation orders was stated by Scarman, L.J., in Inwood (1975) 60 Cr. App. R. 70:

"Compensation orders were not introduced into our law to enable the convicted to buy themselves out of the penalties for crime.

They were introduced .. as a convenient and rapid means of avoiding the expense of resort to civil litigation when the criminal clearly has means which would enable the compensation to be paid."

In our view, compensation may be ordered for personal injuries, loss or damage. It is not necessary for the convict to be liable civilly for the loss although in most cases he will be.

It is pointless to make a compensation order if there is no realistic possibility of it being complied with (Webb and Davis 1979) 1 Cr. App. R. (S)16 or if the convict will not be able to pay off the amount of compensation within a reasonable time. In this case, the appellants were each given long prison terms and, although the compensation order is silent as to the period of payment, it cannot be said that there is a realistic possibility of the order being complied with within a reasonable time. In Bradburn (1973) 57 Cr. App. R. 248, the Court of Appeal had this to say: