IN THE SEYCHELLES COURT OF APPEAL

LOUIS MICHEAL ILLDRIS
(ALIAS ILLDRICE)

V.

THE REPUBLIC

Criminal Appeal No. 7 of 1995

Before A. Silungwe, E.O. Ayoola and L.E. Venchard JJA.

JUDGMENT

The Appellant was charged under Count 1 with the offence of Attempt to Murder in breach of section 207(a) of the Penal Code. He was also charged in an alternative Count 2 for the offence of causing grievous harm in breach of section 219(a) of the Penal Code.

The case was heard before Alleear C.J. He found the Appellant guilty of the offence of Attempt to Murder and convicted him. He however made no pronouncement on the alternative count. He sentenced the Appellant to undergo a term of 10 years imprisonment.

The Appellant appealed initially against the conviction and sentence. However, in the revised Memorandum of Appeal, it is only the conviction which is being challenged on the following grounds -

1. The learned Trial Judge erred in failing to give adequate and due consideration to the evidence of alibi as adduced by the defence.

2. The learned Trial Judge erred in failing to give adequate consideration to the flaws and discrepancies in the evidence of identification of the key prosecution witnesses.

The main facts which have led to this prosecution may be summarised as follows -

The Appellant was living in concubinage with Silvianne Pointe and a child was born out of their relationship. She left the Appellant some 4 to 5 months before the occurrence of the incident giving rise to this prosecution and went to live at the house of her relatives with a new paramour, Alex Allisop, the victim in the present case.

On 6th February 1995, the victim went to bed at about 10 p.m. On 7 February 1995 at about 1 a.m. someone entered his room and stabbed him in the chest. He was perfectly conscious and he shouted that Idrice had stabbed him. The lights were put on and Steve Pointe who was also living in that house was able to recognise the Appellant who was trying to remove the dagger from the victim's chest but afterwards ran away.

The victim was taken to hospital and had to undergo surgery and the dagger was removed from his chest. It is not disputed that given the circumstances in which he was wounded and the nature of his injuries that there was an attempt on his life which would constitute an attempt to Murder. Mrs. TirantGherardihowever submitted that the Appellant had a perfect alibi in that he was at his place at Bel Ombre on the night of 6 to 7 February 1995 and that in any case it has not been satisfactorily proved that it was the Appellant who was the victim's assailant on that night.

As regards the defence of alibi, the Appellant gave evidence that he had not left his house on that night. His brother Olivier also gave evidence to that same effect. Two friends of the Appellant gave evidence that on a certain night they were in the company of the Appellant but they were unable to give any indication of the date on which they were in Appellant's company. The trial judge quite rightly rejected the evidence of the two friends. He examined the evidence of the Appellant and that of his brother. He

rejected their evidence in view of various contradictions. The trial judge had the opportunity to see how those two witnesses demeaned in the witness box and we see no reason to interfere with that finding of fact.

Evidence was adduced to rebut the defence of alibi. Two witnesses whose credibility was not impugned were called by the prosecution. They stated that they had seen the Appellant on that night in the vicinity of SMB at about 8 p.m. and in the vicinity olf St. Louis at about 10.30 p.m. respectively. It was therefore obvious that the Appellant had lied when he asserted that he had not left his house on that night.

Mrs. Tirant-Gherardi submitted that guilt could not be inferred from a false alibi nor should adverse inferences be drawn from lies. She referred us to the case of James Penman (1986) 82 Cr. App. R.44. She submitted that even if the alibi evidence could not be accepted it was still incumbent on the prosecution to establish that it was the Appellant who had assailed the victim on that night.

She expatiated on her submission regarding the identification of the Appellant. She stated that the evidence of the identification should be viewed with extreme caution as it was too easy to assume that it was the Appellant who had perpetrated the crime in view of strained relations resulting from the fact that Silvianne had preferred the victim to the Appellant. She drew our attention to the guidelines set out in R. Turnbull (1976) 3 ALL ER 549. She commented that there was always a ghastly risk of being mistaken in cases where identification rests solely on fleeting encounters. She referred also to the more recent case of Pope v. R. (1985) 85 Cr.App. R.201 where it was held that the summing-up was impeccable containing all the elements of the Turnbull guidelines but the Appellate Court allowed the appeal as it was unsafe to convict on the identification evidence which was available.

We entirely endorse the view of the law as exposed by learned Counsel. We only wish to add the following passage from Archbold 1993 edition at p.1139 paragraph 14-21. The learned author while referring to the case of R. Weeder (1980) 71 Cr. App. R.228 made the following comment -

> "The court emphasised that what mattered was the quality of the identification evidence rather than the volume of it. Thus the identification can be poor, even though it is given by a number of witnesses. They may all have had only the opportunity of a fleeting glance or a longer observation made in difficult conditions. Where, however, the quality is such that the jury can safely be left to assess its value, even though there is no other evidence to support it, the trial judge is entitled (if so minded) to direct the jury that an identification by one witness can constitute support for the identification by another, provided that he warns them in clear terms that even a number of honest witnesses can all be mistaken."

The trial judge was alive to the Turnbull guidelines and the need for caution. He had this to say -

> "The case against the accused person depends substantially on the correctness of one or more identifications of the accused which the defence allege to be mistaken. Hence there is a duty cast upon the court to warn itself of the special need for caution before convicting in reliance of the correctness of the identifications. The court must bear in mind the possibility that a mistaken witness could be a convincing one and that a number of such witnesses could all be mistaken.
>
> In this case I have examined closely the circumstances in which the identification by each witness came to be made; the length of time a witness had the accused under observation, the distance, the lighting condition, whether it was identification by recognition or whether the witnesses were seeing the accused person for the first time. I note that recognition might be more reliable than identification of a stranger. Also I bear in mind that sometimes mistakes could be made in recognition of close relatives and friends. In this case all

> those who identified the accused person did so by recognition. They did so in good lighting condition. Both Alex Allisop and Steve Pointe knew the accused person very well and saw him in good lighting condition and were not confused or mistaken."

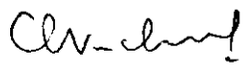
In view of the findings of fact of the trial judge, which findings are fully borne out by the evidence on record, the trial judge was fully justified to conclude that it was the Appellant who had stabbed the victim.

The appeal is dismissed.

Delivered on the 19th day of October, 1995.

A. SILUNGWE (JUSTICE OF APPEAL)

E.O. AYOOLA (JUSTICE OF APPEAL)



L.E. VENCHARD (JUSTICE OF APPEAL)