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IN THE SEYCHELLES COURT OF APPEAL

PAUL MICOCK

APPELLANT

Versus

THE REPUBLIC

RESPONDENT

Criminal Appeal No: 9 of 1997

[Before: Goburdhun, P., Silungwe & Venchard, JJ.A]

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Mr. F. Elizabeth for the Appellant

Ms. L. Pool for the Respondent

REASONS OF THE COURT

(Delivered by Silungwe J.A)



The appellant was tried before Alleear, C.J., sitting with a jury, on a charge of murder, contrary to section 193, and punishable under section 194, of the Penal Code. The particulars of offence alleged that on August 8, 1993, at Pointe Larue, Mahe, he murdered Michel Orredy. He was convicted as charged and sentenced to life imprisonment. This appeal was against conviction only. Having heard the appeal, we dismissed it, for reasons to be given at a later date. These are the reasons.

Briefly, the prosecution evidence was that sometime in the evening of Saturday August 7, 1993 Orredy, the deceased, went to Mirabelle Discotheque in the company of his girl friend, Guyto Patricia (PW9) and Edwige Julius and were later joined by Norbert Izrael Louange (PW8). There the deceased consumed some guinness beer. After the closure of the Discotheque, and as they walked back in the direction of Anse Aux Pins at around 1.30 am, they saw four to five persons at a fish market. According to Barry Amade (PW3) the appellant's childhood friend, and Brian Moustache (PW5), both whom were, inter alia, in the appellant's company, they heard the appellant whistle at the deceased and his companions. When the deceased

asked who was whistling, the appellant identified himself and thereafter an altercation between both of them ensued. This resulted into a fight between them. According to PW8 and PW9, someone had asked the deceased to let him have one of the women in his (deceased's) group. The appellant was seen pulling out a knife or dagger from under his shirt and with it he stabbed the deceased who fell down and died. According to PW3, the deceased had merely come to ask the appellant why the latter was whistling when the argument and fight developed between the two. According to both PW3 and PW5 (the appellant's companions), the appellant was heard saying (apparently) to the deceased: "I have sent 7 persons in ICU now I will give you death" (per PW3); and "I have sent seven people in ICU now I will send you in your coffin" (Per PW5), or words to that effect.

The appellant gave a voluntary extra judicial statement to Inspector David Dubignon (PW4) in which he said -

"I remember one day during the month of August 1993, but I do not recall the day and date I came from Anse Aux Pins from a Night Fair. I was on the way to Pointe Larue. It was around 1:30 to 2:00 am. Arriving at Point Larue just after the market I saw two guys and two ladies going up towards the direction of Anse Aux Pins by foot. I want to point out that there was a group of people going down together but I am not ready to mention their names. While we were on our way one of us, but I do not recall who, whistled to one of the two girls who was walking up together with the two men. One of the two men and whose name was unknown to me came and dealt with me. We fought and people who were walking down together with me intervened and tried to stop the fight. I said that the fight had not ended. The guy came back and fought me again. During that time I had a dagger about 9 inches long including its handle and blade in my possession. Its handle was

black. I brought the dagger with me as there was always people fighting at the Mirabel and the dagger was some sort of defence for me. When we were fighting for the second time, I removed the dagger under my shirt and I wounded him but I do not recall how many times. I was under the influence of alcohol during that time. After I had wounded the man, I ran towards town direction with the dagger. A rastaman whose name I do not know ran after me. Arriving at the Pointe Larue School, I was caught by the rastaman and we fought. I managed to get free and ran off. He ran after me and threw a stone at me. During that time the dagger was under my shirt. I pulled it out once again and wounded him on his hand, after that I continued running. I continued running towards town. Arriving at Anse Dejeuner opposite Kyon I took the dagger and threw it at the left side of the road. I continued to walk down by foot to go to Les Mamelles. Two days later I learnt from the news that a guy by the name of Michel Oreddy had been killed at Pointe Larue. I thought that he was the same guy whom I fought and stabbed at Pointe Larue. I want to state that it was not my intention to kill that man even if I used the dagger to wound him. I am ready to show the police where I threw the dagger."

Dr. Brewer (PW2), a pathologist, examined the deceased's body at 12.20 p.m. on August 8, 1993. An external examination of the body revealed two injuries: one in the chest cavity and one in the abdomen; both injuries were on the left side of the body. The chest injury was a penetrating one but the injury on the abdomen was superficial and only skin deep. In his opinion, a sharp instrument had been used to inflict the said injuries. An internal examination showed that the deceased's lungs had been perforated and that the

weapon used had gone through the heart. The perforation of the heart had caused a lot of bleeding and with the entry of blood into the lungs, the latter collapsed. In the doctor's opinion, the cause of death was due to internal bleeding leading to the collapse of the lungs and the perforation of the heart. The doctor deponed that the injuries sustained by the deceased were fatal and that no amount of medical care and attention in Seychelles could have saved his life.

The appellant elected not to give evidence or to call witnesses on his behalf, an election he was fully entitled to make.

The memorandum of appeal contained several grounds, the first two of which alleged that the learned trial judge was wrong to refuse to entertain a submission of no case to answer and that the said refusal amounted to a material irregularity; consequently, the grounds continued, the trial judge erred in allowing the case to go before the jury.

Plainly, these first two grounds are without merit as the trial judge was fully justified to reject the no-case-to-answer submission.

The third ground accused the trial judge of failure to direct the jury adequately on the burden of proof and on the presumption of innocence. On a review of the record, we found these complaints to be misconceived.

The fourth ground spoke of the trial judge's failure to direct the jury correctly on the law relating to the offence of murder. But we are satisfied that there was no misdirection on the part of the trial court.

With regard to the fifth ground, we were unable to find that Article 19 of the Constitution was, on the facts of the case, violated in so far as fair trial was concerned.

The trial judge did not misdirect himself, as alleged in the sixth ground, on the sufficiency of what amounts to grievous harm. Accordingly, this ground could not succeed.

The seventh ground was all about picking out a sentence from the summing up and criticising it. This in our view, is not in itself a proper way of formulating a ground of appeal and it deserves to be frowned upon.

The eighth and ninth grounds relates to what the trial judge said as to what transpired at the time of the fatal stabbing. The learned trial judge said in part:

“After an argument, the accused and Michel Oreddy (the deceased) grappled and wrestled with each other. Somebody parted them. Michel Oreddy was on his way back to join his friends who were waiting for him when the accused called him and told him that the fight is not over. Michel Oreddy returned. The accused struck him two blows with a dagger. Michel Oreddy sustained light injuries on the left abdomen of which he could not have died but the second blow that was inflicted in the region of the chest with the dagger caused his death. You have to determine whether when the fatal blow was struck by the accused, the latter was being attacked or his life was in immediate peril. It could be said that his life would have been in immediate peril if Michel Oreddy had not turned his back to join his friends but had continued to rain the blows on him.

In this case, the evidence shows that when the fatal blow was struck, or shortly before the blow was struck, Michel Oreddy had turned his back to join his friends. On this evidence you will have to determine whether the accused when he inflicted the blows was acting in self defence or not. If you think that the accused was defending himself when he struck the fatal blow or if there are doubts in your minds that he