IN THE SEYCHELLES COURT OF APPEAL

ANTONIO JOUBERT **APPELLANT**

VERSUS

THE REPUBLIC **RESPONDENT**

Criminal Appeal No. 5 of 2002

[Before: Ayoola, P., Pillay & Matadeen, JJA)

Mr. F. Ally for the Appellant
Mr. B. Hoareau for the Respondent

JUDGEMENT

(Delivered by Pillay, JA)

This is an appeal against a decision of the Supreme Court which upheld the judgment of the Magistrate's Court convicting the appellant, together with Roland Dorothe ("the co-accused") with the offence of robbery, contrary to Section 281, read with Section 23 of the Penal Code, and sentenced him to undergo six years' imprisonment. The appellant had pleaded not guilty to the charge of robbery whereas the co-accused had pleaded guilty.

The sole ground of the appeal is that:-

> "The first Appellate Court was wrong to have found on the evidence accepted by the trial Court that, in law, the Appellant has committed the offence of robbery or that there was a common intention between the Appellant and the other person to commit the robbery".

The salient facts found and accepted by the Trial Court were as follows:

The complainant came across three men who were together while he was on the pavement of 5th June Avenue at about 4.30 a.m. on 5th June 1999, two of whom he identified as the co-accused and the appellant. The former asked him for a cigarette and the complainant replied that he had none. He was then hit twice by the co-accused and he fell unconscious on the pavement. When he regained consciousness, he noticed that his shoes, his gold rings, and golden necklace, his purse containing Rs.500/- and watch were missing. He then reported the matter to the Police.

The complainant stated to the Police that he was attacked by three men, although he did not mention specifically the name of the appellant. Moreover, some 14 hours later, the appellant was found by the police to be in possession of a golden necklace which the complainant identified as his.

On the facts of the case, as highlighted by us above, the trial Court and the Supreme Court had no difficulty in coming to the conclusion that the appellant, together with the co-accused and another unknown person, had acted in concert and had formed the common purpose of robbing the complainant. We agree for the following reasons:-

(a) The complainant was alone when he met the appellant in the company of the co-accused and an unknown person who were all together. There was, significantly, no one else present at the relevant time.

(b) No doubt the co-accused was the only one to assault the complainant but it is to be noted that the co-accused was together with the appellant and the third person and it can reasonably be inferred that they acted in

concert and had the intention of robbing the complainant. This is shown by the fact that not only the co-accused assaulted the complainant and pleaded guilty to the charge of robbery but also that the appellant was found to be shortly afterwards in possession of the golden necklace of the complainant.

We consider that the irresistible inference to be drawn from all the facts of the case is that the appellant, together with the co-accused and the third unknown person, had acted in concert in robbing the complainant.

For reasons given, we dismiss the appeal and uphold the judgment of the Supreme Court. With costs against the appellant.

E.O. AYOOLA
PRESIDENT

A.G. PILLAY
JUSTICE OF APPEAL

K. P. MATADEEN
JUSTICE OF APPEAL

Delivered at Victoria, Mahe, this *16th* day of *December* 2002.