IN THE SEYCHELLES COURT OF APPEAL

CLIVA DINE **APPELLANT**

versus

THE REPUBLIC **RESPONDENT**

Criminal Appeal No: 7 of 2002

[**Before:** *Ayoola P, Pillay & Matadeen JJ.A]*

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Mrs. A. Antao for the Appellant

Mrs. S. Govinden for the Respondent

JUDGMENT OF THE COURT

(Delivered by Matadeen, JA)

This is an appeal against a judgment of the learned Judge of the Supreme Court who upheld the conviction of the appellant by the Magistrates' Court on two charges of housebreaking and stealing from a dwelling house.

It is not disputed that the evidence that was placed before the trial Court was as follows:-

(a) the bulk of the evidence against the appellant came from an accomplice, Gervais Aimée, who explained that in the afternoon of the day on which the offences were committed, he was at the place of his aunt who lives together with the appellant as man and wife. Later both the witness and the appellant proceeded to the house of the complainant. The latter knew the appellant for having received him under his roof for some two years. The complainant's house was locked. The witness went on to explain how he was asked to keep watch whilst the appellant broke the padlock to the door of the complainant's house with an iron bar, went inside the house, and came out a few minutes later with an envelope containing money and a box. The appellant gave him part of the money and they both proceeded to the place of Lisette Jean, to whom the appellant sold a gold necklace;

(b) Lisette Jean confirmed that she bought the gold necklace from the appellant, the very necklace which later the complainant's wife identified as the one which was stolen from the house of the complainant;

(c) the complainant confirmed the breaking of the padlock and the loss of the money and the gold necklace;

(d) the appellant, who was inopsi consilii, gave evidence to say that he and witness Aimée wanted to go to a discotheque. As they did not have any money, witness Aimee left him for a few minutes and later came with SR1000/- and a gold necklace which, at the request of witness Aimée, he sold to Lisette Jean.

The trial Court analysed the evidence of Gervais Aimée which was almost uncontroverted and found it to be credible and in view of his participation the Court considered him as an accomplice. The Court found no direct evidence of corroboration but that there was *"circumstantial evidence corroborating ... the version of Gervais Aimée."* The learned Magistrate went on to add that, even if there were no corroborative evidence he could, after warning himself as to the danger of acting on the uncorroborated evidence of witness Aimée, rely upon such evidence which had remained almost unrebutted.

The trial Court then considered the evidence of the appellant and rejected it, the more so as it did not tally with his statement to the police. The Court then went on to say:-

> "To my mind, accused has tried to put the blame on witness Aimée, albeit unsuccessful. If Aimee was allegedly lying as accused denies the charge, then one would expect the accused to come forward with concrete defence in order to rebut those allegations." (the underlining is ours)

The two issues that were canvassed on appeal before the learned Judge of the Supreme Court and rehearsed before us hinged on whether, first, there was corroboration of the evidence of the accomplice and,

secondly, whether the trial Court had not misdirected itself in law in the abovequoted excerpt by reversing the burden of proof.

The learned Judge had, on appeal, held that there was *"independent corroboration of both offences and the identity of the offender"* and that at any rate the Magistrate had warned himself of the dangers of acting on the uncorroborated evidence of an accomplice. The learned Judge also held that the above-quoted statement by the Magistrate, though unfortunate, could not be construed as casting the burden of proof on the appellant.

It is trite law that when the only direct evidence against an accused party emanates from an accomplice, a trial Court is required as a matter of practice to look for other independent evidence which implicates the accused in a material particular. It is equally trite law that even in the absence of such evidence the trial court can proceed to find the accused guilty so long as it is alive to the dangers of acting on the uncorroborated evidence of the accomplice.

Now, in the present case, the learned Judge on appeal found that the trial Magistrate sought to find corroborative evidence in the circumstantial evidence but concluded that even in the absence of such evidence he could act on the uncorroborated evidence of witness Aimée, the more so as he considered that evidence to be credible and to have remained substantially unchallenged. The learned Judge concluded that the language used by the Magistrate showed that he was alive to the dangers of acting on such uncorroborated evidence. We hold that the Learned Judge's approach cannot be faulted.

The Learned Judge also considered the evidence placed before the trial Court and found that at any rate there was, in relation to the charge of stealing, corroboration in the evidence of witness Lisette Jean and, in

relation to the charge of housebreaking, corroboration in the evidence of the complainant. In view of our conclusion that the learned Judge was right in finding that the trial Court acted properly in convicting on the uncorroborated evidence of the witness Aimée after giving itself the appropriate warning, we need not pronounce on that finding of the learned Judge.

As regards the second complaint, we hold that the learned Judge correctly held that there was no misdirection in law. True it is that the language used by the Magistrate was infelicitous. But when the words are placed in their context they cannot be construed as shifting the burden of proof on to the appellant. Indeed, the trial Magistrate considered at some length the evidence of the appellant, the bulk of which was not mentioned in his statement to the police. The trial Magistrate found his testimony to be incoherent and inconsistent and, after concluding that he was trying to shift the blame to witness Aimee, made the impugned statement quoted above. We agree with the learned Judge that the statement was unfortunate and that the words used meant only that the appellant had failed to put forward a coherent version of the incident. In any event the words used did not convey the idea that the trial Court was requiring the appellant to prove his innocence, as suggested by the learned Counsel for the appellant.

For the reasons given above, the appeal fails and is dismissed with costs.

E. O. AYOOLA	**A. G. PILLAY**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

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