

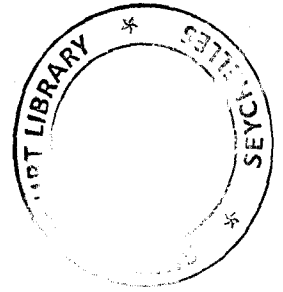
IN THE SEYCHELLES COURT OF APPEAL**JUDE BRISTOL****APPELLANT****VERSUS****REPUBLIC****RESPONDENT**SCA No. 7 of 2003[Before: Ayoola, P., Silungwe and De Silva JJ.A.]

Mrs. A. G. Antao for the Appellant
 Mr. B. Hoareau for the Respondent

JUDGMENT OF THE COURT
 (Delivered by G.P.S. De Silva, J.A.)

The appellant was convicted of the offence of sexual interference with a child contrary to section 135(1) of the Penal Code (Amendment) Act 1996 and punishable under the same section. The particulars of the offence as set out in the charge are that the appellant "on a date unknown in September 2000 sexually committed an act of indecency towards Bevina Rose, a girl under the age of 15 years". (The emphasis is ours). The finding of the trial court was that "the incident happened sometime in November 2000". Learned counsel for the appellant submitted that there was no basis for the trial court to have found that the incident occurred "sometime in November 2000". The prosecution did not move to amend the charge, which specifically stated that the date of the offence was in September 2000.

The girl Bevina Rose very clearly stated in her evidence that the incident happened in September 2000. With equal certainty, she deponed



that at the time of the incident one hand of the appellant had been amputated. The trial court accepted the statement made by the appellant from the dock that he lost his right hand in an accident on the 9th November 2000. On this point in regard to the date of the offence the trial court concluded, *“the accused in fact lost his right hand in an accident at work on the 9th November 2000 The said incident, which has given rise to the case against the accused person therefore must have happened late in the year 2000. I am satisfied that the incident happened sometime in November 2000 after the accused had lost his right hand”*. (The emphasis is ours).

This finding is unsupported by the evidence. Indeed, it is contrary to the evidence led by the prosecution. It is trite law that the particulars of the offence must be clear and precise so that the accused person could know in advance the case he has to meet. In the appeal before us the date of the offence is material as it could have a bearing on the outcome of the case. This is evident on a reading of section 135 of the Penal Code Amendment Act of 1996. The section reads as follows: 135(1) “A person who commits an act of indecency towards another person who is under the age of 15 years is guilty of an offence liable to imprisonment for 20 years”.

135(2) “A person is not guilty of an offence under this section if at the time of the offence the victim of the act of indecency was – (a) fourteen years old or older and the accused had reasonable grounds to believe that the victim was over 15 years old...”. Thus it is seen that the date of the offence is not merely a matter of “*procedure*” but it has a direct bearing on the defences available to the accused person. It is in evidence that the girl was born on 26th February 1987.

Learned State counsel relied on section 187(4) of the Criminal Procedure Code and strongly contended that “variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material”. As stated earlier, this is not a case of mere variance between the charge and the evidence but a case where the trial court reaches a finding which is inconsistent with, and contradictory of, the evidence on record. What is more, the date of the offence is material and relevant to the defences open to the accused person.

In the result, we are of the view that substantial prejudice was caused to the appellant by the trial court reaching the finding that “*the incident happened sometime in November 2000*” when there was no evidence at all to support such a finding.

The conviction and sentence are accordingly set aside and the appellant is acquitted. The appeal is allowed.

E.O. AYOOLA
PRESIDENT

A.M. SILUNGWE
JUSTICE OF APPEAL

G.P.S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe, this...5.....day of December.....2003