

## IN THE COURT OF APPEAL OF SEYCHELLES

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### **Reportable**

[2023] (18 December 2023)  
SCA CR 06/2023 and SCA  
CR 07/2023  
(Arising in [2023] SCSC 155  
CO 26/22)

### **1. LUSSEL LABICHE**

*(in forma pauperis rep. by Clifford André)*

and

### **2. ASHTEN ELISABETH**

*(in forma pauperis rep. by René Durup and Audric Govinden)*

**Appellants**

And

### **THE REPUBLIC**

*(rep. by Mr. Hemanth Kumar and Ms. Gulmette Leste)*

**Respondent**

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**Neutral Citation** *Labiche & Anor v R* (SCA CR 06/2023) and (SCA CR 07/2023 [2023]  
(18 December 2023)  
(Arising in [2023] SCSC 155 CO 26/2022)

**Before:** Twomey-Woods, Robinson, Gunesh-Balaghee, JJA

**Summary:** murder, non-conformity with The Seychelles Court of Appeal Rules-  
homemade grounds-confessions- overwhelming and corroboratory evidence

**Heard:** 4 December 2023

**Delivered:** 18 December 2023

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### **ORDER**

The Second Appellant withdrew her appeal. Her conviction and sentence are therefore affirmed. The appeal of the First Appellant is dismissed. His convictions and sentence of life imprisonment for murder and 18 years concurrent imprisonment for conspiracy to murder are affirmed.

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### **JUDGMENT**

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## **DR. M. TWOMEY-WOODS JA**

*(Robinson and Gunesh-Balaghee JJA concurring)*

### **Background**

- [1] The brutal and violent murder of 21-year-old Sherleytine Ernesta, shocked the entire Seychellois nation. The details of how two individuals meticulously and callously planned her killing were even more shocking.
- [2] On 3 May 2022, Mrs. Anne Marie reported to the Anse Royale Police Station that her daughter, Sherleytine Ernesta (the deceased), had not returned home since the previous day. It was discovered that Mr. Lussel Labiche, her boyfriend, was the last person to see her, and his car had been parked in the woods in Bougainville on May 2. Subsequently, on May 4, Mr. Labiche was arrested, and his car was searched. Human blood, later identified as belonging to the deceased, was found in his car. Based on additional information, the police searched the woods near Bougainville, where they discovered the body of the deceased. Mr. Labiche provided several statements to the police, and he revealed the location in the woods where he had discarded the knife used in the stabbing.
- [3] Further investigation involved examining phone data, which revealed that Mr. Labiche had made numerous phone calls to Ms. Ashten Elisabeth, another girlfriend, before and on the day of the incident. Ms. Elisabeth was interviewed and confessed to being at the scene of the incident with Mr. Labiche. She admitted to assisting him in concealing the deceased's body in the bushes. During the investigation, her notebook containing incriminating notes related to the murder and a list of items to be purchased for the murder was recovered from her home.

### ***The charges***

- [4] The first appellant, Lussel Labiche (Mr. Labiche), now 45 years old and Ashten Elisabeth (Ms. Elisabeth), now 19 years old, were charged and stood trial for three counts of conspiracy to murder, murder, and aiding and abetting the murder, respectively, of 21-year-old Sherleytine Ernesta (the deceased) before a judge and a jury in the Supreme Court.

### ***The summing up***

[5] On 24 February 2023, after a trial lasting weeks, guilty verdicts were returned on all counts against both accused persons. They were each sentenced to eighteen years for the offence of conspiracy to commit the offence of murder and to life imprisonment for the offences of murder and aiding and abetting murder, respectively. Initially, they both appealed against their convictions and sentences. Ms. Elisabeth withdrew her appeal at a preparatory hearing of the appeals held on 24 October 2023.

[6] I shall now consider the appeal of Mr. Labiche.

### **The notice and grounds of appeal**

[7] A notice of appeal was filed personally by Mr. Labiche on 27 March 2023. It reads:

*“Take notice that I, Lussel André, Labiche, hereby appeal to the Court of Appeal against the decision of Chief Justice Ronny Govinden in case number SR26/22, given at the Supreme Court on 24- Feb- 2023.*

*Whereby I was convicted of the offence of conspiracy to commit the offence, namely murder and murder. The sentence was 18 years imprisonment and life imprisonment. This appeal is against both sentence and conviction on the grounds that it is too harsh” (Verbatim).*

[8] Under Rule 24 (1) (a) of The Seychelles Court of Appeal Rules, an appellant is given one month to file his main heads of argument from the date of service of the record of appeal on him. The record of appeal was served on the Appellant’s attorney, Mr. Clifford André, on 27 September 2023 at 10.55 am.

[9] The matter was mentioned in this Court on 24 October 2023, in which Mr. Labiche appeared in person and indicated that he was proceeding with his appeal. The Court informed him that his Counsel would have to do what was necessary before the appeal hearing, as no adjournment would be entertained. It was not until 1 December 2023, a mere two days(the weekend) before the hearing, that Mr. André filed a fresh notice of appeal, grounds of appeal and skeleton heads of argument.

[10] At the hearing, Counsel apologised from the bar for his tardiness and prayed for condonation of the delay. No application in writing or supporting affidavit had been filed for such a course of action. No good reason was shown for the delay. In the circumstances, this court rejected the viva voce motion. I address the conduct of Counsel later on in this judgment.

[11] I am however, fully alive to the fact Mr. Labiche was assisted by his Counsel, Mr. André, under the provisions of the Legal Aid Act and had no part in the *laches* of Counsel. He is entitled to a fair hearing as prescribed by the Constitution. I am, however, also fully alive to the dictates of the effective administration of the criminal defence function in the courts of Seychelles, as well as the efficient administration of justice and management of the courts as a whole.

[12] That said, this court is reminded of its duties to accused persons at trial. I can do no better than to restate what this court said in *Bacco v R* (2004-2005) SCAR 261:

*“Judges have an onerous duty to perform as custodians of the Constitution and the rule of law. As the Court, which is mandated to speak the last word in litigation in this country, that duty obviously falls more heavily on this Court than any other court. It is in this sense that this Court [upholds] the accused’s Constitutional right to a fair trial in as much as the Constitution is the supreme law in this country.” ) at 268-9)*

### **The appeal**

[13] Bearing all these factors in mind, I have given anxious scrutiny to the record of appeal, the evidence adduced, the closing legal submissions made in the court below at the trial, and the direction by the trial judge to the jury. I examined them to determine whether any miscarriage of justice occurred or whether any factual or legal error could have been made.

[14] One of the main complaints of Mr. Labiche is the admission of his confessions at his trial. I note that he made four different statements under caution.

[15] I list them below:

1. Statement dated 4 May 2022, at Anse Royale Police Station, recorded by Tania Solin and witnessed by Corporal Bettymay Lesperance, retracted at trial (Exhibit P. 148).
2. Statement dated 5 May 2022, at Anse Royale Police Station, recorded by Tania Solin and witnessed by Corporal Bettymay Lesperance, retracted at trial (Exhibit P. 149).
3. Statement dated 6 May 2022, at Anse Royale Police Station, recorded by Tania Solin and witnessed by Corporal Bettymay Lesperance, repudiated at trial (Exhibit P. 151).
4. Statement dated 27 May 2022, at CID Headquarters, recorded by Sgt Marianna Eulentin and witnessed by Sgt Robin Legaie retracted at trial (Exhibit P18).

[16] The admission of all of these statements was objected to. Mr. Labiche retracted his confessions in Exhibits P.18, P. 148 and P. 149 and repudiated his confession in P. 151.

[17] The admission of these confessions merits this Court's considerations.

**The retracted statements of 4 May 2022 and 5 May 2022 (Exhibits P.148 and P.149, respectively)**

[18] The investigation officer in the case, Corporal Tania Solin, testified that on 4 May 2022 at 11.25 at Anse Royale Police Station, she took a statement from Mr. Labiche. In that statement, he stated that he had gone to his usual place at Bougainville to have sex with the deceased. They had put down a gunny bag to sit on and had had lunch together. He then told her he wanted to end their relationship, and she started hitting him. He got angry and stabbed her several times until she stopped responding. He dragged her body into the bushes. He used his T-shirt to wipe blood from himself. He threw away the knife, the handle of which had broken off. On the way home, he threw the gunny bag and the

bloodstained clothes into a bin. Later, he threw the phone he had taken from the deceased into the sea. He remarked that he had grown weary of the deceased but regretted his actions.

[19] A few minutes after completing this statement, Mr. Labiche stated that he wanted to say what really happened and that he would tell the truth. Hence, at 12.34, Corporal Solin recorded another statement from Mr. Labiche, which Corporal Bettymay Lesperance again witnessed. In that statement, he repeated much of what he had said in the first statement but gave more details. He added that when he first started stabbing her, a Rasta man appeared and asked him what he had done. He then heard Ms Elisabeth, who had been following him, say the same thing. The Rasta man, accompanied by another man, told him he would tell the police what had happened. Ms Elisabeth then helped him to conceal the body in the bushes. They then drove off together, and he dropped her at Marie's takeaway at Anse Royale.

[20] At the trial, objection was taken to the production of these two statements on the grounds that they had been obtained by oppression. The details of the oppression were that neither his constitutional rights nor his rights to defence counsel were explained to him and, that he remained in the same room during the duration of two statements being taken from him and that at the time the statements were made, the identity of the victim was not known to the recording officer.

**The retracted statement dated 27 May 2022 (Exhibit P. 18)**

[21] In that statement, Mr Labiche admits to assisting in the murder of the deceased but claims the main perpetrator was Ms Elizabeth. He stated that he gave her SCR 1000, although he did not ask her what equipment she would purchase with it. He stated that he had made arrangements with Ms. Elisabeth to kill the deceased, as both of them had had enough of her. They planned what to do on the Monday he was to meet the deceased. He told Ms. Elizabeth of the place where they would kill the deceased, and she asked for plans on how she would follow him in a car. He bought juice and lemonade, and she put sleeping tablets in them. He collected a card board box from Ms Elisabeth's house in which she had placed chains, two bottles of bleach, washing powder, grey duct tape and a knife. He put the box in the back of his car.

- [22] He collected the deceased and kept in touch with Ms. Elisabeth on the phone using “missed calls” and texts. He drove to Bougainville and left the boot of his car unlocked. At the picnic with the deceased, he repeats much of what he had said in the previous statements – that they argued when he told her he wanted to break up even if she was pregnant. He kept in touch with Ms. Elisabeth all the time by text and indicating where they were. Then, on instruction from Ms Elisabeth, he removed his T-shirt and pressed it to the deceased’s mouth. Ms. Elisabeth rushed onto the scene and stabbed the deceased several times, then placed duct tape onto her mouth. They then pulled her body under the bushes.
- [23] He objected to the production of this statement. His testimony in the *voir dire* was that the statement he gave on 27 May 2022 at 2.38 p.m. at the Bois de Rose CID office, recorded by Sergeant Mariana Eulentin and witnessed by Sergeant Robin Leggaie, was extracted under duress. Mr. Labiche testified, among other things, that he was told to give another statement because his previous statements did not match that of Ms. Elisabeth, that his rights were not read out to him, and that his children would grow up with a different stepfather. He added that Sergeant Simeon put pressure on him and offered him an inducement that he would get a reduced sentence if he told the truth. However, he agreed that he had amended the statement nine times and signed it.

### **The repudiated statement of 6 May 2022**

- [24] Mr. Labiche also objected to the admission of a statement he made on 6 May 2022 on the grounds that he was never taken out of his cell that day to make any statement. However, he acknowledged his signature on the statement. In that statement, he states that there had been no one apart from himself and Ms. Elisabeth in the forest on the day of the killing. He took responsibility for the killing and stated that Ms. Elisabeth had only followed him and arriving at the scene helped him to conceal the body.

### **The applicable law**

- [25] It is trite that for a statement to be admissible in evidence against an accused person, the Prosecution must prove that the admission was voluntary in the sense that it had not been obtained from him either by fear of prejudice or hope of advantage or held out by a person

in authority contrary to the Constitution and the Judges Rules (*Leon v R* 2 SCAR 188, *R v Ali and Others* (14 of 2010) [2010] SCSC 46 (21 September 2010) *R v Rachidi* (CO 08/2017) [2018] SCSC 8246 (29 August 2018).

- [26] In the present case, three confessions are retracted, and one repudiated. In this regard, the observations made by the Court of Appeal of Eastern Africa in *Tuwamoi v Uganda* [1967] EA 84 although dated are apposite:

*“We now come to the distinction that has been made over the years between a statement “retracted” and a statement “repudiated”. The basic difference is, of course, that a retracted statement occurs when the accused person admits that he made the statement recorded but now seeks to recant, to take back what he said, generally on the ground that he had been forced or induced to make the statement, in other words, that the statement was not a voluntary one. On the other hand, a repudiated statement is one which the accused person avers he never made.”*

- [27] The distinction is important. While it is generally accepted that in cases of retracted confessions, a *voir dire* is necessary to establish whether the confession was voluntarily made, the jurisprudence in relation to repudiated confessions is more confused. In the latter instance, there seemed to have been contradicting jurisprudence between whether it was necessary to hold a *voir dire* or not (*Dugasse v The Republic* 1978 SLR 28) or unnecessary (*Antoine v R* (SCA 26 of 1996) [1997] SCCA 44 (3 April 1997)).

- [28] The court’s decision on repudiated confessions and confessions generally is now as stated in *Roble & Ors v R* (SCA 19 of 2013) [2015] SCCA 24 (28 August 2015). It now seems generally accepted that although there is no absolute right to have a *voir dire*, out of an abundance of caution, it is best to hold a *voir dire* whether or not it is a retracted or repudiated confession sought to be admitted.

- [29] In addition, a retracted confession, in general, needs corroboration (*Guy Pool v The Republic* (1974) S.C.A.R. 88, *Rachelle v. The Republic* [1984] SLR 42. However, courts have often asserted that each case must be decided based on its particular circumstances.

- [30] I am comforted to note that in the present case, on each occasion that objection was taken to the statements made by either accused, the learned trial judge held a *voir dire* to probe



the circumstances and facts of each statement and to rule whether they were indeed made and/or extracted by oppression as alleged.

### **The law regarding oppressive behaviour in extracting admissions**

- [31] In *Sheha v R* (SCA 18 of 1997) [1998] SCCA 36 (11 April 1998), the Court of Appeal defined what amounted to the oppression of an accused person when making a statement. It stated:

*“Oppression imports something which tends to sap and has sapped the free will which must exist before a confession can be said to be voluntary: R v. Priestly (1965) 51 CAR 1; Otar v The Republic 1987 SLR 26. The totality of the circumstances must be taken into consideration in deciding whether to infer from the circumstances in which a statement is taken that there had been a probability not only of a likelihood of oppression but also of actual oppression. In the instant case it was not sufficient to infer such probability merely from the fact that the appellant's statement had been taken in the early hours of the morning. In R v. Prager (1972) 56 Cr. App. R. 151, the English Court of Appeal adopted and applied the definition of oppressive questioning as :*

*“...questioning which by its nature, duration or other attendant circumstances (including the fact of custody) excites hopes (such as hope of release) or fears, or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have stayed silent.”*

*The burden is on the prosecution to prove beyond reasonable doubt that there had been no oppression. The question for determination was whether the prosecution had proved that the statement had not been made due to oppression.*

- [32] Similarly, Sachs J in *R v Priestley* [1967] 51 Cr App R 1 defined oppression as follows:

*“. . . to my mind, this word in the context of the principles under consideration imports something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary . . .”*

- [33] Again, in *The People v Shaw* [1982] I.R. 1, the Irish Court of Criminal Appeal stated that:

*“The primary requirement is to show that the statement was voluntary, in the sense in which that adjective has been judicially construed in the decided cases. Thus, if the tendered statement was coerced or otherwise induced or extracted without the true and free will of its maker, it will not be held to have been voluntarily made. The circumstances which will make a statement inadmissible for lack of voluntariness are so varied that it would be impossible to enumerate or categorise them fully. It is sufficient to say that the decided cases show that a statement will be excluded as being involuntary if it was wrung from its maker by physical or psychological pressures, by threats or promises made by persons in authority, by use of drugs, hypnosis, intoxicating drink, by prolonged interrogation or excessive questioning, or by any one of a diversity of methods which have in common the result or the risk that what is tendered as a voluntary statement is not the natural emanation of a rational intellect and free will...”*

### **The admissibility of the confessions**

- [34] With this legal backdrop, I have examined the facts, circumstances, proceedings and rulings with regard to the four admissions. As the learned trial judge rightly found, the objections to all the statements were made on weak grounds. Mr Labiche repeats that he was “pressured” but provides little or no evidence. Strenuous questioning that makes a suspect uncomfortable is not oppressive behaviour. Interviewing, questioning and interrogating by the police of a suspect are different stages in crime detection and solving. These demand exceptional vigour when a brutal murder has been committed. The suspect should not expect the interaction to be like a job interview. Difficult and probing questions will likely be asked. As long as there are no accompanying threats, intimidation, coercion, or physical violence, there can be no finding of oppression. I do not find any in the present case.
- [35] With regard to the repudiated statement, I find it hard to believe that one would sign a statement five times and then say they never gave it. The learned trial judge was right to reject Mr. Labiche’s testimony on this point.
- [36] In respect of each statement, I do not find fault with the rulings of the learned trial judge. All the statements were rightly admitted, and the jury correctly directed on their import.

## **Corroborating and Overwhelming evidence**

- [37] In his direction to the jury, the learned trial judge was at pains to summarise all the evidence in addition to the incriminating evidence in the admissions. As detailed below, this evidence of Mr. Labiche's guilt is compelling and convincing.
- [38] The evidence, which Mr. Labiche does not deny, is that he was having two extramarital affairs. It was also not denied that Mr. Labiche had had a relationship with the deceased and had had a child with her who had subsequently passed away.
- [39] The evidence of the phone calls between the deceased and Mr. Labiche on the fateful day tally with the times they met. The proof of phone calls from the deceased's phone in the evening after she had died and the following day could not have been sent by her corroborates the admission by Mr. Labiche that he had appropriated her phone after killing her, which phone was later handed over to the police by Ms. Elisabeth.
- [40] The description of the contents of the meal at the picnic they shared is corroborated by the evidence of Ms. Marie Gabriel who sold the deceased the takeaway. The sighting of Mr. Labiche's car in the woods at Bougainville at the time of the death of the deceased also corroborates the fact that he was with the deceased at the time of her death. The driver of the "taxi pirate", Christopher Jacques's testimony, who conveyed Ms Elisabeth to the murder site, corroborates the narrative of another witness, Jean-Claude Philoe, who saw her going into the woods. The driver testified that she made him follow Mr. Labiche's car and got out near the vicinity of where the deceased's body was recovered.
- [41] Then, most glaringly, the direct evidence that Mr Labiche accompanied the police to the scene of the crime on the 4th of May and pointed out where he had sat with the deceased, where she had rolled down after she had been stabbed, where he had hidden her body and where he had thrown the knife used to stab the deceased and which was retrieved in the exact spot by the police.
- [42] The items found at the crime scene additionally corroborate the admissions by Mr. Labiche: the bitter lemon bottle in which sleeping pills had been mixed after being purchased by Ms.

Elisabeth and which the deceased drank matched the toxicology report, the duct tape purchased, which was stuck to the deceased's mouth and which formed part of the "murder shopping list" found in Ms Elisabeth's notebook recovered from her house. Additionally, human blood was discovered in the car Mr. Labiche used on the day of the murder.

[43] This is a case where the evidence implicating the appellant in the offences of murder and conspiracy to murder is so overwhelming that even if this court had found errors by the learned trial judge – which it did not - the Court would have applied section 344 of the Criminal Procedure Code to the effect that :

*"no finding, sentence or order passed by a court of competent jurisdiction, shall be reversed or altered on appeal... on account ..."*

*(c) of any misdirection in any charge to a jury,*

*Unless such error, omission, irregularity or misdirection has, in fact occasioned a failure of justice."*

## **Decision**

[44] Given the overwhelming evidence in this case, I have no doubt that the direction to the jury cannot be faulted, and the conviction on both counts rightly returned.

[45] Mr. Labiche has submitted in his grounds of appeal that the sentences meted out to him were harsh. This was a callous, calculated and brutal murder of a very young and vulnerable woman whose only mistake was to love a sexual predator who was more than twice her age. He stated that he got tired of her. All he had to do was break up with her, not kill her. He merits and deserves the sentences handed down.

[46] Finally, this Court is duty bound to address a few remarks regarding the misconduct of Counsel in this appeal, who appeared under legal aid certificate for Mr. Labiche. He has failed in his duties and has not assisted Mr. Labiche. This Court is therefore minded to make orders to preclude any fees being paid to Mr. André for work he did not do.

## Order

[47] Mr. Labiche's appeal is dismissed.

*(1) The convictions are upheld, and therefore, the mandatory life sentence of imprisonment for murder and 18 years concurrent sentence of imprisonment for conspiracy to murder is affirmed.*

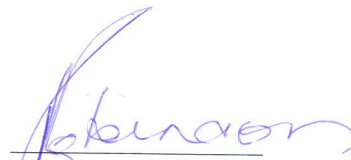
*(2) Mr. André is not to be paid any fees for this appeal.*

Signed, dated and delivered at Ile du Port on 18 December 2023.

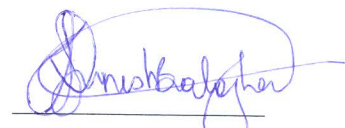


Dr. M. Twomey-Woods, JA.

I concur

  
F. Robinson JA

I concur

  
K. Gunesh-Balaghee JA