

**Republic v Joseph
(1997) SLR 53**

Romesh KANAKARATNE for the Republic
Frank ELIZABETH for the Accused
Accused - present

[Appeal by the Accused led to his sentence being reduced to 3 years on 14 August 1997 in CA 4 of 1997.]

Judgment delivered on 24 January 1997 by:

AMERASINGHE J: The accused Tony Joseph was charged before the Supreme Court with committing robbery with violence, contrary to section 281 as read with section 23 of the Penal Code.

Particulars of the offence are as follows:

Roy Estico, Tony Joseph (alias Togo) and Vincent Marie (alias Toe) on the 23rd day of February 1995 at Mont Buxton, Mahe robbed Marie Andre Wester (alias Idola) of a handbag containing Seychelles Rupees 4,725, US Dollars 6,943, Holland Gilder 800, 30 Dubai Dirhams, Kenyan Shillings 1,500, Italian Lira 100,000, South African Rand 325, Sri Lankan Rupees 100, three gold necklaces, two gold earrings, one gold bracelet, two cross pendants in gold, two small earrings, and three gold rings, and some personal documents, and at the time of such robbery did use personal violence to the said Marie Andre Wester.

The two eye-witnesses to the incident, unlike in very many cases of robbery, knew the three accused personally. The instant trial was only against the second accused as the other two accused have been convicted on their own pleas and sentenced. Marie Stella Henriette, the first witness, has lived in Mont Buxton.

The complainant in her evidence said that as usual she opened her shop at Mont Buxton on the morning of 23 February 1995 between 7.30 and 8.30 a.m. As customary, she had carried to her shop in her handbag foreign and local currency along with jewellery described in the aforesaid particulars of offence. Her first customer, as confirmed, was the first witness who purchased a lemonade and left the shop. After the first witness left the shop the complainant consumed coffee and seeing the first accused approaching the shop had gone towards the counter in the shop. She had seen the second accused behind the first accused. The first accused, before the Complainant could get behind her counter, had jumped over and grabbed the hand bag, at which time the complainant had got hold of him by his t-shirt. The first accused, struggling to escape, had dragged the complainant through the only door of the shop to the outside, where both had fallen. The second accused had then picked up the handbag containing her currency and jewellery and had run away from the shop followed by the other two accused. The first witness while leaving the shop had seen the three accused

coming towards the shop and thereafter, on hearing the complainant's screams, had looked back to witness the three accused running away from the shop.

On account of the struggle with the first accused the complainant has received superficial injuries to her body. Detective Constable Jesta Vidot and Doctor Agnes Vel confirmed the injuries sustained by the complainant on an examination of her.

Social Worker Michelle Docteur, Constable Jesta Vidot and Corporal Justin Dogley testified to the voluntary statement of the second accused recorded by Corporal Dogley on 27th February 1995, produced marked exhibit P8. The aforementioned statement of the second accused, after inquiry, was admitted by the Court in evidence on the reasons recorded in a separate ruling of the Court filed on record.

As pointed out by the counsel for the second accused the two eye-witnesses were either uncertain or at variance on the following facts.

1. The time of the first witness entering the shop.
2. The first accused placing a ten rupee note on the counter.
3. The first witness being accompanied by her son.

The evidence before the Court reveals no circumstances to conclude any of the witnesses were untruthful. The complainant specifically stated that she was uncertain on matters that appear to be at variance with the first witness. The second accused opted to remain silent and did not call any witnesses. I warn myself and draw no adverse inference from the exercise of the aforesaid discretion by the second accused.

I am conscious that the prosecution has the burden to prove the charges against the accused beyond a reasonable doubt at all times. Corporal Dogley produced a cross pendant handed over to him by the second accused as item 9. The same pendant was shown earlier to the complainant, who identified it as one of the articles contained in her stolen handbag.

Corporal Dogley also testified to the fact that since 23 February 1995 he had been looking for the three accused on the complaint made and on the night of 23 February on information he had visited the Plaza bar and the first and the second accused evaded arrest by running away. In the second accused's statement P8 the accused has admitted the aforesaid fact.

I find no reason to doubt the veracity of the witnesses who testified before the Court and I conclude that the few contradictions are on account of human error. I therefore accept that the said witnesses have all given truthful evidence.

In section 280 of the Penal Code (Cap 158) the offence of robbery is defined as follows:

Any person who steals anything, and at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he is liable to imprisonment for life.

The evidence of the complainant, as admitted in the statement of the second accused, was that the first accused, by taking the handbag containing cash and jewellery, being articles capable of being stolen, and depriving the owner of its possession, and the second accused by picking up the same bag and running away, have committed theft. The first accused, by exerting force on the victim to dispossess, and causing her to fall on the ground and sustain wounds to her body, has completed the act of robbery. The evidence also established that the first accused has used violence against the complainant by the use of force by causing her to be pulled, dragged and to fall on the ground in the ensuing struggle in the commission of the theft.

The charge of robbery punishable under section 281 of the Penal Code is to be read with section 23 of the same Code which reads thus

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

It is apparent from the evidence of the complainant and the statement of the second accused that the three accused came together to the shop, and while the first accused stole the hand bag of the complainant and struggled with the complainant to effect the release of the stolen article, the second accused watched over the incident and thereafter picked up the handbag at the first opportunity available, establishing that the two accused were acting in furtherance of the common intention of committing theft. It is further established that in the course of the resistance of the complainant that the first accused struggled with the complainant at the risk of wounding her, and doing so amounts to violence against her, and it was undoubtedly the probable consequence of the prosecution of the common intention of committing theft. I therefore find that the second accused was aware and conscious of the probable resistance and struggle resulting in the wounding of the complainant. The second accused is equally guilty and responsible for all acts of commission of the first accused.

In view of the aforesaid reasoning the proposition of the counsel for the second accused that there is no evidence to establish violence in the commission of theft by the second accused is without merit.

I find the charge of committing robbery with violence as read with section 23 of the Penal Code proved beyond a reasonable doubt by the prosecution.

I find the accused guilty of the charge of robbery with violence punishable under section 281 of the Penal Code and I convict him of the offence as charged.

Record: Criminal Side No 23 of 1996