

**Republic v Gilbert
(1997) SLR 11**

Frank ALLY for the Republic
Frank ELIZABETH for the Accused

Judgment delivered on 21 May 1997 by:

ALLEEAR CJ: The accused stands charged with the following offences:

Count 1

Statement of Offence

Breaking and entering into an office and committing a felony therein, namely stealing in a public office contrary to section 291 (a) of the Penal Code as read with section 264(e) of the Penal Code and punishable under section 291 (a) of the Penal Code.

Particulars of Offence

Francois Patsy Gilbert during the night of 13 October, 1996 and the early hours of the morning of 14 October, 1996 at Victoria, Mahe, broke and entered into an office, namely the Administration Office of the President's Office, and committed a felony therein, namely stealing therein a plastic bag containing, three audio tapes, a bunch of keys, a notebook and a sum of R2000 in cash belonging to the Government and the employees therein.

Count 2 Statement of Offence

Stealing from a public office contrary to and punishable under section 264(e) of the Penal Code.

Particulars of Offence

Francois Patsy Gilbert at the place and date mentioned in Count 1 and within the course of the same transaction stole from a Public Office, namely the Administration Office of the President's Office, a plastic bag containing three audio tapes, a notebook, and a sum of about R2000 in cash deposited or kept therein belonging to the Government and the employees therein.

Count 3

Statement of Offence

Arson contrary to and punishable under section 318(a) of the Penal Code.

Particulars of Offence

Francois Patsy Gilbert at the place and date mentioned in Count 1 wilfully and unlawfully set fire to a building, namely the Administration Office of the President's Office.

During the early hours of 14 October 1996, shortly after 1 am, the Administration block of the President's Office in the State House compound was set on fire. By the time the fire brigade and the police were alerted and reached the scene of the fire the first floor of the said building was virtually destroyed.

The offices of the Cabinet Affairs Secretary, the Advisor to the President of the Republic of Seychelles and offices of supporting staff were located on the first floor of the building. In those offices there were several expensive pieces of equipment such as computers, printers, photocopiers, television sets, video recorders etc. Highly confidential documents like cabinet papers and the record of the Constitutional Commission were also stored on the first floor of the said building.

CID officers, fingerprint experts and other high ranking officers of the Seychelles Police Force all started their investigations around 8 am on 14 October 1996. The Administration Block building was thoroughly combed inside and outside. It was noticed that two glass louvre blades were missing from the window frame of the men's toilet situated on the ground floor. Metres away from the said toilet a glass louvre blade, was found lying in the grass by SP Antoine Belmont, which fitted exactly the said window frame. SP Paul Bedier undertook photographic and fingerprint examination on the said louvre blade (Exh. P3). The fingerprint examination of the impression found on the louvre blade and the finger impression taken from the accused led SP Becher to the irresistible conclusion that the two impressions were identical, i.e, they were made by the same person.

ASP Ronnie Mousbe also assisted in the search of the area inside and outside the compound of the Administration Block of the State House building. He found in the Bel Air cemetery, not far from the said building, a plastic bag in which there were three audio tapes, a notebook, a bunch of keys and a key ring. On one of the audio tapes there was a label 'Psi on chantait'. SP Bedier lifted fingerprint impressions from one of the said audio tapes (Exh. 4). When the impressions were compared with the fingerprint of the accused person, they were found to be identical. SP Bedier confirmed that the impressions that were lifted from the audio tape and the glass louvre blade were fresh and very clear. Based on his training and experience he said the impressions could not have been more than one week old.

Once SP Bedier satisfied himself that the prints lifted from the scene of the crime matched those of the accused taken by Inspector Dubignon on a form, he sought a second and third opinion from his two assistants, namely Inspector Reginald Elizabeth and Inspector Sylvia Chetty. The latter confirmed that after SP Bedier had carried out his fingerprint examination and came to the conclusion that the prints lifted at the scene of crime matched those of the accused person they were asked to compare those sets of prints and give their opinions thereon. Both Elizabeth and Chetty who were called by the defence deposed that they agreed with the conclusion reached by SP Bedier. When asked in Court to identify the characteristics of each point of similarity marked out by SP Bedier on Exhs. 21, 26 and 34 there were some divergences in the characteristics of the ridges designated by SP Bedier and those of the two expert defence witnesses. For

instance what SP Bedier described as a bifurcation, Inspector Elizabeth thought was a ridge ending. There were also divergences between the evidence of Inspector Elizabeth and Inspector Sylvia Chetty. I have attributed the divergences to the fact that while SP Bedier used a magnifying glass in Court, the two other witnesses, who are in their mid-forties and wear glasses, compared the exhibits with their naked eye. My view on this matter was confirmed by Inspector Sylvia Chetty who pointed out that "with the naked eye it is difficult to state with a high degree of certainty the characteristics of the ridges." With the aid of a magnifying glass I have no doubt that both Inspectors Elizabeth and Chetty would have reached the same conclusion as that of SP Bedier. Both defence witnesses stated in no uncertain terms that when they were asked for their second and third opinion by SP Bedier they agreed entirely with his conclusions.

The evidence is clear that whoever had gained access to the Administration Block of the President's Office did so through the gap made after two glass louvres were removed from the window frame of the men's toilet on the ground floor. A concrete block was found just outside the said window on the ground apparently to help the intruder to climb up the said window with greater ease. The cleaner who was responsible for cleaning the building testified that on Friday 11 October 1996 when she cleaned the said toilet all the louvres in the said window frame were intact.

On the first floor of the building on an office desk, the police found an empty match box and a gallon of Agip oil. There is evidence that the said gallon was on a shelf on the floor of that office before the employees occupying the said office left on Friday evening. Undisputedly the fire started on the first floor of the building before spreading to the other parts of the building. Unfortunately, in an attempt to put out the fire, fire officers spread a lot of water on the burning building and the gallon of Agip oil was wet when SP Bedier examined it. No print impressions therefore could be lifted from it or were found on it. The person who had entered that building to set fire to it must have used the Agip oil as an accelerant.

Claudette Arnephy, an employee in the Administrative Block, testified that on Friday 11 October 1996 before she left the office for home she had R2000 in a cash box which was in her desk drawer. On Monday 14 October 1996 the drawer was found to have been broken and the contents of the cash box were missing. Penny Belmont, Marie Francoise, Jules Nageon and Raymond Brioche positively identified the items found by SP Mousbe in the plastic bag in the Bel Air cemetery. The bunch of keys which was left by Marie Francoise in a tray on her office desk was identified to be the office door keys belonging to the Government. All the aforesaid witnesses testified that the items found in the plastic bag were in the said building on Friday 11 October 1996. Therefore, there can be no doubt that if they were found in the plastic bag in the Bel Air cemetery that someone must have removed them from the said office of the Administration Block and left them at the place where they were subsequently found.

The accused's concubine, called by the prosecution, deposed that on the night of Sunday 13 October 1996, whilst she was in bed with the accused, the latter told her that he was going to the toilet which is situated outside the house. She noticed that the

accused remained absent for a relatively long period of time. However, she could not recall the exact period of time during which the accused was absent from the house. Neither was she able to tell the Court at what time the accused left and when he returned home. She was certain that it was after the television station went off the air that she went to sleep that night.

Following his arrest and detention by the police on 21 October 1996, the accused gave two statements to ASP Quatre. In his first statement he denied all involvement in the offences levelled against him. On 22 October 1996, he was again interviewed by ASP Quatre. In a second statement he confessed to his involvement in the crime. The defence objected to the adduction in evidence of the second statement on the ground that it had never been made. In other words, the accused repudiated the second statement. The Court heard evidence from ASP Ernest Quatre, Inspector David Dubignon and Lance Corporal Jeffrey Mane on a voir dire to ascertain whether or not the accused had in fact made the second statement. After the conclusion of the hearing on the voir dire, the Court was satisfied beyond all doubt that the accused did voluntarily make a second statement which he repudiated in Court. I am satisfied beyond doubt that the accused denied making the second statement because of its incriminatory nature.

In the case of *David Antoine v R*, (unreported) Criminal Appeal 32/1995, this Court held:

The Court is entitled to found a conviction solely on the admission of an accused person provided that the Court is satisfied beyond doubt that the confession was either made voluntarily or in the case of a repudiated statement that it was made but repudiated because of its truth.

In the case of *Tuwamoi v Uganda* [1967] EACA 84 the Court of Appeal for Eastern Africa reviewed its earlier decision and made the following observation:

We would summarise the position thus: The trial court should accept any confession which has been retracted or repudiated or both retracted and repudiated with caution, and must before founding a conviction on such a confession be fully satisfied in all the circumstances of the case that the confession is true. The same standard of proof is required in all cases and usually the Court will only act on a confession if corroborated in some material particular by independent evidence accepted by the Court. But corroboration is not necessary in law and the Court may act on a confession alone if it is fully satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true.

In the case of *Guy Roger Pool v R*, the Seychelles Court of Appeal made the following comments with regard to the conclusion reached by the Court of Appeal for Eastern Africa in *Tuwamoi v Uganda*. It stated:

We certainly do not dissent from the proposition that the same standard of proof is required in all cases, but we think, with respect, that the conclusion overlooks the distinction between a retracted and a repudiated confession as indicated in *Gathuga & Waweru v R* (1953) 20 EACA 294. Each case, as indicated in the House of Lords decision referred to above, must depend on its own circumstances, but in general we consider that the need to look for corroboration in Seychelles will arise in any case of a retracted confession, while in the case of a repudiated confession, it will depend entirely on the circumstances whether corroboration should be regarded as an essential element.

It is perhaps worth emphasising the distinction in principle between a statement or confession which is retracted and one which is repudiated. In the former case, the trial court looks for corroboration as a matter of practice, if not of law, to assist it in determining which of the two stories told by the accused is likely to be the truth. In the case of a repudiation, once the Court is satisfied that the accused did in fact make the statement, it is a reasonable inference to draw in the absence of contrary indications that it has been denied because of its truth.

In the accused's first statement it is stated as follows:

I am a soldier in the Defence Forces and it has been five years since I joined the Forces. I was based at the Barbarons Camp and my duty was to be among the security escort of the President when he is going out and when he is going home at Barbarons. When I was doing the escort I went anywhere I was detailed to go with the President if it was my escort day. During my escort time among all the other soldiers we were placed at the State House compound, at the garden, at the front gate, at the La Poudriere road at the mountain, at the coco de mer tree and at the footpath facing the front garage and at the car park. We do not make sentry in any office but if we are asked to come and do something at the offices we come. Apart from the offices up at State House at the President's Office there is also the Administration Offices down close to the front gate facing Revolution Avenue not far from the Bel Air cemetery and there is a fence all round. Since I have been at Barbarons I have run away from the camp three times and the last time was in June. I think it was on the 29th June 1996, until today. Like I am being questioned by the Police and I have been asked where I was on Sunday 13th October 1996, I was at home at my wife's place at St. Louis. She was present at home and did not go to work on that day. I remained at home and did not leave to go anywhere until U went to sleep at 9.00 pm after the French News on television. The only time that U left home was on Sunday morning when I brought my child to my mother-in-law May Marguerite's place. My mother-in-law lives close to where I live. Her house is situated opposite my house. Everyone who lives at her place was present. Danny and Serge, who is a National Guard, live there. There is a girl by the name of Anna who lives there, also is Danny's wife. As I have been told by

the Police that I have been arrested in connection with the fire that burnt the Administration Office at State House I do not know anything about that fire. I have not set fire to the Administration Block of State House during the night of Sunday 13th of October to 14th October 1996. I was at home on that day. Even when I was working at State House I did not work at the Administration Block of State House. I went there regarding a housing problem. I saw a girl at the reception, it was only once in March 1996. During the time that I have been absent from the army camp since June 1996, I have not been at the office, not even at the State House. After I had seen the Secretary, I went home and told my wife. I was told by her that she had already seen Georgie who is the Chairman of the Bel Air District. I did not know if there was any fire at State House until I heard on the news on television on Monday 14th October 1996 and during the time that I have been absent from the camp I have not been at State House not even to any army camp. Not even after the fire. The day I went to State House concerning the housing affair I went only at the Reception and not to any other office.

The second statement reads as follows:

I am going to state what made me go away from the Army Camp is because I have encountered so many problems, and not with the officers, but with my fellow soldiers. The NCOs do not delegate duties as they are ordered. If they know that you are a good worker and that the officers are satisfied with your performance they put pressure on me and I cannot remain in the camp. I want to go away and I do go away. After I have been arrested and been locked up after I have been released I repeated the same thing again. It seems that someone is playing 'grigri' at me. As I have said earlier on I went away from the army camp since June 1996, when there was too much pressure on me. I wanted to quit but I was not granted permission. Since I have left the army camp and I have not been able to work and every time I tried to seek work I am discouraged. Sunday 13th of October 1996, at around 7.00 am to 8.00 am I left home and told my wife that I was going to my mother's place at Anse Etoile and I did not go there. I was going to meet a girlfriend but did not meet her. I waited for her but she did not turn up. It was at St. Lows. At around 6.00 pm I returned home and my wife was present at home. I remained at home. My wife did the cooking. After we had finished eating and had watched television we went to sleep at around 9.00 pm. I woke up during the night as I wanted to pass urine. I put on the television in order as to get light as the electricity had been cut off. We had to use candles. My wife also does the same thing. After I had finished passing urine I went back to sleep. It was around 11.00 to 11.30 pm. I got some sleep. Afterwards I was awoken. I cannot say what was the time but I slept for quite a while but I did not know the time as I did not have anything that tells the time. After that I could not sleep any more. I just relaxed. I got the idea of putting fire at the State House Administration Office. As soon as I got the idea I woke up. I was wearing a black t shirt and a multi coloured

short. I took my box of cigarettes and my match box and I went off. I passed at the main road at Curio Road and arrived at Bel Air. I walked until I arrived at the cemetery and walked up to the fence at State House where the wires have been cut. I passed through the wires and walked up to the coco de mer tree and arrived at the Administration Office. I stood and I observed and there was not any soldier. I removed two louvre blades at the window downstairs as the building is a two storey building. I placed the louvre blades on the ground and went inside. I went upstairs and I took three cassettes inside an office. I took a plastic bag and placed the three cassettes in the plastic bag. There were two or three keys inside the plastic bag also there was a small red book. I took the matches and set fire to the papers that were inside an office facing the President's office. There were a lot of papers inside the office and there were computers. After I had set fire to the papers the fire started. I walked out and went downstairs. I went out from where I came in from the two missing louvre blades. I jumped outside the building. Once outside I took one of the two louvre blades and placed it up among the bushes. I arrived at the fence and got out through the fence. Arriving outside the fence I looked inside the plastic bag containing the cassettes and I left the plastic bag at the grave and I went home. Before I walked home I stood by the roadside and I saw the smoke rising up from the direction of the Administration Office but I did not see the flames. I heard the alarm of the fire fighters; since I was walking home I heard the sound of fire brigade. After I had been there on the road for some time I went home and after I got inside the house, I was asked by my wife where I had been. I told her that I have been by the road side and looking at the fire. It was around the early hours of Monday 14th October. I went to sleep until the afternoon when my child was admitted at hospital. I went to see my child at the hospital. My wife stayed with him at hospital and I went home. It was announced on television at night that there had been a fire at the Administration Office at State House. I was not asked by anyone to set fire at the offices. I just got the idea at night and I went down to set fire there. I regret doing such an act. Apart from the cassettes, the keys and the note book, I did not take anything else at the Administration Office. I took them before I set the fire.

It is plain that in his repudiated statement the accused had made an unequivocal admission of the crime. I have come to the conclusion that he denied that he ever made the second statement not only because of its truth but also because he thought that was the only way for him to escape conviction and punishment. The fingerprint of the accused on the glass louvre blade and on the audio cassette which was inside the building in an office amply show that it was the accused who had broken into the building, set fire to it, and stolen the items specified in the particulars of offence.

In the administration of justice, courts of law do often rely on the expertise of witnesses to assist them. When an expert witness informs the Court, often with the aid of photographs, that he took the fingerprints of the accused and found them to be identical

with those on an object connected with the case, this is very strong circumstantial evidence. Courts take judicial notice of the fact that finger marks remain unaltered throughout life, and that no two persons have identical fingerprints. In other words, no proof is required of these facts. The Courts are entitled to found a conviction solely on the correctness of fingerprint identification provided that they satisfy themselves beyond reasonable doubt that the impressions lifted on objects found at the scene of crime are identical with the fingerprints of the accused.

The accused exercised his right of silence and did not personally give evidence. No adverse inference is drawn. The accused, however, as indicated earlier in the judgment called two fingerprint experts from the fingerprint bureau to testify on his behalf. These experts confirmed the correctness of the fingerprint evidence of SP Bedier although in court they described the characteristics of some of the ridges on the various impressions differently from the description of the characteristics given by SP Bedier.

At the close of the defence case, the court invited both counsel to submit written submissions. In his submission, Mr. F. Elizabeth stated that the charges laid against the accused person were defective in many respects. For instance, Mr. Elizabeth observed that the statement of offence in counts 2 and 3 failed to state the statute and the relevant sections which the accused was alleged to have contravened. He wondered in such a situation how could the accused person be expected to properly prepare for his trial and indeed be said to have had a fair trial. With respect, I do not share the opinion of defence counsel that counts 1 and 2 of the indictment are inaccurate, incomplete or imperfect. They are complete, perfect and accurate. They provide all the necessary information required so that in no uncertain terms the accused was made aware of the charges levelled against him.

It was also submitted by defence counsel that counts 1 and 2 charged the same offence twice and were therefore bad for duplicity. A count is said to be bad for duplicity when it charges more than one offence in the same count. Therefore, with respect, I do not think that counsel has properly grasped the meaning of duplicity.

Mr. Elizabeth's next contention was with regard to the particulars of the offence, counts 1 and 2, which according to him merely stated that "the properties allegedly stolen belong to the Government and the employees therein but neither employees nor Government are named." Counsel queried which Government the prosecution was referring to. Was it the Government of Seychelles or any other Government, and which Government employees were referred to, he wondered. It goes without saying that the jurisdiction of this Court extends only to the territory of Seychelles. Moreover are we honestly doubtful of the ownership of State House. In my view there can be no question as to which Government and employees were being referred to in the said particulars of offence.

In the particulars of offence, counts 1, 2 and 3, it is stated "that during the night of the 13th October 1996 and in the early hours of the morning of the 14th October 1996, the accused broke and entered into an office, namely the Administrative Block of the

President's Office, and committed a felony therein." The defence took issue with regards to the dates specified therein and remarked that the offence was not committed on 13 but in the early hours of 14 October. The defence further pointed out "that the prosecution's case 'hinged' entirely on circumstantial evidence of identification."

In my opinion I see nothing wrong in stating the time at which the offence was committed in the way stated in the particulars of offence, counts 1 to 3.

Earlier in the judgment, it was pointed out that once the Court is satisfied that the accused's fingerprints were found at the scene of crime, in the absence of an innocent explanation, or any explanation at all, the Court can convict on that evidence alone. In the present case, in addition to the fingerprint evidence, we have damning evidence against the accused provided by himself in his repudiated statement. The Court is also mindful of the fact that provided a confession is given voluntarily like it was in the present case, the Court can rely on it on the principle that no man would voluntarily incriminate himself out of his own mouth if he was not guilty.

I have considered the whole of the evidence in this case including the two statements given by the accused. The evidence is so overwhelming that no Court can come to any conclusion other than the guilt of the accused on all three counts. The accused's guilt in respect of all three counts having been proved beyond doubt I accordingly convict him as charged.

Record: Criminal Side No 34 of 1997