

**Republic v Savy  
(1999) SLR 26**

Anthony FERNANDO for the Republic  
Jacques HODOUL for the accused

[Appeal by the accused was dismissed on 10 April 2000 in CA 14/1999.]

**Judgment delivered on 5 February 1999 by:**

**AMERASINGHE J:** Paddy Michel Savy is charged with the offence of committing, "sexual assault contrary to and punishable under section 130 of the Penal Code as amended by Act No 15 of 1996" (hereinafter referred to as 'section 130 as amended').

**Particulars of offence are as follows:**

The particulars of the offence provided to the accused in the formal charge are as follows:

"Paddy Michel Savy on 1 November 1998 at Intendance assaulted A."

It is considered pertinent and appropriate to deal with the several points of law raised by counsel for the accused in his submissions to Court, at the commencement of the judgment.

1. Right of reply to the submissions of counsel for the accused

Counsel objected to the written reply of the Attorney-General dated 21 January 1999. He relied on the provisions of the Criminal Procedure Code (Cap 54) which provide for the examination of the witness and the addresses to the court. The examination of the witness is followed by the addresses to the court which are regulated by the provisions of the Code. It is my finding that the provisions of the Code have no bearing on the addresses made at the instance or with leave of court. However as the benefit of addressing the court on the said aspect of the case is available to counsel when it is desired, and counsel has had an abundance of opportunity to address the court and will remain unperused for the final determination of matters in issue in the proceedings.

2. The inadequacy of the particulars of offence given to the accused as may be necessary for giving reasonable information as to the nature of the offence

Information given by the formal charge contained the name of the accused, date, time, place and the name of the victim in respect of the specific offence as described in section 130 as amended.

The accused complains that the prosecution has failed to comply with the requirements in section III of the Code to give reasonable information as to the nature of the offence charged. It is the contention of counsel for the accused that "The offence of "sexual assault", as constituted by the statute, includes the doing of any four possible acts in the alternative. Section 130 (2)(a)(b)(c) or (d) ranging from "indecent assault", to "penetration" in increasing degrees of gravity, each bearing a commensurate sentence (section 130(4))." Counsel cannot be further from the correct interpretation of Section 130 as amended. Section 130(2) prescribes that "for the purposes of this section sexual assault includes" the four different acts. The four examples of sexual assault described therein are not the ingredients of the offence. They are merely four of several assaults of a sexual nature that could constitute the offence of sexual assault. With reference to the case of *R v Leeson* (1968) 52 Cr App R 185 "an indecent assault" as referred to by the Attorney-General could include numerous specific acts that could constitute the offence of sexual assault.

When counsel for the accused submits that "in the 'particulars of offence' the accused is not given the slightest indication as to which of the 4 acts is alleged against him" it appears that counsel envisages the prosecution to be restricted to one of the four acts described therein.

To support such a conclusion there is neither statutory provision nor known practices. Hence the prosecution need not be confined to any particular act that constitute the charge of sexual assault.

Counsel for the accused very correctly quotes from *Archbold*, 36<sup>th</sup> ed, para 122 that, "the indictment ought to follow the language of the statute". In my view unlike the original section 130 of the Penal Code which defined the offence of rape, 'section 130 as amended' provides no such definition of sexual assault. The offence of sexual assault includes indecent assault, which is general in nature and includes very many different acts, one of which is described in the particulars of the offence of the case of *Republic v Richard Riase* cited by counsel. Such a charge of sexual assault justifies the statement in respect of the very act that constituted the offence, but in the case of *Republic v Harikrishnan Paramesvaran*, the other case referred to by counsel, where the offence is sexual assault of penetrating the anal orifice of another for sexual purposes, specific reference in the particulars of the offence was not obligatory.

Counsel, with reference to *Vidot v Republic* (1981) SLR 79 submits that an "autrefois" test on the instant charge before the court of sexual assault shall fail. His contention is that the failure of the prosecution to specify the particulars of the act that constituted the sexual assault in accordance with section 130 (2) a, b, c and d aforesaid is devoid of certainty as to what offence the accused is charged with. The said section 130(2) only provides a few examples of acts that constitute sexual assaults which are not exhaustive, hence the offence is 'sexual assault,' and the statute does not provide the definition of sexual assault unlike the offence of rape before the amendment. Therefore a plea of "autrefois convict" or "autrefois

acquit" will apply precisely to all subsequent prosecutions in respect of all acts that amount to offences of sexual assault.

Counsel for the accused finds that in respect of the difference in subsection 130(2) "each [bear] a commensurate sentence" Amendment to the Penal Code Act 16 of 1996 in section 130(4) stipulates only a maximum sentence of 20 years, which is not exceeding 20 years.

The two Mauritian Cases cited by counsel for the accused in the instant action as the charges were made on provisions which are ingredients of the offence like in the case of the offence of rape before the amendment. In the case of *Samson v The Republic* [1995] 1 All MR 1000, section 2 of the Dangerous Drugs Act (Cap 186:01) distinct from "cannabis resin" which led the Judges of the Full Bench to hold that "a person cannot be expected to answer a charge of possession of cannabis resin against him." There can be no doubt a charge of sexual assault sufficiently conveys to the accused the nature of the offence in accordance with the statute, and facts relating to the charge were left to be disclosed to the accused and witnesses testify in his presence. The accused never could have known what the charge was until the evidence was concluded.

I therefore decide that particulars of the charge given were sufficient to inform the accused of the nature of the offence, and that he was not prejudiced and the information was according to law, including the provisions of article 19(2) of the Constitution.

### 3. Delayed disclosure and the right to a fair hearing

It is without dispute that the statement made to the police by the alleged victim and a few other witnesses were not available to the accused before they testified before the Court. The said statements were subsequently disclosed to the counsel for the accused by the refusal of the prosecution to make an application, and it is not clear why. A delay under the said circumstances cannot be construed to be a denial of a fundamental rights enshrined in article 19 of the Constitution, and it is not clear why. If, in the case of the accused, the Court had found that the alleged victim's testimony was contrary to the evidence proved by her and the contradictions were proved by the witness to be recalled, notwithstanding the inconvenience to the accused, the Court had the option to prove such contradictions if an application was made. Stella Francoise, who recorded the statement of A, was called by the prosecution and gave evidence. In such a statement, if facts stated contradicted the complainant's testimony before the Court, the accused had the right to make the necessary application to the Court to have the witness recalled or for the Court to act on the proved contradictions in the statement of the witness. Counsel,

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however, did not have recourse to the said procedure and instead attempted to comment on the contents of an unproved document on 25 November 1999 as seen in the record of proceedings at page 6 and 7. In the absence of such proof of contradictions in respect of the virtual complainant's testimony and her statement, counsel's claim of such contradictions on material facts cannot be entertained by the Court.

In respect of other witnesses called by the defence and the denial of the choice of refraining from calling any of them, if in fact their evidence was adverse to the accused, once again on application the Court could have considered to act in an appropriate manner if such facts were proved.

I find that the defence has not made out a case to establish that any prejudice has been caused to the accused or that he has been deprived of any benefit by any statement to his advantage, hence I decide the aforesaid statements have not affected the course of these proceedings or resulted in a miscarriage of justice.

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#### 4. Complaint

Counsel submits that the complaint is inadmissible for that it was made on the first opportunity available and that it was made after a considerable delay. He therefore questions "whether the statement is veridical in the sense that it is an unassisted and unvarnished story of

son that it was not after a considerable rry, spontaneous in happened".

On the evaluation of evidence by counsel the statement was made five hours after the alleged commission of the offence. The complainant was a foreigner with a small child with her mother waiting in expectation of the arrival of her acquaintances for her taxi until 4 pm on 1 November 1998. Her evidence shows that she preferred known persons to unknown tourists or pick ups, she cannot be blamed. It was not clear from the evidence that she recognised Esther and Samson to be police officers as testified according to officer Octobre, leave alone that they were not police officers. It is relevant to note that there is no evidence to conclude that the complainant at that time had any reason or did intend to falsely implicate the accused in the commission of the offence of sexual assault on her. Even if she had intended to inform the police of the assault on her, there is nothing in the evidence before the Court to suggest that she had an ulterior motive to make a complaint of sexual assault without reason or proper ground, or that she was motivated to do so to save face under the circumstances.

been made at least once. The evidence revealed that the complainant was not expecting to see the accused on the beach as she was a previous day. If the evidence suggests that she was on the beach to see the accused, she were not in uniform as she was a beach warden. It is not clear from the evidence that she was a complainant at any time. The evidence before the Court shows that she was not the first to complain of sexual assault on the beach. It is not clear from the evidence before the Court whether she was compelled to do so to save face under the circumstances.

The circumstances under which the complaint was made do not show that it was delayed considerably, or that it was not made at the first opportunity which was reasonably offered itself to the complainant.

It should be considered to be a complaint made at the first opportunity which was reasonably offered itself to the complainant.

5. Was the complainant sexually assaulted on 1 November 1998 at Intendance Beach?

A, a German national, mother of four children, married, 40 years old, had arrived in Seychelles on 25 October 1998 with her 4½ year old child B. In addition to the aforesaid particulars, she revealed that she enjoyed being in the nude when she visits the Takamaka end of the Intendance beach, where the words "NUDIST BEACH" are found painted in white on a rock. Early on Sunday 1 November 1998 she has gone to the said part of the beach with B as she had done on previous days and had found the beach completely deserted. After she had undressed and had a short sea swim she was seated and playing with her daughter when the accused approached her wearing blue jeans and a white T-shirt with a red and pink coloured square in the middle, which she later identified as the production in the Court obtained by the police from the accused. According to her, he spoke to her, stating that he is a teacher of French. He then removed his swimming suit and after a little while in the sea went away. According to her, the accused, in the course of his conversation with her, had assured her that his friends will come later.

Thereafter for about 1½ hours she was on her guard and kept an eye on the part of the jungle from which, according to her, the accused had entered the beach on the four days that she had seen him. When she thought she had nothing to worry about she had resumed playing with her daughter. At that time she had heard a soft noise behind her, which she took to be of her daughter. She later identified as the accused has grabbed her from behind with both his hands so that both her hands were locked in his grip. She turned her head a little bit she recognised the face of the accused. As she felt he was wearing his jeans and fearing that he could have a nip on her, she refrained from resisting. She did not shout for help as there were no people in the vicinity and also because of the presence of her daughter. He had driven her on the beach while she was attempting get up when she recognised that a zip fastener of the trouser was open.

Although she tried to press her legs together she had not been able to do so and the accused had succeeded in penetrating her vagina. He did so and fully with his penis. When he had ejaculated he put on his trousers and went away. On being questioned by counsel she said that the accused was not wearing any underwear, which was later confirmed by Constable Octobre, and the fact was admitted by the accused himself in evidence. The accused also admitted in evidence that the jeans that he wore that day belonged to his brother and that the zip fastener was broken and it could not be closed.

As against her testimony of sexual assault committed by the accused, the medical evidence of two doctors has to be dealt with. Dr Dilip H. who examined A at 5.30 pm on Sunday 1 November 1998 found no injuries on her body and found no spermatozoa on three swabs taken from her. His evidence

revealed that the washing of the victim's genitalia with sea water, want of resistance at the time of the attack, partial penetration and premature ejaculation could be reasons for the absence of spermatozoa and injuries on the victim.

Dr Tsultrim Tenzin examined the accused on the day of the alleged incident at 3.55 pm and his finding was no different from that of Dr Hajarnis, that is that there was no evidence of sexual assault with penetration resulting in sexual intercourse. Dr Tenzin found smegma present under the accused's prepuce and commented that sexual intercourse or washing would have removed same. He conceded that if penetration was partial and ejaculation premature the smegma could remain undisturbed. He concluded that urination and washing could have removed spermatozoa from the genitalia of the accused.

After a careful consideration of the medical evidence before the Court it is necessary to conclude that the said evidence alone neither proves nor disproves the alleged sexual assault on A.

There was no evidence to hold that the victim's version of the sexual assault was a figment of her imagination or that there was any reason for her to pretend that she was sexually assaulted. There was evidence on her own admission that she was once drunk at the Blue Lagoon Hotel and that she drinks with lemonade for breakfast. Although Dr Tenzin did examine the victim and did not receive any smell of alcohol from her, he had got the impression that she had consumed alcohol. The reason adduced for such impression was his observation of the way she got up from her chair and her slow speech. Dr Harjanis examined her at about 5.30 pm on the said date specifically stated that she was not under the influence of alcohol. Dr Harjanis' evidence on the said matter should rule out the reliability of the observations of witness Jean Baptist Orter

The two taxi drivers Kitson Burca and Carl Lablache testified of the drinking habits of the victim. Kitson Burca had seen A with a bottle of beer on Wednesday evening and on Friday as admitted by the victim, he had seen her drunk. That was the day that she was made to leave Blue Lagoon against her wishes, which state on that date. according to her upset her, and her reason for her inebriation. The witness, in his examination-in-chief, tried to make out the victim's experience, but he did not want to offer his services on the next date on account of his previous experience, but not have a car on the next date. On his evidence, she had been under the influence of alcohol only on one day.

Lablache, on the other hand, took the victim in his taxi from the hotel to Intendance Beach on the day of the incident. He described that the victim was already drunk when she boarded the taxi and that he discovered when he had to assist her with the bag inside the car that she was carrying four pints of beer that evening and ere she stayed, to the alleged incident that day he had not been able to get his taxi there after he had to go twice to the hotel Lazare Picau

collect his fare of one hundred rupees. He volunteered to express the demeanour of the victim who was at tea on the day he received his taxi fare through a waitress at the hotel. Lablache had known the accused for three years and had been a visitor at his mother's house. As pointed out in cross-examination that, in spite of the fact that Lablache was unhappy with the state of his passenger that day and noticed that she was drunk, he said that when the victim offered him the fare that morning he left it with her to be collected on the return trip that evening.

It is my considered opinion that his uncorroborated evidence of the discovery of four bottles of beer with her while she was travelling in his vehicle and the postponement of collecting his fare when he was said to be disgusted with his passenger on account of her conduct are not credible.

The accused admitted meeting the victim and speaking to her on the day of the alleged sexual assault, but he never said that she ever smelled of alcohol. Police officers Octobre and Stella Francoise in evidence specifically stated that she did not smell of alcohol and that she was not under the influence of alcohol.

I therefore find that her allegation of being sexually assaulted on 1 November 1998 was not in any way influenced by her consumption of alcohol or due to a drunken state. Other than her own evidence the only other evidence of sexual assault is the expression of B to the effect "he put his hands on her legs". The commission of any act with the consent of A was never in issue as the defence was virtually an alibi, and on mistaken identity.

In respect of the uncorroborated evidence of A on the claim of sexual assault I am inclined to give expression to the quotation from the judgment of *Mousmie v The Republic*, (1978-1982) SCAR 543 as follows:

In this case it was unthinkable that the complainant had been concocted and there was no evidence that the complainant was suffering from delusions or hallucinations. The "part of the offence" could have been believed on the uncorroborated evidence of the complainant.

On the evidence of A I find that the alleged act was intended to apprehend immediate and unlawful violence by the penetration of a body orifice of her for a sexual purpose, thus constituting the offence of sexual assault in accordance with section 130(4) of the Penal Code as amended.

I therefore conclude that the complainant A was sexually assaulted on 1 November 1998 at the Intendance beach.

6. **Identification on days previous to the assault.**

A testified that the accused was seen at the Intendance beach on three consecutive days immediately prior to the alleged offence, that is on Thursday October 29, Friday 30 Saturday and 31. If in fact the victim had seen the accused on the said dates, the identification of the accused on the date of the assault is considered to be made easier and the fact bears witness to the state of mind of the accused by his interest in those frequenting the specific section of the beach.

However for the prosecution, only the evidence of A is available to establish the presence of the accused on the beach on the dates prior to the assault. Kitson Burca testified to the fact that he drove the complainant to the beach in his taxi at least on two days of the said week. There is no reason for A to lie about the rest of the days on the beach if she has not been there, but she may be mistaken with the specific days of the week or that they were consecutive.

The accused led substantial evidence to establish that he was elsewhere, on the said days, but to prove the charge against the accused beyond a reasonable doubt what is relevant is that on the day of the incident he was on the beach at the time of the assault. On the evidence of Marie Confait, Maxime Lequeune, Teddy Desaubin, Philip Monthe, Clifford Mondon, Alma Didon, Michel Marie and Veronique Gerello there can be no doubt that on several days immediately before the date of the alleged assault the accused was very much involved in the preparatory activities of the Creole Festival, and his work at the NYS at Port Launay. The witnesses understandably could not be specific as to the hour and minute of the time that the accused was with them on the said days to rule out the possibility of the accused visiting the said section of the beach on the three days before the incident. I therefore decide that the lone evidence of the complainant in respect of three days prior to the date of the alleged assault should be ignored and not acted upon to prove the charge against the accused.

7. **Identification of the assailant of A on Sunday 1 November 1998 at Intendance beach.**

It was concluded earlier that the complainant's capacity to identify her assailant on the said date was not in any way impaired by a state of inebriation. There is no dispute about the presence of the accused on the Intendance beach on the said date and that he was taken into police custody just after 3 pm on 1 November 1998 at the beach. The case of the accused is that he was at his mother's place at the relevant time and that he arrived on the beach much later.

According to the complainant on 1 November 1998 she had breakfast at the hotel at about 7.30 am and arrived at the beach by taxi. Taxi driver Lablache said that he went to Lazare Picault to pick her up at 9.00 am. None of them spoke of the time they arrived at the beach. The complainant was unable to state the time when the assault took place. The accused, after being up the whole night, returned to his mother's place with Teddy Desaubin at about 8.30 am. He left for the beach with Teddy Desaubin, , at about 10.15 am or 10.30 am he first said in evidence-in-chief but immediately thereafter



he changed the time to 11.15 or 11.30 am (page 31 of the evidence at 9.00 am). Teddy Desaubin confirmed that he gave a lift to the accused at 11.30 am. The evidence of the accused was that Teddy Desaubin had no prior arrangement, but Teddy in cross-examination said that it was by arrangement that he met the accused at about 11.00 or 11.30 am to give him a lift. It was disclosed in evidence that Teddy Desaubin and the accused were close friends and according to the evidence of Teddy Desaubin and Marcel Belle, Teddy Desaubin and the accused are close friends. Marcel Belle, not without reluctance, admitted that the accused mother and that he and the accused's mother are cousins. Teddy Desaubin revealed that Marcela Belle's mother and her mother are cousins. Jean Baptiste Bonne, Regis Monthe and Brian Morel are all neighbours of the accused's mother, who frequented her place to play dominoes.

On 1 November 1999 Jean Baptiste Bonne left his home at 9.00 am and had seen the accused from time to time at his mother's place to play dominoes until he left at 11.00 am. The witness under cross-examination disclosed that he usually goes to play dominoes on Sunday at 2.00 or 3.00 pm and continues to play until late evening. The reason he gave for the departure from the accustomed practice of playing on the Sunday morning in question was because he had to go to work. Although there was nothing special on the said date, Regis Monthe was another dominoes player who saw the accused at his mother's place to play dominoes between 8.30 and 8.45 am until he left at 10.15 am. He had a job at the Kreol Institute and had gone home only at 7.15 in the morning. He had participated in Kreol Festival competitions, and had left for work at 1.15 am. The witness had not given a statement to the police.

Brian Morel was at the accused's mother's house at 10.30 am and had met the accused. He is the only witness out of the witnesses who saw the accused leave with Teddy Desaubin. It was his evidence that when Teddy Desaubin was driving to Intendance, the accused stopped him and asked for a lift. Unlike the other two dominoes players who gave evidence he did not know about the accused making and serving soup or frying eggs for breakfast.

Bonne and Morel displayed under cross examination that their ability to recollect was more prominent in respect of matters pertaining to the morning of Sunday 1 November than happenings of other days of the year.

After hearing the three witnesses whose testimony was directed to establish that the accused did not leave for the beach until at least 11.00 am, I find that their evidence cannot be believed on account of the observations made earlier. It is my conclusion that the accustomed gathering for playing dominoes was in the afternoon, and their testimony of witnessing the movements of the accused on the said Sunday morning

on 1<sup>st</sup> December 1998. The accused was accused about 11 or 12.00 am to fetch him by 11.30 am without any previous arrangement that morning to give him a lift. The accused were close friends, Mirena Belle, Marcel Belle, as well. Marcel Belle is the accused's uncle's daughter and that they are all neighbours of the accused's mother.

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was fabricated to assist the accused in his defence. The accused's relative and close friend Teddy Desaubin's performance as a witness was no better. He contradicted himself on his own evidence in respect of his movements on the afternoon of Sunday 1 November. In answer to counsel for the prosecution he said that he slept from 12.00 to 3.30 pm but his evidence-in-chief was that he went to the beach to see the accused between two and three in the afternoon. It was previously noted in this judgment that the evidence of the accused and the witness Teddy Desaubin was at variance in respect of whether the picking up of the accused was by design or by accident. I have no doubt that the witness conspired with the accused to establish that the accused's arrival on the Intendance beach was much later than what the prosecution sought to establish.

On the evidence of the complainant she was unable to offer any particular time at which the assault took place. In considering her evidence of eating breakfast at 7.30 am and thereafter going to Intendance, and leaving a period of two hours for the period between the appearance of the accused and the happening of the assault, it is probable that the assault took place before 11 am when the beach was almost deserted by humans.

Egide Suzette, according to his testimony had left home at 10 am on 1 November 1998, had met the accused at about 11.15 am walking away from the 'nudist beach' area on the foot path close to the beach at a distance of about 100 metres with a T shirt on his shoulders and wearing blue jeans. He has known the accused for a period of about 20 years and had noticed that the accused at the said time looked a "bit quickly". He had again seen him at about 3 pm walking towards the so-called nudist beach'.

Daniella Adeline called by the prosecution testified to the fact that she went with others to the Intendance beach at about 12.00 in the afternoon and after had seen the accused who was known to her, coming from the direction of the 'nudist beach' shortly thereafter. According to her evidence the accused had spent the time with Daniella and others and had lunch, cooked on the barbecue.

The evidence of William Belle about the man looking like a suspiciously and apparently trying to hide himself in the bushes near a rock" as well as Daniella seeing an Indian looking person entering the sea for a swim can have no bearing on the case even if they had looked similar to the appearance and physical features of the accused, for want of evidence of their identification. Daniella's statement can make no difference to the prosecution case. She could have made a deliberate lie, in any event her evidence is more consistent with the accused's claim of his arrival at about 11.30 am. Daniella's evidence does not establish that it was Egide Suzette that she referred to when she said that she saw two boys passing with palmist on their shoulders.

The accused in his testimony described how he walked towards the far end of the beach and when he was returning the complainant had stood on the beach where she had

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The accused in his testimony described how he walked towards the far end of the beach and when he was returning the complainant had stood on the beach where she had

been sleeping or sitting, walked towards him naked and told him that she was afraid of thieves. He had then reassured her that there are no thieves and that there are police officers who guard the beach. According to the complainant and the accused they had exchanged a few words about themselves. He later said the following:

“I remember just after she had seen me after she had asked me if I was a thief she went back to where her things were and she covered herself with a T-shirt”.

The complainant's evidence on the said encounter was as follows:

When I was playing he came totally close with blue jeans and a white T-shirt.....

He began to speak to me and came closer..... He told me he was a French teacher.

Q. “When he came close to you did you continue to be friendly?”

A. “No, I protected my naked special point with a towel because I could not find my T-shirt very quick, but I protected it with a towel”.

On the version of the accused it is obvious that the complainant had not displayed a desire to engage herself in a friendly conversation with the accused but expressed her fear when she said according to the accused either “she told me something like she was afraid of thieves” or “she asked me if I was a thief”.

It is extremely strange and appears to be illogical for a foreign child on a beach with a small child to approach an unknown male naked, and express her fears. She could not have had any good reason to do so, and worst of all in the evidence. I consider the version of the complainant is rational and the statement of true evidence is cogent and forthright, and I therefore find that the accused has lied under oath deliberately to prevent the interest she has shown in the complainant being established before court.

It is unfortunate that the complainant was never afforded the opportunity of identifying the accused at a parade. In *Pragassen v R* (1974) SLR 13, the court held: ,

The identification of an accused party by a witness in court when the accused is in the dock, without an identification parade having previously been held is improper, unsatisfactory, and should be avoided wherever possible. Such evidence is admissible although suspect and, in some cases, of no weight. It must be taken into account with the rest of the evidence. Failure by the Magistrate to waive it amounts to a non-direction.

Other than the dock identification of the accused by the complainant and her daughter, both of them had pointed out the accused at the time he was taken into custody according to the evidence of police officer Weston Michel Esther and Constable Octobre. According to the evidence of police officer Stella Francoise on 6 November 1998 when the complainant and her daughter accompanied by her was near the entrance to the court room no 1, B has again pointed out the accused.

The fact that the complainant recognised at the time of the sexual assault that the assailant had the zip fastener open and was without underwear, later to be confirmed by the accused himself and Constable Octobre, is considered a relevant fact in the identity of the accused.

B, the daughter of the complainant in unsworn evidence before the Court, pointed to the accused and said, "he pushed on her legs" which is consistent with the account of the complainant of the sexual assault, and demonstrates the child's ability, even though of tender years, to give intelligible evidence.

I warn myself that in the case of the charge of sexual assault on the complainant based on the testimony of the accused upon uncorroborated testimony of the complainant it is unsafe to convict.

In the present case I find corroboration of the complainant's evidence of identification by the evidence of B and the deliberate false testimony of the accused that the complainant in the nude approached him and engaged in a conversation with him about thieves.

Even in the absence of corroboration I find that on account of the earlier encounter with the accused on the same day the complainant has properly and directly identified the accused by the features she witnessed when she "turn[ed] her back on him around a little bit" as the person who committed the offence of sexual assault on her.

It is of significance that the accused was taken into custody very close to the scene of the incident. He has, for an inexplicable reason, not left the area where the crime took place. The reasons for his conduct are only open to conjecture. At the time he was arrested due to a period of about five hours have lapsed, he may have felt safe and inquisitive to find out whether the complainant was going to accuse him. A delay could have given him a false sense of confidence and his impatience was hindering him from doing so.

On the totality of the admissible evidence referred to in this charge that Paddy Michel Savy on 1 November 1998 at Intendencia committed sexual assault on A was proved beyond a reasonable doubt.

I convict the accused Paddy Michel Savy of the offence of sexual assault as charged.

**Record: Criminal Side No 51 of 1998**