IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

1. **JOHN FRANCOIS**
2. **HANSEL GERARD LARUE**

Criminal

Side No 108 of 2003

Mr. R. Govinden for the Republic
Mr. B. Georges for the 1st Accused
Mr. F. Bonte for the 2nd Accused

JUDGMENT

Renaud J

The 1st Accused, John Francois, originally stands charged with the following counts of offence:

Count (1) Robbery with violence contrary to Section 281, read with Section 23 of the Penal Code and punishable under the proviso to Section 281 of the Penal Code.

Count (2) Burglary contrary to Section 289 as read with Section 23 and punishable under Section 289 as read with Section 264(b) of the Penal Code.
Count (3) Robbery with violence contrary to Section 281, read with Section 23 of the Penal Code and punishable under the proviso to Section 281 of the Penal Code.
Count (4) Burglary contrary to Section 289 as read with Section 23 and punishable under Section 289 as read with Section 264(b) of the Penal Code.
Count (5) Robbery with violence contrary to Section 281, read with Section 23 of the Penal Code and punishable under the proviso to Section 281 of the Penal Code.

Count (6) Burglary contrary to Section 289 as read with Section 23 and punishable under Section 289 as read with Section 264(b) of the Penal Code

Count (11) Retaining stolen property contrary to section 309(1) and punishable under Section 309 of the Penal Code.
Count (12) Unlawful possession of property contrary to and punishable under Section 310 of the Penal Code.

The 2nd Accused, Hansel Gerard Larue stands charged with the following counts of offence:

Count (7) Retaining stolen property contrary to section 309(1) and

punishable under Section 309 of the Penal Code.
Count (8) Retaining stolen property contrary to section 309(1) and
punishable under Section 309 of the Penal Code.
Count (9) Unlawful possession of property contrary to and

punishable

under Section 310 of the Penal Code.

Count (10) Unlawful possession of property contrary to and punishable under Section 310 of the Penal Code.

Both Accused pleaded not guilty to the charges against them and the case proceeded to trial. The Prosecution presented its case and the Court heard the testimony of 10 witnesses. At the close of the case for the prosecution, respective Learned Counsel for each of the Accused submitted that the respective Accused has no case to answer to the charges laid against each of them.

In its considered Ruling dated 5th April, 2006 this Court finds that each of the two Accused persons respectively has a case to answer only in respect of the following charges:

1st Accused, John Francois –

Count (11) - Retaining stolen property contrary to section 309(1) and punishable under Section 309 of the Penal Code, and, Count (12) - Unlawful possession of property contrary to and punishable under Section 310 of the Penal Code.

Count (12)- Unlawful possession of property contrary to and punishable under Section 310 of the Penal Code.

2nd Accused, Hansel Gerard Larue –

Count (7) Retaining stolen property contrary to section 309(1) and punishable under Section 309 of the Penal Code;

Count (8) Retaining stolen property contrary to section 309(1) and punishable under Section 309 of the Penal Code;
Count (9) Unlawful possession of property contrary to and punishable under Section 310 of the Penal Code;
Count (10) Unlawful possession of property contrary to and punishable under Section 310 of the Penal Code

The two Accused persons were accordingly called upon to offer their defence if any to those charges.

Section 309(1) of the Penal Code Cap. 158 states:

"*Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing or having reason to believe the same to have been feloniously stolen, taken, extorted, obtained or disposed of, is guilty of a felony, and is liable to imprisonment for fourteen years.*"

Section 310 of the Penal Code Cap. 158 states:

"Any person who has or had in his possession anything whatever which may be reasonably suspected of having been stolen or unlawfully obtained and who fails to give a

satisfactory account to the court of how he came by the same is guilty of a misdemeanour."

The 1st Accused, Mr. John Francois exercised his right to remain silent and did not offer to testify. It is not for the Accused to prove his innocence. It is for the Prosecution to prove the guilt of the Accused beyond any reasonable doubt. The Prosecution has to prove all the elements of the offence. In this case, to convict the Accused of the Offence under Section 309(1), the Prosecution has to prove:

- firstly, that the property which is the subject matter of the charge has in fact been stolen, or feloniously or unlawfully taken, extorted, obtained, converted or disposed of,

secondly that the Accused knew or had reason to believe that the subject matter was stolen property, and,
thirdly, that the Accused despite having such knowledge or reason, yet received or retained the said stolen property.

With regard to the offence under Section 310, the Prosecution has to similarly prove the first element of the offence and secondly that the Accused must have reasonably suspected that the subject matter was stolen or unlawfully obtained.

The offence under Section 310 is alternative to that under Section 309(1). The Accused, if convicted of one of the offence cannot be convicted for the other.

The subject matter in respect of the 1st Accused is a pair of "Caterpillar Boots" valued at SR500.00 belonging to Neil Watson. With regard to the 2nd Accused, the subject matter is in respect of a Gold Necklace valued at SR1,000.00 and a Gold Earring valued at SR1,000.00 both belonging to Venita Watson.

The pair of "Caterpillar Boots" was admitted and marked as Exhibit P1. The purported owner of those Boots, Mr. Neil Watson testified, *inter alia*, that he has no doubt that the pair of Boots showed to him in Court, was indeed his and were stolen from his home at Glacis on 14th October, 2002 when burglars broke into the house he was living with his parents. He identified it by it looks and further by certain scratch marks which he recalled very well having been made

when he kicked an iron gate. He bought these shoes overseas when he was there. I believe and accept the evidence of Mr. Watson that the "Caterpillar Boots" belonged to him and was stolen when there was a burglary at his home as he stated.

During the trial it transpired in the evidence laid by the Prosecution that when the pair of boots were found in the locker of the 1st Accused in prison, he explained that he won these while playing cards with other inmates. There is no other evidence to counter the explanation given by the 1st Accused, not even evidence that Prison inmates do not play cards and using personal items as bets. The explanation of the 1st Accused is both probable and possible. The 1st Accused had been serving a prison sentence and was in prison when the incidence of burglary took place in the house of the virtual complainant at Glacis. There is no evidence that the 1st Accused was out of prison at the material time and therefore I cannot find that the 1st Accused stole those boots during the burglary. Somehow those boots reached the Prison premises. Is it reasonable in the circumstances for the 1st Accused to believe that the boots were not stolen property? I cannot reasonably conclude otherwise than it would be farfetched to find that the 1st Accused should have known or had reason to believe that those boots were stolen property, and, that despite having such knowledge or reason, yet the 1st Accused received or retained the said stolen property.

In the circumstances I find that the Prosecution has not proved beyond reasonable doubt the charges against the 1st Accused. Accordingly I acquit the 1st Accused of the count of offences with which he is charged. The 1st Accused is discharged.

The subject matter in respect of the 2nd Accused, namely, a Gold Necklace and a Gold Earring is alleged to belong to Ms. Venita Watson. Ms. Venita Watson did not testify. Dr. Peter Larose testified that Mrs. Watson is his wife and they were living together in their house at Glacis in

October, 2002. He was overseas when burglars broke into that house. Upon learning of that incident, he immediately returned to Seychelles. Among other things, he came to know that his wife had lost jewelries including necklace and earrings. He gave a brief description of those items as far as he could recall as he was the one who bought those items when he was studying overseas and gave these to his wife as gifts. He identified those items in Court, Exhibits P2 and P3 respectively as being the ones he gave to his wife. He admitted however that they were not items specifically manufactured at his behest but that such and similar items could be bought by anyone at any jewelry shop. He bought these over the counter at a Mail Order Store in England.

The 2nd Accused gave evidence under oath and explained that he got the necklace, Exhibit P2 that was found by the

Police at his home in November, 2002, from an ex-girlfriend, namely, Ms. Paquerette Hopeng on the occasion of his birthday in April, 2002. As for the earring, Exhibit P3 that the Police found at his home, he explained that there was only one side of the earring and that belonged to Ms. Paquerette Hopeng. The latter came into his possession at a Disco when the other side accidentally fell and got lost. Ms. Hopeng then removed the remaining side from her ear and put it in his (witness') pocket. When he reached home he removed it and kept it at his home. Ms. Hopeng also testified and she corroborated in material particular the evidence of the 2nd Accused. Before she was shown the two Exhibits, she gave a description of these and explained that she bought these items overseas during her travels. She stated that she has other similar pieces of jewelry. She identified those exhibits as the ones that belonged to her and also to the fact that she gave the necklace as a gift to the 2nd Accused on his birthday and that as to the earring she was the one who put it in the pocket of the 2nd Accused at a Disco when the other side got lost. Her description of both items to the Court before these were shown to her was very convincing. The witness went as far as describing that the necklace was broken and she had it mended by a Jeweler, a fact that Dr. Larose did not inform the Court and in any event, a fact that was hitherto remained unnoticed. When the necklace was shown to Ms. Hopeng she positively identified it as the one which she gave to the 2nd Accused and showed the Court where she had it mended. Ms. Hopeng was equally convincing when she described the earring before that item was shown to her. Again, her description was convincing and when that item was shown to her it

matched her description and she positively identified it as the one that she kept in the pocket of the 2nd Accused at the Disco.

It is not for the 2nd Accused to prove beyond reasonable doubt that he had no reason to believe that the items for which he has been charged with were not stolen property. I believe that the 2nd Accused has sufficiently satisfied this Court that when he received and kept in his possession those items, there was no reason for him to believe that those items were stolen property. In view of the evidence of both the 2nd Accused and his witness Ms. Hopeng, I entertain a reasonable doubt as to whether indeed those items belonged to the virtual complainant. I allowed the Accused the benefit of the doubt. I therefore conclude that the Prosecution had not proved beyond reasonable doubt an important element of the offence. In the circumstances I acquit the 2nd Accused of both counts of offence. He is accordingly discharged.

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B. RENAUD

JUDGE

Dated this 4th day of August 2006