

# **IN THE SUPREME COURT OF SEYCHELLES**

THE REPUBLIC

VERSUS

NIGEL NORAH

**ACCUSED**

**Criminal Side No**

**6 of 2007**

Mr. R. Govinden Deputy Attorney General

Mr. J. Renaud for the Accused

**JUDGMENT**

**Perera J**

The Accused stands charged on two counts, Count 1 with attempting murder, an offence contrary to Section 207(a) of the Penal Code, and Count 2 with the offence of committing an act intended to cause grievous harm contrary to Section 219(a) of the said Code. The case for the Prosecution is that the Accused, on 30<sup>th</sup> December 2006 inflicted two stab wounds with a knife on the body of one Suzette Estro, his concubine,. Medical evidence was adduced to establish that one of those stabbings caused injury to the colon and the left kidney. Although the injury to the colon was sutured, the left kidney had to be surgically removed as it was beyond repair.

P.C. Vanessa Sharon Jean (Pw1) testified that she was directed to proceed to the Victoria Hospital where one Suzette Estro had been admitted with stab injuries. When she saw her, she stated that her boyfriend Nigel Norah had stabbed her twice. That evidence, though hearsay, was admitted, upon the Prosecution stating that Suzette Estro will be called as a witness. P.C. Jean thereupon saw a stab wound under the right arm and another wound on the left side. She proceeded to the scene of the crime at La Louise with Sgt Tirant and P.C. Alcindor, and there they met one Hugh Belle, who showed where the incident occurred.

P.C. Jean produced the bloodstained clothing of the victim, which she recovered from the hospital.

Hugh Belle (PW2) stated that he lives at La Louise with her aunty, one Theanne Marengo. Suzette Estro was another aunt who was living with the accused at Les Mamelles. At the time of the incident, she was living with them at La Louise. That day he went to the Stadium Car Park

where the Accused was harassing Suzette. However all of them got into a pick up and went to La Louise. The Accused who was also in the pick up got down at La Louise. But about 10 minutes later came to the house and started to argue. Then he heard Suzette scream stating that she had been stabbed. When he went there, he saw the Accused still stabbing. When he asked him why he was doing that, he ran away. However in cross examination he stated that he saw Suzette lying down, but did not know whether the Accused was "*going to do anything he was doing before*". But when he came, he ran away.

Suzette Estro (PW3) testified that she was friendly with the Accused for about 8 years, but lived with him and their child at Les Mamelles for two years prior to 23<sup>rd</sup> December 2006 when she went to reside with her sister at La Louise. The alleged incident occurred on 30<sup>th</sup> December 2006. She further testified that after she finished work that day around 7 p.m at the "*Supa Save*" Supermarket, the Accused who was outside asked her to return home with him. As she refused, he continued to argue and followed her to the Stadium Car Park. There she met her sister Theanne Marengo and Selwyn Belle. She told them that the Accused was harassing her. Hugh Belle also arrived and all of them went to the house at La Louise. The Accused came and sat in the sitting room, but shortly went out and came again. He started to argue once again and stated "*if it is like this, nether you nor me will see the child*" and then started the stabbing. One stab wound penetrated a kidney, which was removed in hospital.

Selwyn Belle (PW4) stated that he was also living in the use of Theanne Marengo at La Louise, where Suzette also lived with her daughter for a short time before the incident. He witnessed the argument between Suzette and the Accused at the Stadium Car Park. All of them went in the pick up of Hugh Belle to La Louise, from where he left. Later in the night he received a telephone call that Suzette had been stabbed by the Accused, so he went to the hospital to visit her. He tried to contact the Accused by telephone, but could not reach him as it was switched off.

Theanne Marengo (PW5) witnessed the incident at the Stadium Car Park. At the residence at La Louise, she was preparing dinner in the kitchen. The Accused left the house and returned again and called Suzette to come outside. On hearing Suzette shout she went out and saw her holding her hands against the bleeding stab wounds.

Carole Marengo (PW6) the daughter of Theanne Marengo lived in the same house. She corroborated the evidence of Suzette and Theanne regarding the events at the house at La Louise that night. She stated that after stabbing Suzette, the Accused had left.

Corp. Lorna Barbe (PW7) the investigating Officer stated that although the offence was committed

on 30<sup>th</sup> December 2006, the Accused was arrested on 27<sup>th</sup> January 2007, as he was absconding.

Dr. Manuel Pascal (PW8) who attended on Suzette Estro on admission described the injuries found on her, and produced the Medical report (exhibit P4). He stated that the wound on the colon was sutured and the damage to the left kidney was irreparable and hence had to be removed. He stated that those injuries were "serious and critical" and that she could have died if not for the treatment. He however explained that those injuries would, if untreated, have led to complications, which would have resulted in death.

Tony Barbe, a Prosecution witness who was not called, was tendered for cross examination by the defence. He stated that he usually met the Accused and had drinks with him. He further stated that on 30<sup>th</sup> December 2006, the Accused was consuming beer and rum with him from about 3 p.m to 6.30. The Accused was a person who could control himself though drunk. He gave him Rs3/- for his bus fare, and then he left. He did not see him thereafter.

The Accused exercised his right to remain silent and also not to call witnesses on his behalf. The Court does not draw any adverse inference from that election.

On the basis of the evidence adduced by the Prosecution. The defence does not seriously contest that the Accused inflicted stab wounds on the victim. In fact, when making the submission for no case to answer, Learned Counsel for the Accused contended that there was insufficient evidence to establish on a *prima facie* basis, the ingredients of a charge attempted murder. He did not make any such submission as regards the offence of committing an act intended to cause grievous harm. As regards Count 1, in the Ruling on the submission of no case to answer, I referred to the maxim *actus non facit reum nisi mens sit rea* (an act does not make a person guilty unless his intentions were so). I also stated that as the term "attempt" has not been defined in the Penal Code, the following elements are generally accepted as constituting an attempt.

- (1) *Mens rea to commit the offence*

*An act which constitutes the actus reus of a criminal attempt*

- (2) Failure in accomplishment. That is, where execution of the purpose falls short of a complete execution, and the consummation is hindered by circumstances independent of the will of the offender.

In the case of Davy v. Lee (1968) 1. Q.B. 366 it was held that –

“Where the act concerned is equivocal, the intention of the defendant is relevant to see to what end the act was directed. When that is decided, it still remains for the Prosecution to show that the act itself was sufficiently proximate to the crime which the defendant intended to commit to amount to an attempt.”

Hence if there was evidence that the Accused had an intention to kill, then the offence of attempted murder has been made out. A further consideration would be to consider whether there was any further act on the part of the Accused, remaining to be done before completing the crime. Russel on crime (11<sup>th</sup> Edition) Page 195 states that the practical test for the actus reus in “*attempt*” is that the Prosecution must prove that the steps taken by the Accused must have reached the point when they themselves clearly indicate what was the end towards which they were intended. In the ruling on no case to answer, I ruled that the Prosecution had established a prima facie case against the Accused without making a critical analysis of the evidence at that stage of the case. However, considering the totality of the evidence in the case, Hugh Belle (PW2) stated in examination in chief that the Accused was still stabbing the victim when he came out hearing the cries. In cross examination however he stated that he saw the victim fallen down, and he did not know whether the Accused was going to do anything he was doing before. He stated that the Accused ran away. The consideration here should be whether the Accused had by then completed his criminal act, or was hindered by the arrival of Hugh Belle. Suzette Estro, the victim testified that when she refused to come back to live, the Accused who had gone out for a short time returned with a knife and stated “*neither you nor me will see the child*”. Carole Marengo (PW6) stated that the Accused went away after stabbing.

Dr. Pascal also explained that the injuries would have caused death as a result of complications that may have arisen. The incident at the Stadium Car Park was essentially due to the refusal of the victim to reconcile and return to the Accused. Although a sharp weapon such as a knife was used to stab the victim on her body, yet the essential mental element of intention to kill cannot be gathered from the evidence. Hence the Court is not satisfied that the charge of attempted murder has been established beyond a reasonable doubt. The Accused is consequently acquitted under Count 1.

As regards Count 2, Section 219(a) of the Penal Code provides that –

219 “Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest

or detention of any person-

- (a) Unlawfully wounds or does any grievous harm to any person by any means whatever,

.....

is guilty of a felony, and is liable to imprisonment for life.

The evidence in the case overwhelmingly discloses that the Accused intended to cause grievous harm to the victim by stabbing her with a knife. The term "*grievous harm*" is defined as "any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely to injure health, or which intends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense" In this case, the injury caused by the Accused caused permanent damage to the kidney of the victim necessitating its removal. In these circumstances, the Prosecution has established the charge under Count 2 beyond a reasonable doubt. Accordingly, I convict the Accused on the charge of doing an act intended to cause grievous harm contrary to Section 219a) of the Penal Code.

.....

A..R PERERA

**JUDGE**

Dated this 20<sup>th</sup> day of December 2007