

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VS.**

**ROY YOUPA**

Criminal Side No. 327 of 2004

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Mr. H. Ally for the Republic

Mr. Herminie for the Accused

**JUDGMENT**

**Gaswaga, J**

Mr. Roy Youpa, the accused, stands charged with one count of Assault Occasioning Actual Bodily Harm contrary to and punishable under Section 236 of the Penal Code, Cap 158. The particulars allege that the accused on the 24<sup>th</sup> day of January, 2004 at the place of residence of Christina Pillay, his ex-girlfriend, assaulted the said Christina Pillay and thereby caused her actual bodily harm. When the charge was read out to the accused he denied it and the prosecution led evidence from four witnesses in a bid to prove the case beyond reasonable doubt as required by law. See **Woolmington vs. D. P. P. (1935) A. C 462.**

Briefly, the facts as recorded are that the accused and Christina Pillay (PW1) had

an affair which was blessed with one issue. On that fateful day the accused, who was a regular visitor, came in to PW1's flat at Union Vale to sleep. It will be recalled that the two had at one time shared and lived in that flat for a period of five years. When the accused woke up PW1 asked him about the two 'Barrel Discotheque' entry tickets that were in his shirt pocket. They started quarreling. PW1 was alledging that the accused had the previous night gone out to a discotheque with another woman. It is PW1's evidence that as the accused continued to swear at her she asked him to leave the flat. That it was at this point that the accused took a potato peeler, went closer and threatened to hit PW1 with it. All this happened in the kitchen. Further, that as PW1 was trying to remove the potato peeler from the accused, he boxed her three times on the head. She fell down and became unconscious.

Mirenda Quartre (PW2) who lives next door to PW1, about six meters away, testified that on that morning between 9:00am and 10:00 am she heard PW1 and the accused arguing and recognized their voices which were familiar to her. That in particular she also heard Christina screaming "let go of my knife". As she came out of her place PW2 saw the accused leaving the flat while PW1 was lying in the door way. The accused corroborated PW1 and Pw2's testimony that there was a pool of blood around her. Joe Barbe and PW2 who is a nurse by profession assisted her since she was in a coma. She had also sustained a cut on the upper lip which continued to bleed and her face was swollen. PW2 checked her pulse and administered some medicine called eau'decarn to her. PW1 was taken to the English River Clinic and later that evening to the Casualty Unit at Victoria Hospital.

With this evidence I put the accused on his defence under Section 184 of Penal Code Act, Cap 158 since a prima facie case had been established by the prosecution.

For his defence, the accused did admit most of the above facts. However, the accused denied the fact that he assaulted PW1 in any way. Instead, he stated that there was a struggle between him and PW1 because PW1 was hysterical at the time after finding two tickets in the accused's pocket. That she jumped on his back, scratched him and in the process fell down and hurt herself. No witnesses were called to his aid.

As already stated the defence tacitly conceded to most of the facts and therefore some of the ingredients of the offence in question. Notwithstanding that concession it is trite law that Court must make specific findings on all the ingredients of the offence charged. It is beyond dispute that PW1 sustained the injuries she did either during or after or as a result of the struggle between herself and the accused. Dr. Pumundi (PW4) of the Ministry of Health tendered a medical report (PE1) wherein it was stated, shortly after the incident and examining the patient (PW1), that "*the patient suffered laceration of the mucosa and skin of the upper lip on the left side, and soft tissue swelling (not involving the bone) on the left half of her face*". The doctor opined that the injuries could have been caused by an external force. In cross-examination however he agreed with the defence counsel, Mr. Herminie, when it was suggested to him that the cut on the upper lip and swelling of the face could also be caused by someone tripping and falling down. The remaining pertinent question for the Court to decide is whether it was the accused who assaulted and thereby caused PW1 those injuries or she sustained the injuries after falling down. It is a requirement of the Criminal Law that for a conviction to be entered against an accused the prosecution must not

only prove the commission of the alledged offence but also establish a concrete and impeccable nexus between him and the said offence.

Christina Pillay testified that she received three blows on the head which sent her into a coma. There is ample evidence to prove that the two, PW1 and the accused, were arguing and struggling in the kitchen at the time. The only eye witnesses to the whole fight were young children, PW1's son and PW2's daughter who did not even come to court to testify. This Court wonders why the accused, if he was scratched on the back, did not report the matter to the police or go for treatment in hospital. Anyway in his defence the accused stated that the injuries were minor which he decided to ignore. I further wonder why the accused on the 26<sup>th</sup> January, 2004 did not state to the police or record in the police statement the 'actual' cause of PW1' injuries that she fell off his back when the incident that took place on the 24<sup>th</sup> January was still fresh in his mind. This was a very crucial aspect in establishing the cause of PW1' injuries and therefore going to the root of the case. Could his Court testimony be an afterthought? Part of the accused statement (PE2) as recorded by PC Agnes Sinon (PW3) reads:

"One Mr. BARBE said to both of us to stop, she continued holding my hands and hit me in my face and scratched me, but I tried to defend myself, she entered into the kitchen but at the time I tried to close the gate she came in front the door and she fell down and I heard MIRENDA QUATRE saying blood is coming from her mouth, I saw Mr. BARBE and Mrs. QUATRE waking her up and then I left the place."

Mirenda Quatre further testified that when she came out of her house the second time she found the accused leaving the scene while another neighbour Mr. Joe

Barbe was trying to lift PW1 off the floor in the door way where she lay in a pool of blood and in a state of unconsciousness. Again if PW1's falling was not caused by the accused why was he fleeing the scene when the mother of his son was in such a helpless and dying state? His explanation that PW1 had already chased him out of her flat is not plausible in such circumstances. Instead the accused's behaviour was consistent with that of a guilty man after committing an offence. In **R. vs. Savage [1992] 94 Cr. Appeal R 193** it was held that "*the offence of assault occasioning actual bodily harm is established by the mere proof of the fact that actual bodily harm was occasioned by the assault. The prosecution need not prove that the accused intended to cause some actual bodily harm or was reckless as to whether such harm could be caused.*" See also **Mathiot vs. Rep 1992 SLR No. 50.**

I have again considered the evidence outlined above. I noted that there was no direct evidence called save for PW1 with regard to the fight. For the reasons already stated I find that PW1's version of the story is credible. It cannot therefore be that PW1 fell down by herself and as a result sustained those injuries as alleged by the accused. There is ample evidence to support the view and prove that it was the accused who assaulted and thereby caused bodily harm to PW1. The prosecution has proved its case beyond the reasonable doubt.

This Court finds the accused guilty as charged and accordingly convicts him.

**D. GASWAGA**

**JUDGE**

Dated this 1<sup>st</sup> day of June, 2007.