

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

BARRY SOUFFE (Accused)

Criminal Side No. 2 of 2006

Mr. Esparon for the Republic

Mr. Pardiwalla for the Accused

RULING

Gaswaga, J

After calling all witnesses and closing its case the prosecution is applying to have the Court visit the *locus in quo*. Mr. Pardiwalla for the defence is opposed to the application.

This is a charge of manslaughter which arose as a result of two boats colliding at sea on the 1st January, 2006. The prosecution contends that it would be in the interest of justice for the Court to visit, see and appreciate the place and conditions of the scene of the accident. My reading of our Criminal Procedure Code, Cap 54, which regulates criminal proceedings and other relevant laws reveals no legal provision for visiting of locus in quo. In the absence of such statutory provision or elsewhere regarding the point in our jurisdiction, this matter should be considered by the trial Court asking itself if without a visit to the scene the accused would have a fair trial and, if the Court's visit to the locus is expedient to the needs of justice. It was held in **Bouchereau vs. The Republic (1980)**

SLR 14, p. 76 *“The Court has a general discretion whether to grant or to refuse such request.”*

Whereas it is always good practice to visit the scene of crime or accident to ascertain the actual picture of the place, I think this is a very unique case whereby such visitation may not yield anything valuable to add to the case. The weather conditions, water level and tide have already changed. The said scene was never cordoned off immediately after the accident to be preserved while all the articles (eg the two boats, engines, etc) retrieved from the place have already been tendered in Court as exhibits. The place is simply bare – just an open part of the sea with some nearby rocks. Then one wonders what there is for the Court to see.

Further, the said place has been properly described by the witnesses to the Court and in the photographs exhibited. Moreover, there remains no witnesses to explain or describe the scene since all the prosecution witnesses have already testified. This being so, I find no need to grant this application. It must fail.

D. GASWAGA

JUDGE

Dated this 28th day of January, 2008.