

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

KEVIN ZELIA

1. ROGER EULENTIN

Criminal Side No 31 of 2005

Mr Esparon for the Republic

Mr B. Hoareau for the Accused Persons

JUDGMENT

B. Renaud ACJ

The two accused persons Mr. Roger Eulentin and Mr. Kevin Zelia stand charged before this Court with the offence of “robbery with violence” contrary to and punishable under Section 281 of the Penal Code read together with Section 23 of the Penal Code”.

The particulars of the offence are that Roger Eulentin and Kevin Zelia on the 14th of May 2005, at 5th June Avenue, Victoria, Mahe, robbed Wilson Rachel two silver necklaces, one mobile of make Nokia and the sum of SR2,500.00 (two thousand five hundred rupees) and at the time of such robbery used personal violence to the said Wilson Rachel.

Both accused persons were defended by Counsel. The Prosecution adduced the evidence of several witnesses and produced relevant exhibits to prove its case beyond reasonable doubt against both accused persons.

The 1st accused gave an unsworn statement and deponed that on Saturday 14th May, 2005 he was on the beach at North East Point until 6.30 p.m. He came to Victoria by bus then took a car to La Misere with his girl Ms. Elia Adams. He said that he then went to his home at North East Point. He deponed that he had never seen Mr. Wilson Rachel, the virtual complainant until the day that he was arrested and was taking part in an identification parade at the Central Police Station.

The 2nd accused elected to remain silent. No adverse inference is drawn by this Court as this course of action is the legal right of the 2nd accused.

In the afternoon of 14th May, 2005 one Mr. Wilson Rachel came from his home at Union Vale and was going to the shop to buy certain things. At the shop he met the two accused persons who offered to sell him some clothes which he refused to buy. Mr. Rachel then left and went to another shop, that of Krishnamart on 5th June, Avenue. He bought a bottle of beer and went opposite the shop on the other side of the road near a playing field near a 'calice du pape' tree to consume his beer. He found the two accused persons there who engaged in conversation with him. During the conversation, one of the two accused persons asked him to go and buy a beer for him. There was also a conversation about the necklace that he was wearing and one of the accused persons asked Mr. Rachel to sell it to them. Mr. Rachel then went back to the shop again and the two accused also came there. Sometime later Mr. Rachel went to answer a call of nature at the place called 'La

Promenade'. This place is opposite Krishnamart shop on the other side of the road past the playing field and nearer to the sea side. There are tall and bushy grass there. When Mr. Rachel reached the gate in the fence he turned round and saw nobody. As soon as he passed the gate to La 'Promenade' he heard somebody running behind him. He looked and saw the two accused persons coming from behind him. The 1st accused grabbed him by his neck and locked one of his arms and pulled his T-Shirt. The 2nd accused removed his two silver necklaces, worth SR4,000.00, from his neck. Mr. Rachel struggled and managed to free himself from the hold of his assailants. Soon after, he heard the 1st accused said "take out that knife" and Mr. Rachel was scared. Thereafter a fight ensued between Mr. Rachel and his assailants. Mr. Rachel fell to the ground and felt the two accused persons searching his pocket. Mr. Rachel pressed his pocket in order to prevent them from removing whatever was there – a mobile phone and SR2,500.00. The two accused persons struggled with him, removed his shorts and they ran away with the mobile phone and the money. Later on Mr. Rachel heard a female voice calling him by his nickname "Son". Mr. Rachel was bleeding from a wound to his head which he had received from the 2nd accused persons. Mr. Rachel was later assisted by two Police Officers, Mr. Harry Joe and Ms. Itianne Bonne who had come to the scene just after the incident. These Officers had received a phone call from a person and their evidence corroborated that of Mr. Rachel regarding the injuries to his head.

Police Officer Itianne Bonne saw Mr. Rachel bleeding profusely from his head and she caused him to be transported to the Casualty Department of the Victoria Hospital. Police Officer Samy Ghislain confirmed that he was the one who took possession of a necklace from one of the accused persons which Mr. Rachel confirmed as being his. There is no doubt in my mind that that necklace belonged to Mr. Rachel.

Police Officer Jean Paul Ernesta properly conducted an identification Parade and Mr.

Rachel identified both the accused persons without hesitation as the persons who had attacked him.

I totally reject the contention of the defence that the two accused persons charged before this Court are not the perpetrators of the crimes on Mr. Wilson Rachel . I reject the unsworn testimony of 1st defendant as being unfruitful. I am satisfied beyond reasonable doubt that they were properly identified by Mr. Rachel. Mr Rachel had met them earlier that day and had seen them and engaged in conversation with both of them. Mr. Rachel later the same day met them again at Krishnamart shop and interacted with them and there were sufficient lightings then. At the time and place the actual robbery took place lightings might have been poor or none at all, but as I found, Mr. Rachel and the two accused persons had been interacting with each other earlier than that. He had talked to them, observed their built, recalled their voices, noted their interests in getting his necklaces, cannot be ignored in the circumstances for me to reach a conclusion that Mr. Rachel was not mistaken as to the identity of the two accused persons. An identification Parade was mounted and again Mr. Rachel picked none others than the two accused. Here it was not a question of a 'fleeting moment' identification.

I have considered the point raised by Defence Counsel with regard to the wording of the particulars of the charge. Both accused are represented by Counsel. There is no ambiguity in the charge itself to which they have pleaded. The addition or omission of the words "having common intention" does not cause any ambiguity and neither does it amount to a defect in the charge or it being bad in law.

The evidence of the Prosecution established to my satisfaction beyond reasonable doubt that on 14th May, 2005, the 1st accused Mr. Roger Eulentin and the 2nd accused Mr. Kevin Zelia stole from Wilson Rachel 2 silver necklaces, 1 Mobile Phone and the sum of

SR2,500.00 and immediately before or at the time of or later after the stealing, the two accused persons applied violence on the person of Mr. Wilson Rachel. Further, I have no reasonable doubt that the two accused persons had the intention to steal from and use violence in the process on, Mr. Wilson Rachel.

From the evidence I also conclude without any reasonable doubt that the two accused persons had formed a common intention to pursue the crimes committed by them on the person of Mr. Wilson Rachel on the material day.

For reasons stated above I find both accused persons, Mr. Roger Eulentin and Mr. Kevin Zelai guilty of the offence as charged, namely – “robbery with violence”, which is contrary to and punishable under Section 281 of the Penal Code read together with Section 23 of the Penal Code”, and I convict them accordingly.

.....

B. RENAUD
ACTING CHIEF JUSTICE

Dated this 27th day of July 2009