IN THE SUPREME COURT OF SEYCHELES

THE REPUBLIC

V

NELSON ROSE

PAUL DUBOIS

Criminal Side No. 34 of 2009

Mr. Esparon for the Republic

Mr. Hoareau for the accused

RULING

M. N. Burhan, J

I have considered the submissions made by learned counsel on behalf of the 1st and 2nd accused, at the close of the prosecution case in regard to his contention that both accused had no case to answer and the prosecution's reply in respect of same.

In the case of ***R vs. Stiven 1971 SLR 137*** it was held what court has to consider at this stage is whether;

a) there is no evidence to prove the essential elements of the offence

charged.

b) whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal would safely convict.

In the case of ***R vs. Olsen 1973 SLR No 5 at page 189*** it was held that as to whether there is a case to answer should depend not so much on the whether the adjudicating tribunal would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict.

Archbold in Criminal Pleadings Evidence and Practice 2008 edition at page 492 sets out the principle in a no case to answer application.

> "A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, if properly directed, would convict"

The main contentions of learned counsel for the 1st and 2nd accused were;

a) there was no evidence establishing common intention and the elements of the offence charge.

that there were material inconsistencies in the evidence of the prosecution witnesses and therefore their evidence could not be accepted by a reasonable court.

On considering the submission in respect of common intention it does not necessarily in all cases imply that the prosecution proves an express agreement or prearranged plan before the act. The agreement may be tacit and common intention conceived immediately before it is executed. The inference of common intention could be gathered by the manner in which the accused acted and the concerted conduct in the commission of the offence. These are all matters to be taken into consideration as a whole in determining common intention. The evidence of the prosecution shows that both accused had been on either side of the deceased holding him and taking him towards the cell into which he was finally pushed into. The evidence shows that it the 1st accused in the presence of the 2nd accused pushed the deceased into the cell resulting in him falling on the ground and thereafter lying still. The doctor's evidence in regard to the cause of death is supportive to the incidents narrated by the prosecution witnesses and not the suggestions made by learned counsel for the defence. Although there may be slight discrepancies in the evidence of the prosecution witnesses, it cannot be said that the evidence of the prosecution with regard to material facts has been so discredited or is so manifestly unreliable that no reasonable tribunal would safely convict. Further it cannot be said at this stage that there is insufficient evidence to prove the essential elements of the offences the two accused are charged with.

For the aforementioned reasons this court is satisfied that there is no merit in the application that the 1st and 2nd accused have no case to answer. Considering the evidence before court at present court is satisfied at this stage that a *prima facie*

case has been established by the prosecution against the 1st and 2nd accused.

Therefore this court proceeds to call for the defence of both the accused.

M. N. BURHAN
JUDGE
Dated this 23rd July 2010.