

IN THE SUPREME COURT OF SEYCHELLES

**THE REPUBLIC
VERSUS
XAVIER LOUIS**

Criminal Side No. 14 of 2009

JUDGMENT

Burhan J

The accused in this case Xavier Louis stands charged as follows;-

Count 1

Attempted murder contrary to and punishable under section 207 of the Penal Code.

The particulars of the offence are that Xavier Louis of Copolia Mahe on the 18th day of April 2009 at Copolia Mahe unlawfully attempted to cause the death of another namely Emmanuel Allisop.

In the alternative to count 1

Count 2

Act intended to cause grievous harm to a person, contrary to section 219 (a) of the Penal Code and punishable under section 219 of the Penal Code.

The particulars of the offence are that Xavier Louis of Copolia Mahe on the 18th of April 2009 at Copolia, Mahe with intent to cause grievous harm to Emmanuel Allisop, caused grievous harm to the said Emmanuel Allisop.

The accused denied the charges and trial against the accused commenced on the 3rd of June 2009.

The principal prosecution witness the victim Emmanuel Allisop testified to the fact that on the 18th of April 2009 around 8.30pm, while he was washing dishes outside his house, the accused had come up from behind and attacked him cutting him several times on his back, legs, arms and toes with a sword. When he had fallen down he had told him “eventhough you call my name I will kill you today cunt of your mother.” Even after he had fallen down the accused had continued to cut him repeatedly on his feet, legs and toes. Witness further stated that when he realized that he was not moving the accused was about to cut off his head but he had raised his hand and his hand had taken the blow severely injuring it. At that time his brother had come in and scared him off. The accused had been wearing a mask, goggles, a dark blue jacket with a hood and trousers of the same colour, He stated the accused was also wearing army boots and in his hand there was a sword.

Witness further stated he had recognized the accused because as he attempted to run away, the accused had slipped and fallen and his mask had come out and witness had seen part of his face and when the accused had said he was going to kill him today he had recognized his voice. He had known the accused for a period of 5 years prior to the incident had spoken to him well and knew his voice. On several earlier occasions the accused had threatened him and come to beat him and he had had to hide and had even threatened him with a dagger on an earlier

occasion and on each occasion, he had run away in fear. He further stated that the accused suspected him of being with his wife which fact witness denied.

Under cross examination the victim stated that before the incident he had done a tattoo on his neck with the words “nobody can judge me” and the accused had seen it and had looked at him in a strange way which had scared him. When his brother had come the accused had jumped over him to fight his brother but slipped on his blood, the accused had then got up picked up his weapon and his mask and gone and thereafter thrown a tuna cracker at the house which exploded. He stated the accused’s mask had fallen and the accused had picked it up and run away. Witness further stated that the cut had exposed his lungs and it was because he had attempted to run away from the accused that he had not been killed He denied the defence suggestion that it was not the accused who had come that day.

Dr. Fan giving evidence stated that that on the 18th of April he had seen the patient by the name of Emmanuel Allisop. The patient was bleeding from his injuries and there were cuts on the back which had cut through his muscles. When he arrived the doctor and staff who were there had already taken steps to stop the bleeding. Dr. Fan further stated that as some of the big veins had been cut, if he had kept on loosing blood it would have resulted in death and acknowledged the fact, the injuries were life threatening. The arm he said was cut and the tendon too which would reduce the function of the hand. He stated under cross examination that most functions could be restored by physiotherapy but not all. The medical report was produced as P1.

Sub Inspector Jude Bistoquet attached to the Scientific Support Bureau at Mont Fleuri stated he was asked to attend a scene of attempted murder at the house of

one Alex Allissop. He had taken photographs of the scene and made his observations. He produced photographs P2 to P20 of the scene and P21 to 25 showing photographs taken of the victim Mr. Allisop. He stated that from the residue of a tuna cracker left near the tear in the roof, he came to the conclusion that it was the tuna cracker that had exploded on the roof. With a physical examination he could say that the tear on the roof was fresh. Constable Pedro Edmond stated he was the first officer on the scene. He stated there was a lot of blood on the scene when he arrived and the victim was being taken to hospital. He had been cut on his back, arms, legs and underneath the feet. He stated the photographs depicted the scene as it was when he arrived.

Officer Nicol Moustache giving evidence stated that on the 23rd of April 2009 he and Sub Inspector Bell had gone to the house of Mrs. Joeline Louise with a search warrant. The items taken into custody from the room of the accused namely a sword, mask, gloves, woolen hood and boots were marked as exhibits. After taking the exhibits into custody he had kept the exhibits with him in his locker till as such time he produced them in court.

The other witness Alex Allisop brother of the victim gave evidence stating that on the 18th of April around 8.30 pm, he was at home when he heard his brother who was washing dishes screaming “Ayoyo” and he heard dishes falling and his brother had come running out from the kitchen and fallen down. Then he had seen a man come from inside the kitchen and slash his brother. He had recognized the accused when the light shone on him and had said “Hey you Xavier you come from Copolia and you do things down here” and when threatened by the accused with the sword he had run inside. While he was searching for something to defend himself with, he had seen the accused running away. Soon after a tuna cracker had

exploded on the roof. Thereafter he had attended to his brother till the ambulance came and had carried him to the ambulance in a stretcher as the ambulance personal were awaiting for the arrival of the police before entering the house.

The other witness called by the prosecution Sergeant Franc Octobre stated that he was working in the Criminal Investigation Department and he had recorded the statement of the accused Xavier Louis in the presence of Lance Corporal Sabri. He stated that the accused rights were read over to him and the accused was cautioned prior to his statement being recorded. The statement was marked as P32 and translation as P32a. There were no objections from learned counsel at the time the said statement was produced in court. Under cross examination he denied that he recorded something completely different to what the accused said. He stated the statement was read over and explained to the accused and that the accused had signed the statement acknowledging this fact but it was not him who had read it over to the accused. He stated the items mentioned in the statement were taken into custody by officer Belle and another. He denied refusing an opportunity of a lawyer to the accused. He denied the fact that what was written was not being produced in court. Thereafter the prosecution closed its case.

The accused in defence gave evidence under oath and called as witness Mr. Brian Julie, Marie Lina Santache , Johnny Louise, Michael Sophola and Medline Melon. The accused stated he worked as a casual labourer in the port in tuna fishing vessels and on the 18th of April 2009, he left his residence at 4.00pm and went to Corgate Estate to get some DVD and CD movies. He stated three friends were with him namely Andy Franchette, Michael Sophola and Paul Nourice. Thereafter around 6.45pm, he had gone next to the Deepam Theatre and bought some pop corn. He had then approached a taxi driver who had agreed to take him to Copolia

for Rs 60. He had got down from the taxi at the flats near Copolia where his sister and some of his friends lived. He stated his sister's name was Marie Lina Santache. He had heard the 8 o'clock news starting and decided to go in the house and look at the news. He stated he had seen his cousin Marcus Santache and another family member Johnny Louise. After the news finished he had spoken to a few friends and decided to go back to his parents place. He stated it was a 20 minute walk from his sister's house to his parents. He further stated he reached his home around 10 minutes to nine.

Thereafter he had his dinner watched television and after that left the house to burn charcoal. He stated when he burnt charcoal he had to stay there as there was danger that something would go wrong and a fire could start. When he went home in the morning there was nobody present in the house and the house had been ransacked as if someone had come to look for something. He had looked for his mother but could not find her and then he had had his breakfast and gone back to where the coal was burning, got everything under control and left after putting out the fire. He had spent about 6 hours there and thereafter on going home as his mother was not there, he had gone to his sister's flat again.. She was not present while he was talking to some friends he had been arrested. He stated that for his work on tuna vessels he had plastic trousers, gloves and a hood which he kept in his room.

Thereafter he described the threats and beatings he had undergone at the police station. He had had the services of a lawyer at court and had shown the injuries he had suffered at the hands of the police, the police had agreed with his lawyer to take him to the doctor but had taken him back and tortured him further.

Under cross examination he admitted he did not show the court his injuries but showed his lawyer but the lawyer had not told court about it. However thereafter

he stated he told his lawyer but no order was made by court. The accused identified the mask, hood, gloves and the sword as his. He stated further that he had not met Mr. Allisop before and never talked to him. It is to be noted the accused has made no allegation of any friendship between the victim and his wife.

Witness Brian Julie stated he represented the accused in the magistrate's court. He stated that he had before going to court seen the marks on the accused wrist, one on his chest and another on his right hand. The accused had said the police had beaten him up. He had told the accused he needed medical attention. Under cross examination he said he had brought it to the attention of the magistrate. He admitted he could not say whether it was the police who had beaten him up as he relied on what the accused had said. The other witness Marie Lina Santache, the sister of the accused testified that the police had come to her place at 9pm when she was sleeping and inquired whether she had a son. She stated she had seen her brother Xavier Louis around 7.30pm talking to some friends. Under cross examination she stated she saw him come in to watch the news but he could have left the house at any time as she had not seen him leave.

The other witness Johnny Louis stated that he was with Xavier Louis at Copolia near his sister's flat just before he went in to see TV. He had been around till 8.45 pm but Xavier had not emerged. Under cross examination he admitted he did not see Xavier Louis go in but saw him on the verandah of the house. Witness Michael Sophola told that he had met Xavier Louis at 6pm at Corgate Estate while Medelin Melon stated he had seen Xavier Louis under the verandah of Marie Lina Santache house after the 8pm news. He had been with him for 5 minutes and obtained a Mahe King cigarette from him. Thereafter the defence closed its case and both parties tendered written submissions.

When one considers the defence of the accused, it is clear that it is one of an alibi. He has stated that at the time of the incident which was around 8.30pm on the 18th of April 2009 he was at his sister's flat and had watched the 8 o'clock news and after it finished, spoken to some friends outside the flat, walked to his home which was about 20 minutes away and arrived at his home around 10 minutes to nine. He had after watching television and after having his dinner, gone out to burn charcoal which had kept him occupied till morning. It is to be noted that the accused gave a statement to the police in respect of the said incident when he was arrested. The said statement was produced in court as P32. There was no objection to its voluntariness at the time the said statement was produced in court, Therefore this court could come to the finding that the said statement was given voluntarily by the accused to the police. On perusal of the said statement there is no mention of an alibi of any sorts. It is therefore apparent that the said evidence given in respect of the alibi is completely contrary to the voluntary statement given by the accused P32 and therefore on that ground alone could be rejected. It is also apparent that most of the witnesses called to corroborate his alibi are family members or close relations. Had his alibi been genuine, he would have definitely mentioned it in his voluntary statement to the police which he failed to do. Therefore the defence of alibi is rejected.

The other defence of the accused is that the statement produced was not the one given by the accused. However according to the evidence before court the accused has signed the statement produced in court several times. He has not contested the fact by cross examination that the signature on the said statement was not his. He has not stated anywhere in his evidence that the police took more than one statement from him or obtained his signature on more than one statement.

Therefore learned counsel's contention that another statement and not the statement made by the accused was produced or what he said was not produced in court is unacceptable.

Further Sergeant Octobre denied that he recorded something completely different to what the accused stated. He stated though not by him, the statement was read over and explained to the accused and that the accused had signed the statement thereby acknowledging the fact it was correctly recorded. It is to be noted another police officer lance Corporal Sabri was also present at the time. The accused did not seek to deny his signature that appeared on P32. Therefore the defence contention that another statement had been produced or that the accused did not state such facts in the statement bears no merit.

It is to be noted further that learned counsel had been served by the prosecution with a copy of the statement the prosecution intended producing, learned counsel had ample time to prepare his defence and peruse the contents of the statement but yet has sought not to object in respect of the voluntariness of the statement even after being aware of its contents at the time it was being produced.

It is also alleged by the accused that he was severely tortured and punished at the police station. He states that he showed the marks on his hands to his lawyer. However no medical evidence exists to show that he in fact did have injuries resulting from a police assault. It is to be noted further although represented by counsel even at the early stages of this case, he has not been advised to obtain a medical certificate to establish same. The police officers in their evidence have denied any force was used by them on the accused and the victim in this case states that the accused slipped on his blood and fell on the ground at the time of the

attack. Considering all these facts, the evidence of the accused that he was tortured by the police officers cannot be accepted.

For the aforementioned reasons I find that the statement of the accused marked P32 has been given voluntarily by the accused and is a proper record of what he stated and is admissible as evidence in this case.

If one is to seek corroboration in respect of the facts contained accused's statement, his statement stands corroborated by the other evidence led in the case. The fact that he came to the house of the injured Emmanuel Allissop is corroborated by the victim's evidence as he had identified the accused when his mask had fallen off at the time of the fall and had identified him also by his voice as the victim says he knew him earlier and recognized his voice. He admits inflicting injuries on the victim in his statement, the fact that he did cause such severe cut injuries on the victim with a machete stands corroborated by the independent evidence of Dr. Fan and the medical report P1. The fact that his victim Emmanuel was bleeding as mentioned in his statement is corroborated by the by the independent evidence of the police officers who arrived and conducted investigations on the scene who state there was a "lot of blood" at the scene of crime. The accused in his statement states the victim's brother had come out during the attack, this fact is corroborated by the evidence of the victim's brother Alex Allisop. The fact a light was on at the time of the attack as mentioned by the accused in his statement, is also corroborated by the evidence of the victim and his brother. The accused states in his statement, he had thrown tuna crackers on the house when he was leaving, this is corroborated by the evidence of police witness SI Jude Bistoquet who states there were residue of tuna cracker on the roof and damage as a result of the cracker exploding. Therefore

even if one is to seek corroboration in respect of the facts contained in the accused's statement ample exists.

When one considers the evidence of Dr. Fan and the medical report, it is clear that the injuries inflicted by the accused did in fact result in Grievous Harm to the accused as permanent impairment or loss of complete function resulted as the cut injuries to muscles and tendons limited movement of the right hand, and the 1st 2nd and 3rd toes of the left foot. It is to be noted that grievous harm is defined in section 5 of the Penal Code as follows:

“Grievous harm” means 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 extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense.

When one considers the evidence of the prosecution in this case, it is clear from the evidence of the victim that the accused while cutting the victim stated “eventhough you call my name I will kill you today cunt of your mother”. Further the accused had used a sword as a weapon in the attack and repeatedly cut and hacked at the victim with the sword even after he had fallen down, resulting in grievous injuries which were acknowledged as life threatening by the doctor. In addition he had aimed a blow with the sword to cut off the victims head which was warded off by the hand of the victim resulting in grievous injury to the hand. The length and depth of the injuries described by the doctor and the number of injuries caused, speak of the force intensity and savagery of the attack on the victim. All this actions taken together, clearly indicate that the accused was having the intention to

kill the victim and by an unlawful act did attempt to cause the death of the victim Emmanuel Allisop.

Section 199 of the Penal Code contains the definition of causing death. The sudden, unprovoked, continuous and vicious attack on the victim, using a deadly weapon as a sword even after he had fallen down, resulting in several life threatening and grievous injuries to the victim, clearly indicates to this court that the accused was attempting to cause the death of the victim but the desperate efforts of the victim in warding off the blow directed to cut off his head and the timely intervention of the victim's brother prevented the accused from taking the life of the victim and thus the accused failed to accomplish his intended act of killing Emmanuel due to circumstances independent of his own will.

The accused himself in his statement, admits taking a machete and admits injuring Emmanuel more than once. In his statement he admits throwing two tuna crackers on the roof of the house of the victim. Considering all this evidence as the evidence of the prosecution in respect of all the above mentioned facts stands uncontradicted and corroborated, this court is satisfied beyond reasonable doubt that the prosecution has succeeded in proving all the ingredients of the charge of attempted murder beyond reasonable doubt.

For the aforementioned reasons I find the accused guilty on count 1 and proceed to convict him of same.

M.N BURHAN

JUDGE

Dated this 02nd day of February 2010