

IN THE SUPREME COURT OF SEYCHELLES

REPUBLIC

VS

RICKY GOVINDEN

Criminal side no: 45 of 2010

Mr. Kumar for the Republic

Mrs. Amesbury for the Accused

JUDGMENT

Burhan J,

[1] The accused in this case has been charged as follows:

Count 1

House breaking contrary to section 289 (a) of the Penal Code.

The particulars of the offence are that Ricky Govinden a farmer of North East Point Mahe on the 16th of July 2010 at North East Point, Mahe did break and enter the house of Mr. Gervais Pool with intent to commit a felony therein namely robbery.

[2] Count 2

Attempted Robbery with aggravation contrary to section 282 of the Penal Code.

The particulars of the offence are that Ricky Govinden a farmer of North East Point, Mahe having broken and entered the house of Mr. Gervais Pool being occupied by Shang Chun Ping, a Chinese lady, attempted to rob the said Shang Chun Ping by pressing her mouth with a towel containing vinegar and told her not to scream and asked her for money and at the time of the assault on the said Shang Chun Ping in order to steal money from her and at the time was armed with an offensive weapon namely a knife.

[3] The accused denied the charge and trial against the accused commenced on the 3rd of August 2010.

[4] The principal witness for the prosecution Shang Chung Ping testified to the fact that she was a Chinese national who was on holiday in the Seychelles and was residing in a house at North East Point at the time of the incident. On the 16th of July 2010 at 07.30 hours she had heard a noise outside her house and had gone to the door and opened it when she had seen the accused standing outside. He had put a knife on her neck, she had tried to scream but he had put a towel on her mouth with vinegar and asked her to give him money. She had said the money was in her bag and when he went to get her bag she had managed to run out of the house and had informed the owner who had come on hearing her scream that there was somebody in the house wanting to kill her. The owner and his son had gone into the house and she had run outside. She further stated that when the accused came in she had not seen his face properly because he was wearing a mask but she had seen

him properly after he had been caught by the house owner and when he was being escorted out of the house by two policemen. Under cross examination she admitted she did not see the face of the accused when he attacked her but she had seen his eyes.

[5] The other witness called by the prosecution Police Constable Marcus Benjamin Jean stated that he was working at the Beau Vallon Police station when he received a message that his assistance was needed at the Anse Etoile police station and thereafter he and another officer had proceeded to the scene and had met Mrs. Pool who had directed them to the house where the accused was being held. When they arrived the accused was in a room facing the sea and seated on the bed. They had seized a dagger, a towel, a T shirt, a bottle containing a black substance and a clear plastic bag. Thereafter he had handed over the exhibits together with the accused to Sergeant Edmond the station commander at the Anse Etoile Police station.

[6] Under cross examination he stated he was unaware that there was any arrangement between the Chinese lady and the accused but mentioned that the Chinese lady was crying when he arrived. He admitted there was no sign of breaking and entry (vide page 6 of the proceedings of 11th November 2010 1.45 pm). The dagger was next to the accused on the bed. He stated he had informed the accused of his constitutional rights and cautioned him prior to the accused being arrested. SI David Belle stated that he worked with the Criminal Investigation Department and was in charge of the Northern sector and on the said date he was at the Beau Vallon police station. He stated he had gone to the scene of the incident and met the Chinese lady and thereafter had gone to the Anse Etoile police station and collected the said exhibits and

the accused. The accused was cautioned and an opportunity given to him to speak to his lawyer Mrs. Amesbury.

[7] Sergeant Robin Omblime stated he received the exhibits from SI Belle and produced them as P1 to P5. He stated there were no finger prints on the bottle of vinegar or the dagger or on the clear plastic bag. Mr. Gervais Pool giving evidence stated on the said day he was with his wife in the kitchen, preparing breakfast for his youngest son when he heard a scream from the house situated about 150 to 200 metres from his house which too was owned by him. He stated there was a Chinese lady who was occupying the house. He had run to the house and while climbing the stairs to the house he noticed the lady inside and she had made a sign to him that someone was inside. Then she had run out of the house and locked the door and told him there was a man armed with a knife inside. He noticed a couple of louvers were missing in the kitchen. He had told the lady to tell his wife to call the police. His son who was 19 years of age too had come to the house. Witness had then taken a knife lying in the kitchen and gone in. He noticed inside the house a tall person with his head and face totally wrapped in a T shirt. The person was trying to escape from the house and when he was trying to go out through another bedroom window in the house he had gone and pulled him inside. He had told him to sit on the bed and remove the T shirt covering his face and when he did so witness identified him as Ricky Govinden who he identified as the accused in the dock. His son who had come in had noticed the accused had a knife on his side and he had pulled it out and kept it on a table close by.

[8] The wife of witness Gervais Pool corroborated the evidence of her husband. PC Marcus Benjamin and SI Belle too identified the exhibits P1 to P5. Mr.

Shafi Marcel Pool the son of Mr. Gervais Pool stated he was sleeping when his mother woke him up and said there was a thief in the wooden house which was about 200 metres from their house. He had run to the house with his friend who was with him. He corroborated the evidence of his father Gervais Pool and stated that he too had a stick in his hand and when the accused had removed his mask he had identified him as Ricky Govinden who he knew earlier as they had played football together. Witness too identified the exhibits. He too stated that the dagger was next to the accused so he had taken it and kept it on a table close to witness. Thereafter the prosecution closed its case.

- [9] The accused in defence gave evidence under oath. He stated that on the day he was arrested he was invited by the complainant in this case. He stated he had developed a friendship with her and he had come in the night and when he was due to leave in the morning there was an argument with her. He stated she was doing illegal business buying sea cucumbers and processing them at the house and he had threatened to inform the police about it. There was an argument and she began to shout and Mr. Gervais Pool had come and she had gone to the door and he noticed she was trying to frame him as Mr. Gervais Pool was calling to his wife to call the police. He had covered his face with his shirt because Mr. Gervais Pool, his wife and children knew him. He stated in his evidence he was having a relationship with her. He further stated the vinegar, the knife, the towel and plastic bag all belonged to the complainant. He denied breaking into the house and stated that she had invited him. Thereafter the defence closed its case and both parties made oral submissions.

[10] When one considers the defence of the accused, it is apparent that he claims that he was in the house of the complainant as she had invited him the night before as both of them were having a relationship. He further mentioned in his evidence that they had an argument and as he had threatened to inform the police that she was doing an illegal sea cucumber business she had decided to frame him. However when one considers the cross examination of the complainant on behalf of the accused which was conducted in the presence of the accused by his counsel, there was absolutely no mention of these facts or any suggestion made to the complainant Shang Chung Ping namely that she was having a relationship with the accused or that she had framed the accused as he had threatened to inform the police of her illegal business. Therefore this defence cannot be accepted by court as it is apparent the said defence is fabricated and an afterthought as it is not supported in anyway in the cross examination of the main witness the complainant herself. Thus the defence and the evidence of the accused that the exhibits were not his is unacceptable and therefore rejected.

[11] When one considers the evidence against the accused in respect of count 1 namely the charge of breaking and entering with intent to commit a felony eventhough there is evidence that the louvres in the kitchen window were missing it is apparent on considering the complainants evidence in chief that the complainant had heard a noise outside the house and on opening the door the accused was outside and had entered and held a knife to her throat and a towel to her face and asked her for her money. There exists some confusion as to whether she opened the door to her bedroom as borne out in the cross examination or the door to the outside. Therefore having considered the evidence in this case this court is of the view that the

prosecution has failed to establish the elements of count 1 namely “breaking and entering” and therefore proceeds to acquit the accused of count 1.

[12] With regard to count 2 the evidence of the complainant that the accused had entered the house with a knife (dagger), scratched her dress and held the dagger to her throat, placed a towel with vinegar on her face and then asked for her money on the said date and time could be accepted as the accused had been virtually caught in the act of committing the offence as when she had screamed Mr. Gervais Pool her neighbour and houseowner and his son had come and caught the accused while he was in the complainant’s house and attempting to escape. They had observed he had the dagger by his side and had used a T shirt to cover his face as a mask which they had got him to remove on catching him and they had also found a towel. Thus the evidence of the complainant that the accused had held a dangerous weapon namely a dagger to her throat and a towel to her mouth while asking for the money could be accepted. The evidence of Mr Gervais Pool is corroborated by the evidence of his wife and son. It is therefore evident when one considers the acts committed by the accused that he had the intent to use actual and personal violence on the complainant with a dangerous weapon in order to obtain her money.

[13] Even though the accused had covered his face while committing the act and the complainant could see only his eyes he had been recognized by the Mr. Gervais Pool and his son as the accused Ricky Govinden, when they had caught him in the house itself and told him to remove his mask which was a T shirt wrapped round his face. It is to be noted he had been masked at the time he was caught by them. Further the complainant had seen his face properly the moment he was being led out of the house by the policemen and

identified him as the accused in the dock. Considering the evidence of the prosecution witnesses there is no doubt in my mind that it was the accused who had committed the act of attempted robbery on the complainant Shang Chun Ping and had been caught in the act and thereafter handed over to the police together with the exhibits in the case. For the aforementioned reasons this court is satisfied that the prosecution has proved beyond reasonable doubt all the necessary elements as set out in section 282 of the Penal Code Cap 158 and those necessary in the particulars of offence

[14] Therefore this court while acquitting the accused on count 1 proceeds to find the accused guilty on count 2 and convict him of same.

M. BURHAN

JUDGE

Dated this 11th day of March 2011