

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 15/2012

[2013] SCSC

THE REPUBLIC

versus

JOSE NENESSE

Accused

Heard: 26 July 2012, 16 November 2012, 17 January 2013, 28 January 2012

Counsel: Mr. H. Kumar, Assistant Principal State Counsel for the Republic
Mr. N. Gabriel Attorney at Law for the accused

Delivered: 26 November 2013

JUDGMENT

Burhan J

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

[2] Count 1

Statement of offence Robbery with aggravation contrary to Section 280 of the Penal Code and punishable under Section 281 of the Penal Code.

The particulars of the offence are that Jose Nenesse of St. Louis Mahe on 23rd February 2012 at Cash Plus Money Changer at Albert Street, Mahe robbed Ms. Brigitte Pierre, a cashier of Cash Plus Money Changer a total sum of money amounting to Seychelles Rupees 119,850/-, Euro 840.00/-, USD 1,000.00/- and GBP 230.00/- and at the time of such robbery was armed with an offence weapon namely a knife.

- [3] The accused denied the charge and the prosecution called Mr. Bouzin the Government Analyst who had analyzed the footage on a CD labelled Cash Plus. It contained video footage of a robbery which happened on the 23rd of February 2012. The basis of the letter of request sent to Mr. Bouzin was to analyse the video footage and first try to identify the perpetrator and second to identify items of clothing worn by the perpetrator. He stated he had examined the footage and noted it commenced on the 23rd of February 2012 and ran for a duration of 3 minutes 18 seconds. It started at 1 o'clock 6 minutes 12 seconds in the afternoon and ended at 1 o'clock 9 minutes 30 seconds in the afternoon. The footage consisted of 4 channels which show 4 cameras concurrently. He had obtained 4 images from camera 3 also referred to as channel 3 showing the face of the perpetrator at different angles each image was labelled B1, B2, B3 and B4. He stated he had slowed the speed of each of the images and obtained separate frames. He also described the sequence of events shown in the video recording.
- [4] He stated he had printed 10 images he had extracted from the video. The CD was produced as P1. He produced them as P2 (1 to 10). He produced his report as P3. He identified the photographs being that of a dark skinned male. He could establish from the photographs that the person was wearing a black cap a white long sleeved T shirt with logo HP, one blackish short and a pair of sport shoes. He stated the cap was pulled down and used as a mask. He admitted under cross examination that other than these features he could not identify the accused.
- [5] Witness Dave Azemia stated that he was attached to the Scientific Support and Crime Record Bureau and stated he was informed there was a robbery with violence at Cash Plus and he had proceed to the scene and arrived around 2.05 p.m. He had investigated the scene of robbery. He had met a lady called Brigitte Pierre who had been handcuffed. He noticed on the floor of the counter some money and that the drawers had been

ransacked. He also noticed an object on a cabinet behind the counter wrapped in news paper. Having removed the news paper he identified the object wrapped as a machete with a wooden handle. He had photographed the scene and had removed the handcuff and taken it as an exhibit. No latent finger print impressions were found on the scene. They were shown the video footage which was later handed over to him. He thereafter produced the photographs taken of the scene of the incident, the handcuff, the machete and newspaper taken into custody from the scene of the robbery. There were finger prints on the handcuff but were not identified as that of the accused.

- [6] Witness Jimmy Joseph stated his occupation was that of a CCTV and Alarm Systems technician at DG Vision House. On information received from Mr. Sharret, he had proceeded to the scene of robbery at Cash Plus as requested and downloaded the video recording on a pen drive. They had run the video footage and observed it.
- [7] Witness Brigitte Pierre stated that she had worked at the Victoria branch of Cash Plus Bureau De Change attending to customers for three years. On the 23rd of February 2012 she had been working and around 12.00 her friend Jona Esparon had left her and gone out for lunch. She was alone and just after eating she was checking the money when she had heard the door open. She had glanced at the door to see who it was but from where she was she could not see the person's whole body but had noticed white clothing as she could only see the left arm. When the person came towards her she noticed that he had a woollen cap which he had pulled down on his face and there were only two holes for his eyes.
- [8] She identified him to be a man by his body structure and when she saw him masked she had run to the door to get out. He had jumped over the counter since there was a space between the counter and the ceiling. When he was jumping over the counter, she noticed something in his hand wrapped in paper and looking at it she presumed it was a machete. She had begged him not to harm her as she had children. He had thereafter handcuffed her. He had wiped the handcuff on her wrists. She had told him he could take the money. He had made her stand in a corner while he collected the cash, the Seychelles Rupees and foreign currency and left. He had told her not to shout and asked her to open her mouth

and forced a cloth into it. Then he left and as he was leaving he had lifted the mask from his face.

- [9] She described the person as not very tall, about her height, quite slim wearing a white long T shirt which had on the back a mark HP laser. His head was a bit pointed upwards and he was wearing a knee length short and his bag was black and white. She identified herself as the lady in the video. She admitted she had not seen the face of the person who had robbed Cash Plus that day. Witness stated that despite her hands being handcuffed she was able to dial her boss Mr. Francoise Rose.
- [10] Mr. Francoise Rose in his evidence corroborated the fact that witness Brigitte had immediately phoned him after the robbery. He and one of his staff Sharath had run to the office from where they were. He had arrived at the scene and witnessed Brigitte in handcuff and visibly shaken. She had related what had happened and he had immediately called the police who arrived about half an hour later. They had called Mr. Jemmy Joseph who had installed the security system. They all had observed the CCTV recording in the presence of the police officers. He stated that around SR 119,850.00, Euros 840.00 and GBP 230.00 were missing. A voucher containing the details of the money lost was produced as P8.
- [11] Mr. Sharath Kumar also corroborated his evidence. Witness Alice Carol who worked in a shop called Kids Stuff close to the scene of incident stated around 9.30 in the morning of the 23rd of February 2012 she had seen the accused wearing a long sleeved green jacket and gloves and walking up and down. She had noted he was wearing these items on a very hot day and was acting as if he was delirious. She had known him prior as a traffic police officer. She also noted something protruding from his back pack wrapped in news paper. He had seen her looking at him and walked towards her but she had gone into the shop. She admitted she had not seen him steal anything.
- [12] Witness Raddy Gervais Belle stated that around 11.00 in the morning on the 23rd of February 2012 he had come down to town to buy some goods and fish. On the way to the bus terminal he had passed the Jivan's building around 12.40 he had met the accused Mr. Ninesse who he knew well. He had known him to always dress like a gentleman but when he saw him that day he was dressed in a white T shirt with long sleeves, a black

short, a back pack and the back pack had something sticking out of it which was wrapped in a blue shirt. When he got to the bus terminal he had taken the bus which had gone past the traffic light and he had seen the accused standing in the same position near the Jivan building and the time was around 1.00 p.m.

- [13]** Witness stated he had known Jose Ninesse well because witness had been his supervisor at Sentinel Security. In the 8.00 pm news, it was announced that Cash Plus had been broken into and based on the description he had phoned the police to give them the information it was Ninesse. He had gone to the police station and they had showed him the footage and the T shirt and the shorts and the clothes which were the same he had seen the accused Jose Ninesse wearing that day around the time of the robbery. He identified the clothes again looking at the video. He stated that the accused Jose Ninesse was wearing the same T shirt and shorts as the person committing the robbery shown on the footage. From his evidence it could be gathered he had seen and identified the accused wearing the same clothes around the time of robbery and near the scene of robbery i.e. Jivan building.
- [14]** Witness Noella Franchette stated she was working in the airport guard room when she received information that Jose Ninesse was a suspect in a case of robbery and that he may leave the island. She had gone to the check in counters and the Etihad airline had informed her Mr. Ninesse had come but as there was a problem with his passport he had gone but was coming back. When Mr.Ninesse returned to the airport he was arrested. All the money recovered from him after the search was produced in court.
- [15]** Witness Maxim Payet testified to the fact he had gone to the Etihad office and recovered the money SR 7200.00 which the accused had paid for his ticket. The money was produced to court. Witness Linda Melli stated she was working at the Scientific Support Unit and she was requested to photograph a scene of a room of a house showing money in a carton box in a black plastic and money on the bed and money at the back of a printer. The money was produced as P11 (1 to 7).
- [16]** Witness Gulianne Rene stated that the accused had come to the Air Seychelles to purchase a one way ticket via Abu Dhabi to Manchester. A copy of his passport and ticket were marked as P12 and P13. Sub Inspector David Belle of the Criminal

Investigations Department stated that on the 23rd of February 2012 he had gone with Mr. Barra to the scene at Cash Plus. He had seen Brigitte handcuffed and he too had viewed the footage of the robbery recorded by the CCTV camera. He stated he was able to identify the accused in the video as he had been an ex police officer who had worked under his supervision. He confirmed the fact the accused was arrested at the airport at Point Larue. The accused had requested to speak to his lawyer which request was granted. The accused had refused to give a statement.

[17] They had thereafter obtained a warrant and gone to the house of Veronique Barbe the girl friend of the accused to conduct a search on the 25th of February 2012. He had found foreign exchange in a carton box and Seychelles rupees as well. In all they had recovered 51.290.00 SR 1580 Euros, 1000 US dollars and 130 Sterling pounds. He identified the money found in the house of Veronique from the photographs P11 (1 to 7). He also physically produced the money in court. He had sent the video footage for enhancement to the analyst Mr. Bouzin.

[18] Witness Belle further stated that the room where the money was found was the room where the accused slept and they had entered by removing the louvers as the key was not there. He further stated that a person by the name of Felix Robert was arrested but as there was no evidence against him he was released. He admitted they had found less than what was actually robbed from Cash Plus. He stated that he was able to identify the accused as Jose Ninesse when the footage was being viewed frame by frame with Mr. Bouzin in slow motion as just before the accused had pulled down his mask his face was visible. He further affirmed the fact that the police had put out a communication that anyone who had seen a person with a T shirt with the logo HP was to report to the police. It was then that Raddy Belle had come forward. Witness Jemmy Barra corroborated the evidence of SI Belle in regard to the investigations done and stated that he too was able to identify the accused in the footage at the time he was entering with his face uncovered as he had worked with them earlier in the police force.

[19] Thereafter the prosecution closed its case. The no case to answer application made on behalf of the accused was rejected and the accused in defence chose his right to remain silent and did not call any witnesses. Thereafter both parties made submissions.

- [20] It is to be borne in mind that in terms of Article 19 (2) (h) of the Constitution of the Republic of Seychelles no adverse inference should be drawn from the fact that the accused chose his right to remain silent.
- [21] Having thus analysed the evidence in detail and the written submissions, it is apparent the main contention of the defence is that the accused had not been properly identified by any of the witnesses as his face had been covered at the time of the robbery. The footage and description of the witnesses clearly indicate that the accused was wearing a white long sleeved T shirt with the logo HP, a black trouser and had a back pack. The footage also gives the time the incident occurred was around 1.06 p.m. Witness Raddy Belle positively identified the accused Jose Ninesse wearing the same type of T shirt, black shorts and a back pack as seen on the footage and had seen him dressed in such a manner standing near the scene of robbery, Jivan building around 1.00 p.m. minutes before the robbery took place. Witness Raddy Belle clearly identified the accused as he had been his supervisor when they were working at Sentinel Security. It is therefore clear the accused has been identified as the person who was in a long sleeved white T shirt with an HP logo and black shorts and a back pack not only minutes before the robbery took place but also in very close proximity to the scene of robbery.
- [22] The CCTV footage and the evidence of witness Brigitte clearly establish that the person whose face was covered was wearing the aforementioned items at the time of the robbery. The evidence of SI Belle and Sergeant Barra who viewed the video in slow motion and observed the frames where the face of the person entering Cash Plus was uncovered and could be seen is that they identify the person as the accused Jose Ninesse as he was an ex police officer who had been working with them. Mr. Bouzin the Analyst confirms that from his training he could state that the person in the photograph frame was a dark skinned person.
- [23] Several witnesses speak of something sticking out of the back pack which was with the accused. It is also to be noted that the accused had been seen in the vicinity of Cash Plus as early as 9.30 am that day behaving in a strange manner described by witness Alice Carol as delirious and having a back pack with something wrapped in newspaper protruding from it. It is the evidence of witness Brigitte that the person who robbed Cash

Plus had something which she suspected to be a machete wrapped in news paper and had threatened her with it. This evidence is corroborated by CCTV video footage. Further the machete and the newspaper wrapping left behind were also produced as exhibits.

[24] On considering the aforementioned evidence in its entirety this court is satisfied beyond reasonable doubt that it was the accused Jose Ninesse who had committed the robbery at Cash Plus as described by witness Brigitte and as shown in the footage produced as an exhibit in court. The accused defence in regard to his identity not been established by the prosecution therefore stands rejected. Further as witness Raddy Belle stated he knew and had worked with the accused earlier the necessity of holding an identity parade does not arise.

[25] In addition the evidence reveals that foreign exchange and Seychelles rupees were recovered from the room of the accused at his girlfriend Veronica Barbe's house, after obtaining a search warrant and the large amount of money recovered was produced in court. Further there is evidence to indicate that the accused was attempting to suddenly leave the country as he had bought a one way ticket to Manchester soon after the robbery had occurred.

[26] The evidence of prosecution witnesses stand corroborated by the footage recovered which depicts the sequence of events that occurred when the robbery was taking place. There are no material contradictions in the evidence of the prosecution and therefore I will proceed to accept the evidence of the prosecution.

[27] Having considered the evidence of the prosecution as a whole I am satisfied that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than that of the guilt of the accused. I am also satisfied that there are no other co-existing circumstances which would weaken or destroy the inference of guilt based on circumstantial evidence. I am satisfied the prosecution has successfully excluded any alternative possibility that might point to the innocence of the accused.

[28] On consideration of the evidence of the prosecution this court is satisfied that the prosecution has proved beyond reasonable doubt all the elements of the charge of robbery

and the fact that a machete was used to threaten the victim during the robbery. The accused is found guilty of the charge and convicted of same.

Signed, dated and delivered at Ile du Port on 26 November 2013

M Burhan
Judge of the Supreme Court