

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 53/2012**

**[2014] SCSC**

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**THE REPUBLIC**

versus

**LESLIE PAYET**

First Accused

**CHRISTOPHER NICOLAS**

Second Accused

**DAVE ROSE**

Third Accused

**KELLY DUBEL**

Fourth Accused

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Heard: 12/03/13, 03/07/13, 15/07/13, 29/07/13, 21/07/13  
Counsel: Mr. Vipin Benjamin , Assistant Principal State Counsel for the Republic  
Mr. Brian Julie Attorney at Law for the accused  
Mr. Nicole Gabriel Attorney at Law for the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Accused  
Delivered: 27 January 2014

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**JUDGMENT**

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**Burhan J**

[1] All four accused in this case have been charged as follows;

## Count 1

### Statement of offence.

Robbery with violence contrary to and punishable under Section 281 of the Penal Code read with Section 23 of the Penal Code.

The particulars of the offence are that, Leslie Payet of Majoie, together with persons known to the Republic namely Christopher Nicholas of Hangard Street, Dave Rose of Hangard Street and Ms. Kelly Dubel of Majoie, on the 15<sup>th</sup> of August 2012, at La Promenade, Mahe with common intention robbed Mr. Vijish V Joy of his mobile phone and also around SR100/- in different denominations and also robbed from Mr. Madhu Manoj SR500/- and at the time of robbery used knife and personal violence to the said Mr. Vijish V Joy and Mr. Madhu Manoj.

- [2] The four accused denied the charge against them. Trial against the accused commenced on the 12<sup>th</sup> of March 2013 and Mr. Rajesh Thachappuly stated he had been working as an Administrator at the Indian Ocean Tuna factory since 1999 and was in charge of the welfare of all the Indian workers. On the 2<sup>nd</sup> of August Vijish Joy and Nadhu Manoj who were working as loader and unloader of fish into and out of the racks, informed him they had been attacked near the La Promenade beside the English River school and were not able to work due to body pain and neck pain. As they had lost their mobile phone and money, they were requested to make a complaint to the police. He had told them to go to the Central police station and make a complaint and had gone to meet them. He had noticed a bruise on the right side of the neck of Manoj and a black mark on the eye of Vijish. After the complaint was recorded they had been examined by Dr. Afif Hussein the company doctor.
- [3] Mr. Nadoo Manoj stated that on the 15<sup>th</sup> of August 2012 around 2.40 p.m. his friend Vijish and he were attacked by three persons at La Promenade. He stated 3 Seychellois men and a lady were coming from the opposite direction and one of them, the 1<sup>st</sup> accused a Rasta man had placed a knife against his neck while the 3<sup>rd</sup> accused had caught hold of him. They had thereafter taken his bag which was on his back with his wallet which was inside and taken SR 500.00 and a few coins. The 2<sup>nd</sup> accused had gone to his friend Vijish

and beaten him up and taken his phone, headset and cash. The lady with them was watching the incident and all had left together. He stated he had received a scratch injury on his neck due to the knife being placed on it. He identified the accused in open court and stated that even though he had attended the identification parade, it could not be held as the accused had refused to participate in the parade.

- [4] Under cross examination he stated that when they attacked he had not attempted to defend himself but wanted to run but could not as the knife was held against him. He stated that he had given his statement in English and as the administrator was with him he could understand most of it though it was in English. He further stated that they were threatened with two knives, the other was used by the 2<sup>nd</sup> accused to threaten his friend. He was able to recognize the accused in the video clip of the CCTV camera taken of the four accused soon thereafter showed they were wearing the same clothes and were the same persons. He denied that somebody in the court house had shown the four accused to him and told him they were the ones who attacked him.
- [5] The other victim Vijish Vijoy too gave similar evidence in respect of the incident. He identified the 2<sup>nd</sup> accused as the one who had attacked him and stated that the other two accused that is the 1<sup>st</sup> and 2<sup>nd</sup> accused too had beaten him up and taken his phone, headset and SR 70. He also identified the four accused in the video recording shown in open court and stated the headset used by one of the accused seen in the video was his.
- [6] Dr. Afif corroborated the fact that Vijish Joy had complained of pain in the left side of the chest and on examination he noted that there were no visible signs of injury exteriorly on the chest area but he had a small bruise over the left eye, also referred to commonly as a black eye which was compatible to an injury of the blow to the face. The medical report of Vijish Joy was marked as P1. He further stated he had also examined the victim Madhu Manoj and noted a small bruise on the back of the neck and pain on the left shoulder. His medical report was marked as P2.
- [7] Witness Steven Gerard stated that he was dealing with installing and maintaining the police camera system in Seychelles. His experience and expertise were not contested by the defence. He identified the video recording relevant to this case marked as P4 showing a footage taken of 4 persons coming from the right hand side of Market Street. He stated

he could not identify any of them. Witness Denis Sauzier stated on the 15<sup>th</sup> of August 2012 around 14. 51 hours she was on duty observing all cameras. On looking at camera 4 she observed 4 persons one female and three males one a Rasta. She was informed of the incident in relation to this case and therefore paid attention to the video. The police officers present identified the accused in the footage. Under cross examination she stated the footage was in respect of Market Street and not La Promenade.

- [8] Witness Barbara Denise produced the statement of the 1<sup>st</sup> accused Leslie Payet as P5 after a voir dire ruled it was admissible and also produced the statement of the 4<sup>th</sup> accused Kelly Dubel as P6 after a voir dire ruled it too was admissible. The prosecution thereafter closed its case. The defence thereafter made a submission on no case to answer. By ruling dated 6<sup>th</sup> November 2013 this court ruled that all four accused had a case to answer and called for defence.
- [9] The 1<sup>st</sup> accused in defence made an unsworn statement from the dock. The 2<sup>nd</sup> and 3<sup>rd</sup> accused too made an unsworn statement from the dock. The 4<sup>th</sup> accused exercised her right to remain silent. No adverse inference should be drawn from this fact.
- [10] The 1<sup>st</sup> accused in his unsworn statement stated that he had gone with the 4<sup>th</sup> accused his girlfriend to town to buy food. As it was a public holiday the food place was closed. He had met the 2<sup>nd</sup> and 3<sup>rd</sup> accused at Deepam. He stated categorically “what you’ve seen on camera where we were walking on Market Street that was the moment we met the 2<sup>nd</sup> and 3<sup>rd</sup> accused.” It is apparent therefore on this admission that it was he on the video footage. He further stated that 2<sup>nd</sup> and 3<sup>rd</sup> accused had told him to check for food at Honey Pot. But even there they could not buy food. They had gone down to the bus station. He also complained that no identification parade was held and he had no access to a lawyer. He stated that SI Denise had told them that she would put them before this court in order to convict them and when they were seated she had shown them to the two witnesses in order that they could identify them. He stated he would never attack somebody. He was a Stevedore and has two children who are not getting his affection as he is in remand.
- [11] The 2<sup>nd</sup> accused in his unsworn statement from the dock stated that he had his brother had come from his mother’s place at Union Vale and they had met Leslie and Kelly at Deepam. He too admits he was seen on the CCTV camera going to Honey Pot. He denied

attacking the Indians. The 3<sup>rd</sup> accused made a similar dock statement. He too admits he was seen on the CCTV camera going to Honey Pot and denies attacking any Indians at La Promenade.

[12] Having thus analysed the evidence when one considers the evidence of the two victims in this case namely Nadoo Manoj and Vijish Vijoy it is clear that on the 15<sup>th</sup> of August 2012 around 14.40 hrs they had seen four persons including a lady approaching them. It is apparent from the evidence of Nadoo Manoj that two of these individuals who he identified in open court as the 1<sup>st</sup> accused and the 3<sup>rd</sup> accused had attacked him. The 1<sup>st</sup> accused had pointed a knife at his neck and the 3<sup>rd</sup> accused had held him and they had taken his bag which was on his back and his wallet which had about SR 500. He identified the accused in open court. Witness Vijish Vijoy stated that the 2<sup>nd</sup> accused had assaulted him and then the other two accused namely the 1<sup>st</sup> and the 3<sup>rd</sup> accused had come and they too had beaten him up and taken his phone, headset and SR 70.

[13] Further the evidence of the prosecution clearly indicates that soon after this incident around 2.51 p.m all four accused were seen together close to the scene of crime at Market street and were caught on CCTV camera placed in the area. They were identified on the video clip by both witnesses and Vijish Joy was able to identify his head set on one of the accused. Police officer Denis Sauzier who had been operating the CCTV camera for 5 years had noticed the suspicious behaviour of the accused and contacted Central police station and had been told that two Indians had been beaten up in the vicinity of La Promenade by a group of three men and a lady. The persons were subsequently identified by other police officers. It is to be noted that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> accused in their unsworn statements from the dock admit it was them on the P4 video recording.

[14] It is apparent that when one watches the video recording of the CCTV camera, an altercation with some other persons has been recorded which clearly shows the aggressive nature of the 1<sup>st</sup> accused and the other accused even though the 1<sup>st</sup> accused in his statement attempts to show court he is not aggressive and states he will never attack anyone. The recording shows the 1<sup>st</sup> accused and the other accused acting in an aggressive manner with some other persons. The fact that violence and a dangerous weapon was used and injury was caused to the victims in this instant case is clearly borne

out by the evidence of both victims who identify the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> accused as the attackers.

- [15] The evidence of the 1<sup>st</sup> accused that officer Barbara Denise had threatened them with remand and that the case would be allocated to a judge who would convict them is not acceptable as remand is not done by police officers and allocation of cases in courts is not done by police officers. The four accused have not been denied any of their rights unlawfully and legal aid has been provided to them by court at their request. It is also observed that his unsworn statement is different to his statement under caution given to the police.
- [16] The evidence of the victims that they were assaulted and a knife was kept to their neck is supported by the evidence of Dr. Afif who examined them and noted injuries on the neck of Manoj and eye of the victim Vijoy compatible to their evidence. It is apparent that even though the police had attempted to hold an identification parade, the accused had refused to participate in it. Therefore the fact that the accused were not recognized at an identification parade cannot be made use of by the defence.
- [17] Further it is apparent that the victims had observed the four accused walking towards them before they were actually attacked so the defence contention that they would have not been able to identify them as they were attacked suddenly and would have been afraid bears no merit. Further the incident occurred in broad daylight. When one considers the evidence as a whole this court is satisfied that the prosecution has satisfied court beyond reasonable doubt that it was the four accused who had committed the attack on the victims and stolen items and cash from them. The evidence of victim Manoj that a knife was used in the attack is corroborated by the evidence of the other victim Vijish and by the medical evidence of Dr. Afif. Though subject to cross examination there were no material contradictions that would make one disbelieve the evidence of the prosecution witnesses in this case.
- [18] The fact that officer Ron Marie who conducted the ID parade was unable to recognise the accused in open court is not fatal to the case of the prosecution as the victims have been able to identify the accused. The 4<sup>th</sup> accused has been identified by the victims as being present with the others and though she may have not actually done anything to the

victims her presence prior to, during and even after the incident leaving with the others and the fact she was observing the violence of the attack on the victims indicates her complicity with the other accused. I find in her statement she has stated she has walked on and appears to have been unaware of what was happening. I am inclined not to accept this considering the evidence of the prosecution, clearly indicates her presence at the scene and again she is seen with the accused at Market Street soon after the incident. For all the aforementioned reasons this court will therefore proceed to accept the uncontradicted and corroborated evidence of the prosecution and reject the defence.

[19] Section 23 of the Penal Code sets out what common intention is.

*“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”*

[20] Common intention envisages a sharing of similar intention entertained by the accused persons. Common intention requires a common meeting of minds or a sharing of similar intention before the offence is committed. Common intention could be proved by showing the conduct of the accused, that the accused by reason of actually participating in the crime, some overt or obvious act, active presence, pre plan and preparation as well as immediate conduct after the offence was committed. Thus the preceding, prevailing and succeeding conduct of the accused could be analysed to determine whether they acted with common intention.

[21] It does not necessarily mean that the prosecution should always prove an express or pre arranged plan before the act. The arrangement may be tacit and common intention conceived immediately before it is executed or on the spur of the moment. In this instant case the inference of common intention could be gathered by the manner in which the four accused arrived at the scene, mounted the attack and manner in which the beating was given, the manner in which the items were forcibly taken away from the victims and the concerted conduct succeeding the commission of the offence in this case clearly establishes common intention on the part of all four accused.

[22] For all the aforementioned reasons this court is satisfied beyond reasonable doubt that the prosecution has proved all the elements of the charge beyond reasonable doubt and proceeds to find all four accused guilty of the charge and convicts them of same.

Signed, dated and delivered at Ile du Port on 27 January 2014

M Burhan  
**Judge of the Supreme Court**