

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 43/2012

[2014] SCSC

THE REPUBLIC

versus

NADDY DUBOIS

First Accused

MARIE JEAN

Second Accused

SHELTON JEAN

Third Accused

JEAN- YVES DUBOIS

Fourth Accused

VINCENT MARIE

Fifth Accused

ANDREW SOPHOLA

Sixth Accused

Heard: 26 November 2012, 29 January 2013, 7 February 2013, 5 March 2013, 8 April 2013, 30 April 2013, 11 July 2013, 23 July 2013, 4 September 2013, 15 October 2013

Counsel: Mr. Chinnasamy, Assistant Principal State Counsel for the Republic
Mrs. Alexia Amesbury Attorney at Law for the first accused
second accused, third accused and fourth accused
Mr. Nicol Gabriel Attorney at Law for the fifth accused and sixth accused

Delivered: 31 January 2014

JUDGMENT

Burhan J

[1] The six accused in this case have been charged as follows;

Count 1

The statement of offence is Obstructing, interfering with, resisting or delaying NDEA Agents in the exercise of their duties contrary to Section 16 (c) of the NDEA Act and read with Section 23 of the Penal Code (Chapter 158) and punishable under Section 17 (3) of the NDEA Act.

The particulars of offence are that Naddy Dubois of Corgate Estate, Mahe and Marie Jean of Corgate Estate, Mahe and Shelton Jean of Corgate Estate, Mahe and Jean-Yves Dubois of Corgate Estate, Mahe on the 10th July 2012 at around 13.30 hrs at Corgate Estate, Mahe, delayed, obstructed, interfered with, resisted NDEA Agents namely Michel Nourrice, Agent Yvon Legaie, Agent Patrick Hortere in the exercise or performances of their duties or attempted to prevent the NDEA Agents to perform their duties.

Count 2

The statement of offence is Committing and act intended to threatening another with injury or violence to omit to do any act which that person is legally entitled to do contrary to Section 89 (a) and read with Section 23 of the Penal Code and punishable under Section 89 of the Penal Code.

The particulars of offence are that Naddy Dubois of Corgate Estate, Mahe and Marie Jean of Corgate Estate, Mahe and Shelton Jean of Corgate Estate, Mahe and Jean-Yves Dubois of Corgate Estate, Mahe on the 10th July 2012 at around 13.30 hrs at Corgate Estate, Mahe, threatened with violence and injury and committed bodily injuries against the NDEA Agents namely Michel Nourrice, Agent Yvon Leggaie, Agent Patrick Hortere in the exercise or performance of their powers or duties and prevented the NDEA Agents from performing their duties.

Count 3

The statement of offence is Committing acts wilfully and unlawfully destroying or causing damages to the property contrary to Section 325 (1) read with Section 23 of the Penal Code and punishable under Section 325 of the Penal Code.

The particulars of offence are that Naddy Dubois of Corgate Estate, Mahe and Marie Jean of Corgate Estate, Mahe and Shelton Jean of Corgate Estate, Mahe and Jean-Yves Dubois of Corgate Estate Mahe and Vincent Marie of Foret Noire, Mahe and Andrew Sophola of Corgate Estate, Mahe on the 10th July 2012 at around 13.30 hrs at Corgate Estate, Mahe, caused damages to the Vehicles S4946, S 17747, S17574 belonging to NDEA by pelting stones.

Count 4

The statement of offence is Committing acts of assault or attempts to assault NDEA Agents Contrary to Section 16 (6) (a) of the NDEA Act and read with Section 23 of Penal Code punishable under Section 17 (3) of the NDEA Act.

The particulars of offence is that Naddy Dubois of Corgate Estate, Mahe and Marie Jean of Corgate Estate, Mahe and Shelton Jean of Corgate Estate, Mahe and Vincent Marie and Foret Noire, Mahe and Andrew Sophola of Corgate Estate, Mahe on the 10th July 2012 at around 13.30 hrs at Corgate Estate, Mahe, assaulted the NDEA Agents namely Michel Nourrice, Agent Yvon Legaie, Agent Patrick Hortere and attempted to assault other NDEA Agents while performing their duties.

Count 5

The statement of offence is Committing acts with intend to cause grievous harm to a person contrary to Section 219 (a) of the Penal Code read with Section 23 of the Penal Code and punishable under Section 219 (a) of the Penal Code.

The particulars of offence are that Naddy Dubois of Corgate Estate, Mahe and Marie Jean of Corgate Estate on 10th July 2012 at around 13.30 hrs at Corgate Estate, Mahe, unlawfully wounded an NDEA Agent Michel Nourrice by throwing flower pot with full of soil and jar with common intention to cause grievous harm.

Count 6

The statement of offence is Committing acts with intend to cause grievous harm to a person contrary to Section 219 (a) read with Section 23 of the Penal Code and punishable under Section 219 of the Penal Code.

The particulars of the offence are that Marie Jean of Corgate Estate and Naddy Dubois of Corgate Estate on 10th July 2012 at around 13.30 hrs at Corgate Estate, Mahe, unlawfully wounded an NDEA Agent Yvon Legae by throwing a can spray with the common intention to cause grievous harm.

- [2] Mr. Yvon Leggae stated that on the 10th of July 2012, he was on patrol with agent Hortere, and Michel Nourice when they received information that a drug transaction was going on in the house of Naddy Dubois (1st accused) at Corgate Estate. They had been in vehicle S 4946. After receiving information they arrived at Corgate estate around 11.05 hrs. The information they had received was from a good source and they had surrounded the premises of Naddy Dubois and were on the retaining wall watching the premises and noted the back door of the house was open. One Shyra Faure came out and when she saw them she had run towards the river and Naddy had closed the door. Due to their suspicious behavior he had gone over and begun to knock on the door. He had said “NDEA open the door, give us access inside the house for us to search for controlled drug,” but they did not open.
- [3] He had asked agent Nourice to bring a crowbar because he had a hunch that there were drugs inside. He had told agent Michel and agent Hortere to go to the front in case anyone was trying to escape. As they were attempting to open the door Naddy Dubois the 1st accused had come out with an axe in his hand and sworn at them and threatened to pour acid on them. He saw that there were about 12 to 15 persons inside the house and they too were swearing.
- [4] Agent Leggae stated he felt threatened. Shelton Jean (3rd accused) came out with a blue piece of wood approximately 1 metre long. He too threatened them with violence if they were to enter the house. Then Marie (2nd accused) had come out with a pipe a metre long

and threatened them too. A black man had also come out and taken the axe from the hand of the 1st accused and threatened agent Nourrice and him. As the person had threatened agent Nourrice he began to back off slowly. Then Jean Yves the 4th accused came out with a knife in both hands. He had charged agent Hortere. Agent Hortere removed his pistol and told him if he came closer he would shoot but he kept approaching and agent Hortere had turned and run away. Naddy Dubois had grabbed agent Leggai with his left hand and hit him with the right hand on his chin.

[5] The agents had backed away and called for help. Agent Naiken, agent Philoe Dugasse and Marcus arrived. Agent Naiken had a machine gun. When the accused saw this they had gone in and locked the door. Agent Leggae had continued to knock on the door and he had called for the crow bar. When Dugasse had come with the crow bar someone had opened the door before they could break it.

[6] Agent Leggae had thereafter gone into the house followed by Naiken and Nourrice. Inside he had seen Naddy Dubois, Marie, Shelton and Jean Yves. On the table inside they saw pieces of foil paper, lots of blades, knives, lighters, bent glasses. When they entered Naddy Dubois had thrown a glass jar on the face of Nourrice. He had covered his face and witness had seen blood and Mayonnaise. Marie had thrown a can of spray on him and it had hit him on the left side of his forehead. Witness stated he was scared as bottles were being thrown at them and the 1st accused had thrown a flower pot at him which had hit him on the left eye. He felt dizzy as it hit him very hard and he had fallen on the floor. The 1st accused had kicked him and he had said “kill this mother fucker” and Shelton had come and started kicking him all over the body.

[7] Witness further stated that agents Nourrice and Naiken had already left the house and he was alone inside but he had managed to somehow find his way out and had run towards the road. On the way out he was kicked by the 1st accused. The other agents were waiting for him and when he had got to the road he had seen the 1st 2nd 3rd and 4th accused Vincent Marie 5th accused and Andrew Sophola the 6th accused throwing rocks, bricks and bottles on NDEA vehicles. They had left in their vehicles and he stated the vehicle he was in S 4986 was most damaged. He had gone immediately to Victoria hospital and was X rayed and given medication. He had to take a CT scan as well. He stated even up to

date he is under the supervision of a specialist and underwent physiotherapy for about two months. He stated agent Nourice too received injuries on his face and he too received injuries on his face.

- [8]** Agent Seeward stated on the 10th of July around 19.00 hrs (after the incident) he had gone to the house of Naddy Dubois. He was instructed to conduct a search in respect of controlled drugs. He had gone and met a man by the name of Wills Dubois. He had informed him they had come to conduct a search and he had complied to the request. They had searched the place but found nothing. There was a lady called Zola Dubois also present. In the kitchen was a knife which agent Hortere stated was a knife used to threaten him. He had taken it into custody. He produced the knife as P2. He stated at the time he went there was no sign of commotion. He stated there were no stones or broken bottles to be seen. He further stated that at the time he went Naddy Dubois or his wife or two sons were not present.
- [9]** Agent Nourice corroborated the evidence of agent Leggae in respect of the incidents and the attack on the NDEA agents as they attempted to conduct a raid on the house of the 1st accused Naddy Dubois. He too set out the sequence of events as described by agent Leggae and stated that both agent Leggae and he had sustained injuries as a result of the acts of the 1st 2nd 3rd and 4th accused. He corroborated the fact that the 2nd accused threw a spray on agent Leggae that hit him on the head and the 1st accused had thrown a flower vase that hit agent Leggae on the face. He stated he was hit by a bottle of Mayonaise that was thrown by the 1st accused. Both of them had received injuries he had left the house but Leggae did not want to. However when he had got into the car agent Leggae had come out and was holding his face and his eye was blue. He had seen and identified Dubois, Jean Yves Shelton Vincent and Sophola throwing all sorts of things on the jeep.
- [10]** Dr Roland Barbe stated that he was an ophthalmologist and produced the medical report of agent Leggae as P3. He described the injuries sustained by agent Leggai on his eye as grievous and stated if not for the treatment given he would have lost his eye. He stated that there was a possibility of future affects on the patient as blunt injury could increase the pressure in the eye and could result in early onset of cataract.

- [11] Agent Patrick Hortere too corroborated the evidence of the other NDEA officer agents Leggae and Nourice in respect of the fact he was attacked by the 4th accused with two knives and he had taken his pistol out to defend himself. However as there were other persons including agents around he was afraid if he shot and missed he would injure somebody so he turned and ran. He stated reinforcements arrived and he remained outside. There was lot of swearing and shouting inside the house and he also heard things shattering. He had gone back to the rear of the house to observe and saw agent Nourice come out of the house, he was bending and there was Mayonaise on his face. After that agent Leggae had come out and there was blood on his face. He had gone to the front of the house and seen about 6 persons coming out of the house. He had noticed them having crates of empty pints to throw at his colleagues. They had seen him and sworn at him and he had run and jumped the last jeep and returned to base. In the evening after getting more reinforcements they had gone back to Corgate estate. He had gone in with agent Seeward and searched the house and was able to find the two knives he was threatened with and identified same. This basically was the case for the prosecution.
- [12] When one considers the evidence of the defence the 1st accused in his evidence under oath states on the said day he was at home with members of his family when the officers of the NDEA came and knocked at his door. He had opened the door and nobody entered but after he locked it and came again they knocked and when he opened agent Leggae had come in first followed by agent Nourrice and Naiken. The officers had threatened them. Agent Leggae had “jumped” on his smaller son Jan Yves and agent Nourrice had “jumped” on his other son Shelton.
- [13] Thereafter they had harassed the 2 boys and left spraying tear gas into the house. While backing up doing so Agent Nourrice had fallen at the entrance. The 2nd accused identified her husband as the 1st accused Naddy Dubois and her two sons Shelton Jean 3rd accused and Jean Yves Dubois the 4th accused. She stated on the 10th of July she was not present at home that day. And she was working as a caretaker. She had received a call telling her about the incident at Corgate Estate. She had gone home about 11.am but she could not enter her house as she had got the tear gas smell. There were a lot of people gathered outside. She had stayed for some time and thereafter gone inside. Thereafter

Nicole from the NDEA had come in and shouted at her asking where was Naddy Dubois. She was arrested by a lady officer and taken away.

[14] She stated there was no mayonnaise jar, no flower pots nor any axes or machetes. She stated even after her husband was arrested she was not released but charged. She stated she was being paid for being the caretaker of one Zola who is dead and that she had difficulty in maintaining herself as her husband who is remanded is the one who was supporting her. She admitted that when she came back from work around 11.00 a m, there was no one in the house. She denied she was present or that she had thrown a jar at the accused. She stated Vincent Marie and Sophola were also not there. The 3rd and 4th accused exercised their right to remain silent. The 5th accused made an unsworn statement from the dock stating he knows nothing since he was not there on that date. While the 6th accused stated he did not fight with the NDEA and that he did not cause any damage to the NDEA vehicles. Thereafter the defence closed.

[15] Having thus analysed the evidence in the case it is apparent that the evidence of Leggae in respect of the incident that took place at the house of Naddy Dubois on the said date stands corroborated by the evidence of several other witnesses namely agent Nourrice and agent Hortere. Not only are the facts of the incidents as mentioned above corroborated but the fact that agent Leggae received a serious injury on his eye as a result of a flower pot being thrown at him by the 1st accused is corroborated by the independent evidence of Dr. Barbe who states that the injury was of grievous nature. He disagreed that the injury could have been caused by a fall and stated it was more compatible to an injury sustained as a result of a flying object hitting the eye. He further stated that visibility in the injured eye had reduced by 60%. He further stated if the victim had not been treated there would have been a possibility of him having a loss of vision on that eye. From the evidence before court this court is satisfied that the 1st accused by throwing a flower pot on the eye of NDEA agent had committed an act with the intention of causing grievous harm.

[16] However, it is apparent that the particulars of offence in counts 5 and 6 are in sharp contradiction to the evidence before court as it was not Agent Nourrice who sustained grievous harm as a result of a pot being thrown but Agent Leggae. Further there is no

mention in count 6 of the fact that grievous harm was caused to Agent Leggae as a result of the throwing of a flower pot by the 1st accused.

[17] Further the evidence clearly indicates the officers who were attached to the NDEA a fact not contested were on official duty at the time of the incident. They were conducting a raid on the house of the 1st accused for illegal drugs. It is apparent that the agents were performing their official duties and while doing so were subject to various threats and violence which resulted in them being unable to perform their duties and sustaining injuries.

[18] It is also borne out in the evidence that the threatening and violent acts of the accused had resulted in the NDEA agents withdrawing from the premises despite having got down reinforcements and back up which clearly speaks of the intensity and violence of the attack. In addition as the NDEA agents were retreating the attack on them had continued and the accused had thrown bottles and various articles which had damaged the vehicles which the NDEA had hired from the hirer. Mr. Sorce testified to the fact that the vehicles he had rented out that day to the NDEA had been damaged and claims were made to repair same and photographs produced in court showed the damage to the vehicles.

[19] It is apparent when one views the photographs and the evidence of the witnesses that due to the accused throwing various types of objects, damage was caused to more than one vehicle used by the NDEA in the aborted raid that day. It is also apparent from the photographs that extensive damage had been caused to the vehicle S4986 as the rear windscreen is clearly seen to be damaged. The photographs and damage estimate of SR 83.000 indicates the nature of the damage caused to the three vehicles shown in the photographs. Therefore this court for the aforementioned reasons is satisfied beyond reasonable doubt that the accused have wilfully and unlawfully caused damage to the property namely vehicles being used by the officers in the aborted raid.

[20] For the aforementioned reasons this court is satisfied beyond reasonable doubt that the agents of the NDEA had been obstructed resisted or impeded and interfered with during the course of their duties. It is also apparent from the evidence and this court is satisfied beyond reasonable doubt that the accused by their threats and acts of violence prevented the NDEA agents from doing what they had legally been entitled to do.

[21] 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.”

[22] 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.

[23] 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 all the accused acted at the scene, mounted the attack and manner in which the threats, violent acts were carried out and the concerted conduct in the committing of the offence ,clearly establishes common intention on the part of the accused.

[24] With regard to the identity of the accused agent Leggae clearly identifies the 1st accused as the person who threatened them with an axe and threatened them by saying that he was going to throw acid on them. He had assaulted agent Leggae and hit him on the chin. He had thrown a flower pot which had hit agent Leggae on the eye causing grievous harm. The 1st accused has also been identified as the person who had thrown a Mayonnaise jar at the face of agent Nourrice.

[25] The 2nd accused has been identified as having a pipe in her hand and threatening the NDEA officers at the scene and she had thrown a spray can on the head of agent Leggae which had injured him slightly.

- [26] The 3rd accused too has been identified by agent Leggae that he had threatened the agents with a piece of wood in his hand and he too had assaulted agent Leggae. The 4th accused has been identified as having had two knives in his hand and attacked agent Hortere. It appears that despite Hortere having a pistol in his hand, he had continued to attack the agent who had used his discretion wisely and decided to back down and run rather than open fire in the confines of a crowd. It appears than even agent Naiken though armed with a machine gun has used his discretion wisely and decided not to fire in the confines of a house and had instead backed down and moved out as he was afraid that they might take the machine gun from him.
- [27] The 5th and 6th accused has been identified as the ones who had joined in to throw bottles at the vehicles by agent Nourice. In fact agent Hortere too had seen them together taking a case of empty pints for the said purpose.
- [28] When one considers the defence in this case it is apparent that the evidence of the 1st accused is self serving and has no meaning. I see no reason why officers of the NDEA would just go into people's houses and assault them and spray tear gas and then come out. This to say least makes no sense. Further if the 1st accused version is to be believed one would have to come to the conclusion that the agents of the NDEA inflicted injuries on themselves and damaged their own vehicles. It is obvious to this court that the defence of the accused is totally unacceptable and is rejected. The 2nd accused states she was not present but not one reliable witness establishes this fact other than the 1st accused who cannot be believed. Several officers of the NDEA identify her at the scene of crime. I therefore proceed to reject the evidence of the defence.
- [29] When one considers the evidence of the prosecution witnesses it is evident that the evidence of agent Leggae had been corroborated by all the other witnesses and the evidence of Dr Barbe and Mr. Sorce further corroborates the evidence in respect of injuries to NDEA agents and damage to the vehicles. Though subject to lengthy cross examination no material contradictions were observed that would make one disbelieve the witnesses. Therefore this court will proceed to accept the evidence of the prosecution witnesses.

- [30]** For the aforementioned reasons this court is satisfied that prosecution has proved beyond reasonable doubt that the 1st 2nd 3rd and 4th accused obstructed, interfered, resisted and impeded the NDEA Agents in the exercise of their duties and prevented them from performing their duties. Therefore this court proceeds to find the 1st 2nd 3rd and 4th accused guilty on count 1 and proceeds to convict them of same.
- [31]** Similarly for the reasons contained herein, this court is satisfied beyond reasonable doubt the 1st 2nd 3rd and 4th accused had threatened with violence and injury and committed bodily injuries against the NDEA Agents namely, Agent Yvon Leggaie and Michel Nourrice thereby preventing the NDEA Agents from performing their duties. Therefore this court proceeds to find the 1st 2nd 3rd and 4th accused guilty on count 2 and proceeds to convict them of same.
- [32]** This court is further satisfied that for the reasons set out above that the prosecution has proved beyond reasonable doubt the 1st 2nd 3rd 4th 5th and 6th accused wilfully and unlawfully caused damage to the vehicles S4946, S 17747, S17574 belonging to NDEA by throwing objects on the vehicle. Therefore this court proceeds to find the 1st 2nd 3rd 4th 5th and 6th accused guilty on count 3 and proceeds to convict them of same.
- [33]** For the aforementioned reasons this court is satisfied that the prosecution has proved beyond reasonable doubt that the 1st 2nd 3rd accused assaulted the NDEA Agents namely Michel Nourrice, Agent Yvon Leggaie and attempted to assault agent Patrick Hortere while they were performing their duties. Therefore this court will proceed to find the 1st 2nd 3rd accused guilty on count 4 and proceeds to convict them of same. In regard to the 5th and 6th accused although there is evidence to suggest that they were throwing things at the vehicles no evidence exists that they assaulted agent Nourrice Yvon Leggae or Patrick Hortere. The 5th and 6th accused are acquitted on count 4.
- [34]** Similarly for the aforementioned reasons this court is satisfied that the prosecution has proved beyond reasonable doubt that the 1st accused Naddy Dubois unlawfully injured an NDEA Agent Michel Nourrice by throwing a jar on him thereby causing actual bodily harm to him and not grievous harm. The 1st accused is therefore found guilty of assault occasioning actual bodily harm contrary to section 236 of the Penal Code in count 5 and

this court proceeds to convict him of same. The 2nd accused is acquitted of this charge as the evidence indicates it was the 1st accused who had thrown the jar on Michel Nourrice.

[35] Finally for the aforementioned reasons this court is satisfied that the prosecution has proved beyond reasonable doubt that the 2nd accused Marie Jean had unlawfully injured an NDEA Agent Yvon Legaie by throwing a can spray on him thereby causing actual bodily harm to him and not grievous harm. The 2nd accused is therefore found guilty of assault occasioning actual bodily harm contrary to section 236 of the Penal Code in count 6 and this court proceeds to convict her of same. The 1st accused is acquitted of this charge as the evidence indicates it was the 2nd accused who had thrown the can spray on Yvon Leggae.

Signed, dated and delivered at Ile du Port on 31 January 2014

M Burhan
Judge of the Supreme Court