

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 49/2013

[2015] SCSC 223

THE REPUBLIC

versus

1. STEVE DAVID

2. MIKE VITAL

Accused

Heard: 26/06/14, 15/07/14, 17/09/14, 01/08/14, 24/02/15
Counsel: Ms. Brigitte Confait, State Counsel for the Republic
Mr. Guy Ferley Attorney at-Law for the ¹st Accused
Mr. Joel Camille Attorney at-Law for the ²nd Accused
Delivered: 3 July 2015

JUDGMENT

Burhan J

[1] The two accused Steve David and Mike Vital have been charged as follows:

Count 1.

Robbery with violence contrary to section 280 and punishable under section 281 of the Penal Code Cap 158 read with section 23 of the Penal Code.

The particulars of the offence are that Steve Daniel David and Mike Jean Vital on the 7th day of August 2013 at Port Glaud, Mahe, with common intention, whilst being armed with a machete, stole 1 big gold chain, 1 small gold chain, 1 golden bracelet, 1 long gold necklace, 1 big gold bangle, 2 small gold bangles, 9 pairs of gold studs, 2 gold baby bangles, 1 gold baby hipchain, 4 golden rings, 2 gold diamond rings, 1 golden baby bracelet, 1 gold mangal sutras, 1 tablet make Samsung, 1 mobile phone make Micromax, 1 mobile phone make Samsung and Rs. 3000.00 cash altogether amounting to an approximate total value of Rs. 320,905.00, being the property of Venkatarayan Pillay and Abinaya Pillay, and immediately before or at the time of such robbery, threatened to use or used actual violence on and caused injury to Venkatarayan Pillay.

Count 2.

Conspiracy to commit a felony contrary to and punishable under section 381 of the Penal Code Cap 158

The particulars of the offence are that Steve Daniel David and Mike Jean Vital on the 07th day of August 2013 at Port Glaud, agreed with one another to commit a felony namely the offence of Robbery with violence.

[2] Both accused denied the charges and case proceeded to trial on the 26th of June 2014.

The Evidence of the Prosecution.

[3] The prosecution called Dr. Bharun Saha who produced the medical certificate of Venkatarayan Pillay as P1 which indicated that at the time he was examined by Dr. Edalmis Campo on the 8th of August 2013 he was having a inflammation on the left side of the shoulder which would be consistent with a bruise in the shoulder.

[4] Witness Corporal Marie Antoinette Emiet stated that on the 7th of August 2013 while she was stationed at the Port Glaud police station around 23.30 hrs, she had received a phone call from one Mr. Raja Pillay the shop keeper at Sekaar shop who stated that he had been robbed by 2 masked men. She had proceeded to the place of incident with Corporal Morel and had met Mr. Pillay the manager of Sekaar shop and his wife who were living in a bed sitter at the place of one Rosy Savy. She had observed the apartment had been ransacked and clothes were scattered on the ground and bed and the wardrobe was open.

- [5] Mr. Pillay had stated he had been robbed by two masked persons one person had a tattoo on his chest. She stated that at the time she examined the neck and body of Mr. Pillay as he had no shirt on, there was no visible mark on him. He had complained that he had been threatened with a machete under his neck. Under cross examination she stated that finger print investigation was not conducted when she was present.
- [6] The main prosecution witness Andre Dugasse stated he had been working as a labourer for Hunt and Deltel for a long time and lived at Port Glaud. On the 7th of August 2013 around 10.00 pm while he was watching a movie on television at home, he had heard a voice calling 'Paygas' which was his nickname. He had opened the door and seen the accused Mike Vital and Steve David who he knew for some time and identified them as the accused in open court. They had come in a grey coloured car. Steve David had told him there was a "mission" that they had to do and were going to Sekkars. He had told them to go and they had left. About 10 minutes later he had he had gone to Sekkars by foot to see what was happening. He had gone to a wall which was not far from the Sekkar shop at Port Glaud.
- [7] Witness Andre Dugasse was sitting on the wall when he saw two people running from the direction of Sekkar shop to Port Launnay. He had identified them as the 1st and 2nd accused and had run behind them and they had run towards the car parked in the bush. The vehicle was parked in a place called "Vanilla" next to the waterfall about two minutes walking distance from the wall. Steve had told him to get into the car. Mike Vital had driven the car. Near his house he had wanted to get down but the 1st accused Steve had told the 2nd accused Mike Vital who was driving not to stop the car. The 1st accused had thereafter told the 2nd accused to go directly to Mont Buxton and they had gone to the shop of one Ah Pong at Mont Buxton and had got out of the car at that point and gone along a footpath and in the bush the 1st accused had placed some gold which was with him on the ground. Witness stated there were many bracelets and necklaces and SR 600 and a tablet. All were in the possession of the 1st accused in his pocket. They had given witness SR 200 and dropped him off at one Abdullah's shop to sleep the night and left and he had not seen them thereafter. Witness stated Steve David was wearing a long sleeved t shirt which was black and white a black short and a jacket. The 2nd accused

Mike Vital had been in brown t shirt and a blue jeans short and Timberland shoes which was yellow but not a bright yellow.

- [8] Under cross examination he explained that the mission at Sekkars was that they were going to take money from Sekkars which was a shop. He denied he had been watching the movement in the Sekkar shop. He denied he was on guard while they were doing the 'mission'. He denied he was participating in the 'mission' and further stated had he been doing so he would have been in the bush and not on the wall. He had not seen the accused do anything or which house they went to and seen them only when they came running. He stated he was aware that the son's of Sekkars lived in a compound in a flat which had more than one apartment. He stated that at the time they were running away they had nothing in their hands.
- [9] Witness further stated he had got into the car because the 1st accused had told him to do so. He had got into the car to get dropped back at his house. He denied he was the person who had gone into the house of Sekkar with another and had robbed them that night.
- [10] Under further cross examination he admitted he was arrested and remanded for this case and afterwards he was released and not charged. He denied he was telling a story. He admitted it was around 30 minutes after they had left his house that he had seen them come running. He had not received anything else other than SR 200. Learned counsel pointed out to witness that in his statement he had described the t shirt worn by Mike Vital as a stripped t shirt and shoes as caterpillar shoes brown colour. He denied he had made up a story with the police. He stated the items were in Steve David's pocket before he removed them.
- [11] Mr. Venkatarayan Pillay stated he lived in August 2013 at Port Glaud near Presidents Village with his wife and child. It is apparent from the evidence of officer Marie Antoinette Emiet that Mr. Pillay was the shopkeeper of Sekaar shop who had phoned them at 23.30 hrs on the 7th of August 2013 and had reported the incident of robbery that had taken place in the apartment he was living in. Mr. Pillay further stated that on the said day he had finished work at around 10.30 or 11.00pm he had taken the shop money and had gone to Ephilea and given the boys the money to be given to his father.

- [12] Witness further stated he had come back home and walked upstairs to his apartment and was waiting for his wife to open the door when he heard someone coming up the stairs. He had thought it was his neighbour as he too used to come around the same time but on looking noticed a masked man with a long sleeve t shirt coming up the stairs with white shoes. The man had come up to him and pushed him and threatened him with a machete and searched him. He had taken some money which was on him and grabbed his bracelet and chain from the neck. He stated his bracelet and chain was made out of gold each worth Rupees 20.000/=. He had also taken the phone from witness valued at Rs 3500/-.
- [13] The person had thereafter threatened witness and told witness to open the door. His wife had been watching from inside and he had told her to open the door as otherwise the person would do something to him. As soon as his wife had opened the door, the masked man had pushed him inside and gone in and tried to take the chain from his wife but his wife had pushed him away. The man had threatened her with the machete and grabbed the chain and it had broken. Witness had noticed the presence of another person behind the first, keeping watch to see if anybody was coming from down the stairs. He had noticed the second person had a tattoo on the left side of his chest. He had not been able to identify the tattoo and the man had his t shirt covering his face.
- [14] Witness thereafter described how the persons had proceeded to search the clothes and find the gold earrings of his wife, his child's gold chain, gold bangles and Rs 3000 in his wallet which they had taken together with a white Samsung tablet. They had hit him and his child and his wife had started crying and had pulled the child away from her and threatened her not to shout. Then after they left witness had called his neighbour Alex from the balcony and he had come immediately with his friends. Witness stated he had received a blow on his shoulder. He had gone to hospital the next day and given statements to the police. He estimated the value of the stolen items that night as SR 300.000/-.
- [15] Under cross examination he stated he had closed the shop and gone to Ephilea which took him about 10 minutes and had given the shop money which had taken about another ten minutes and driven straight back home. He stated he was able to see the eyes of the masked person. He stated he knew witness Dugasse as he used to come to the shop and

he was certain Dugasse was not one of the two men as from the body and actions of the two persons he could say both of them were not Andre Dugasse. He stated further he was unable to identify both the accused. He had gone the next day to the clinic and met the doctor at only 6.00 pm. Under further cross examination witness stated he was nervous at the time he gave his statement to the police and therefore there would have been certain differences as he could not even speak properly.

[16] Witness Dorothy Edmond stated that she was working at Licensing Authority and had issued a certificate of registration of a car bearing number S 21358 and produce as P2. According to her the said the vehicle a Hyundai I 10, colour Carbon Grey was registered in the name of Mrs. Irene Marylene Vital.

[17] Mrs. Abinaya Pillay corroborated the evidence given by her husband in that she and her husband were living in an apartment at Port Glaud and the evidence in regard to the events that occurred on the 7th of August 2013 when her apartment was robbed by two persons around 11.30 pm in the night.

[18] She described the persons and items stolen and gave further details that there were 9 pairs of studs made of gold, two diamond rings and in total 6 rings. In another small pouch was her necklace and anklets in addition to the items mentioned by her husband and stated too that the total value of the items stolen was around Rs 320.000/-. She further stated that they had threatened to kill her baby if she if she started to cry out or did not give them money. Her husband had kept on telling them they had no money. She had seen the accused put everything in the pocket of their pants. She also corroborated the fact that her husband had gone to see the doctor the next day.

[19] Thereafter the prosecution produced the statement under caution of the 2nd accused Mike Vital through witness Myrinda Esther an officer in the CID after it was held admissible after a voire dire. The prosecution thereafter closed its case.

[20] A submission of no case to answer was made but after considering the submissions of both parties court made order that both the accused had a case to answer and a defence was called.

The Evidence of the Defence.

[21] The 1st accused Steve David stated he lived at Mont Buxton and was at home on the night of the 7th of August 2013. He denied knowing Mike Vital. He stated he knew Mr. Andre Dugasse who he had seen a long time ago in the prison. He denied being a friend of Mr. Dugasse or Mike Vital. He stated he had arrived at home around 5.00 pm and after working at Les Cannelles was at home till 7.30 am the next day. He was arrested one week after the incident in the charge.

[22] The 2nd accused Mike Vital stated he was married had 2 children and during the time of the incident he was living at Anse Royale with his sister. He denied he was a 'taxi pirat'. He stated he knew Andre Dugasse but never had a relationship with him and did not 'hang out' with him. He stated the police had taken him in when he was driving his wife's car and brought him to the CID office at Bois de Rose. He had been confronted by Mr. Octobre of the CID and accused of being involved in a robbery at Port Glaud with one Steve David and Andre Dugasse. He had denied it and said he knew Andre Dugasse but not Steve David.

[23] Thereafter he had been handed over to another officer named Germain who had told him that Andre Dugasse had told them he had come in his vehicle to pick them up and thereafter gone to the house of two Indian nationals near Presidents Village and attacked them. He had denied all the allegations. He further stated thereafter he was told to cooperate and become the crown prosecution witness but he had stated he did not know anything. He stated thereafter Esther another officer had come in but never explained his rights. He had told officer Esther what officer Germain had told him. He stated the facts in the statement were not correct and he had not seen Andre Dugasse on the 7th of August 2013. He denied all the elements of the charge.

[24] Thereafter the defence closed and both parties made submissions.

Analysis of the Evidence of the Prosecution and Defence.

- [25] Having thus carefully considered the evidence before court, it is apparent that the prosecution relies on the evidence of witness Andre Dugasse to prove the identity of both the accused who committed the said offence of robbery at the apartment occupied by Mr. and Mrs. Pillay and their child. It is clear from the evidence of Andre Dugasse that both the accused in this case Steve David and Mike Vital who he had known earlier, had come to his house a short while prior to the incident of robbery relevant to this instant case and asked him to accompany them on a 'mission' to Sekkar's shop. 'Mission' in his words meaning to take money from the said shop.
- [26] Witness Andre Dugasse had refused to go along with them on their 'mission'. He had however after some time followed both the accused and had been seated on a wall when he had identified both the accused come running back from the direction of Sekkar shop. They had come running back and got into a car which had been parked in the bush. The 1st accused had asked him to get into the car. It could be gathered from the evidence of witnesses Mr. and Mrs. Pillay that it was around this time the robbery had taken place at their apartment and items such as gold chains, bracelets, rings and tablet and money stolen. The evidence of police officer Emiet is that the 1st call reporting the incident from Mr. Pillay had come at 23.30 hrs to the Port Glad police station.
- [27] Witness had got into the car with both the accused and wanted to have himself dropped at his house but they had not stopped but driven him to Mont Buxton where admittedly the 1st accused resides and having parked the car near a shop gone down a foot path and at a certain point stopped and the 1st accused had pulled out from his pocket, gold bracelets and necklaces and a tablet and placed it on the ground. Witness had been given Rs 200 and they had gone away while witness had stayed the night at the shop of one Abdullah. It could be gathered from the evidence of the police officers that the robbery reported that night in this area involving the stealing of gold items such as chains, bracelets and earrings and Samsung tablet was that which had taken place in the apartment of Mr. and Mrs. Pillay.
- [28] It is the contention of the defence that Andre Dugasse was an accomplice and in cross examination it has been suggested that it was he who had committed the robbery with

some other person. Witness Andre Dugasse has categorically denied this allegation while witness Mr. Pillay categorically stated that he knew Andre Dugasse as he used to come to the shop and he was certain Andre Dugasse was not one of the persons who had committed the robbery due to the body build and the actions of the robbers were not that of Andre Dugasse. Further he stated he was able to clearly see the body of one individual as he was not wearing a shirt and he had noticed that person had a tattoo on the left side of his chest and therefore could not be Andre Dugasse.

[29] It is further contended by the defence that as admittedly, he was a receiver of the proceeds of crime this act in itself makes Andre Dugasse an accomplice as he had been initially arrested and produced with the other accused.

[30] Be that as it may the law in respect of the evidence of an accomplice has been settled in the cases of ***Raymond Lucas v the Republic SCA 17/09 and Dominique Dugasse & Ors v the Republic SCA Cr 25, 26 and 30/2010*** which dealt with the fact as to whether a corroboration warning should be made by a judge in all cases involving the evidence of an accomplice. Even if Andre Dugasse is considered to be an accomplice, the law provides that his evidence could be accepted but court should caution itself the need for corroboration of the evidence of an accomplice.

[31] It is settled law in the Seychelles that it is left to the discretion of the judge to decide whether corroboration is necessary before accepting the evidence of an accomplice and should do so only when an evidential basis exists.

[32] The Seychelles Court of Appeal in the case of ***Raymond Lucas v Rep SCA No 17 of 2009*** held at paragraph 28 of the said judgment.

“it is not obligatory on the courts to give a corroboration warning in cases involving sexual offences and we leave it at the discretion of judges to look for corroboration when there is an evidential basis as stated earlier.”

[33] When one considers the detailed evidence of Andre Dugasse in this case, it cannot be said that the witness was lying in his evidence or his evidence was unreliable or had made a false complaint against both the accused. He honestly admits he was paid rupees 200 that night by both the accused. He honestly admits that he had not seen either one of the

accused in any apartment committing any act of robbery but had only seen them running away from the Sekkar shop towards Port Launay. Though cross examined on a lengthy basis no material contradictions were forthcoming. Therefore it is the view of this court that no evidential basis exists to look for corroboration prior to accepting his evidence as this court is satisfied witness Andre Dugasse was speaking the truth.

[34] On considering the whole of the evidence before court, this court is satisfied that the evidence of Andre Dugasse even if he be considered an accomplice is acceptable to court and proceeds to accept same. It should be observed that the description given by witness Andre Dugasse of the clothing worn by both the accused that night are very similar to that described by Mr. And Mrs. Pillay in regard to the masked robbers. The few discrepancies could be explained was due to the fact that both Mr. and Mrs. Pillay would have been understandably under mental stress, anxiety and fright due to what they were undergoing at the time.

[35] It is also apparent from the evidence of Mr. Pillay that on returning home that night, he had at the door step to his house been accosted by a person who had threatened him with a machete and made his wife open the door to the house. Meanwhile the 2nd person armed with a knife had appeared and also entered the house and participated in the robbery but had been constantly keeping a lookout as well. It is apparent that both individuals at this stage had been armed with dangerous weapons and in fact threatened the victims Mr. and Mrs Pillay and used force while committing the acts of stealing the gold chains, earrings bracelets and other items. As a result of a blow Mr. Pillay had suffered an injury, a bruise on his shoulder which was painful and apparent the next day when he was examined by a doctor. The medical report filed further corroborates this fact. The evidence of Mr. Pillay stands corroborated in every material detail relating to the robbery by the evidence of his wife Mrs. Pillay. I therefore proceed to accept the evidence of these two witnesses.

[36] It is pertinent at this stage to discuss common intention referred to by learned counsel for the prosecution. It must be remembered that this lays down a principle of joint liability in the commission of a criminal act and is not a manner of committing an offence. 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 two or more 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.

[37] When one considers the evidence in this case the illegal acts of both accused on the victims Mr. and Mrs Pillay, it is clear that both the accused who were armed were acting on a prearranged plan and in a concerted manner. This evidence on the concerted conduct of the accused on the victims indicates that they were acting with common intention. The evidence in this case specially that of the victims Mr. and Mrs. Pillay also clearly indicate that both the accused who were armed with dangerous weapons were jointly participating together to commit illegal acts of robbery with violence on the victims in this case.

[38] In regard to Count 2 the charge of conspiracy, it could also be clearly inferred from the evidence of witness Andre Dugasse who had been invited by both accused to participate in the 'mission,' an invitation which he had decided to turn down that both the accused in this case had entered into an agreement prior to the incident that each of them intended to play some part in the agreed course of conduct in furtherance of the criminal purpose which the agreed course was intended to achieve ***Vide Lord Bridge in R v Anderson 1986.A.C. 27.***

[39] In addition to all the aforementioned evidence there exists the admissions of fact made by the 2nd accused Mike Vital in his statement under caution. It is trite law that as the 2nd accused had retracted his statement, the material facts pointing to the guilt of the accused must be corroborated before being accepted. It is also trite law that the admissions made by an accused in his statement under caution cannot be used against another co accused.

[40] It is apparent that an error exists in the vehicle number given in his statement to that given by the Licensing authority though the colour is the same. In his statement under caution the 2nd accused admits he covered his face with his t shirt. This fact is corroborated by Mr. and Mrs Pillay who say that one of the robbers covered his face with

his t shirt. The 2nd accused admits in his statement he had climbed the stairs of the house of an Indian man and entered his storey house situated near Presidential Village and had a machete with him at the time and heard a child screaming. Both Mr and Mrs. Pillay state that machete was used during the robbery which occurred at their upstairs apartment at Presidential Village and entrance was made to their apartment by the persons climbing up the stairs and their child had screamed on being hit. I am satisfied that sufficient corroboration exists on material admissions in the said statement to be accepted.

[41] The accused in defence have stated that they were not at the scene of crime but at home in their respective homes sleeping. They deny knowing each other. They have not given any good reason as to why Andre Dugasse a person they have each met only once should implicate them. There is no corroborative evidence to establish their alibis. Even though Mike Vital states he was in his sister's house no one has come forward to support the claim. This court has already given reasons as to why the statement under caution of the 2nd accused is admissible as evidence. In the light of the above and the strong corroborated evidence of the prosecution, I proceed to reject the evidence in defence of both the accused.

[42] For all the aforementioned reasons I proceed to accept the evidence of the prosecution and am satisfied that all the aforementioned items of direct and circumstantial evidence when read together 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 exists no other co existing circumstances which would weaken or destroy the inference of guilt. I am satisfied therefore all the essential elements of the charges contained in Count 1 and 2 have been proved by the prosecution beyond reasonable doubt.

[43] I therefore proceed to find both the accused guilty on both the charges contained in Counts 1 and 2 and proceed to convict them of same.

Signed, dated and delivered at Ile du Port on 3 July 2015

M Burhan
Judge of the Supreme Court