

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 81/2013

[2015] SCSC 72

THE REPUBLIC

versus

DAVID LAIMOYE

Accused

Heard: 04.12.14, 06.01.15, 17.02.15, 23.02.15, 25.02.15

Counsel: Mrs. Shenaz Muzaffer, Assistant Principal State Counsel for the Republic
Mrs. Alexia Amesbury Attorney-at-Law for the accused

Delivered: 6 March 2015

RULING

Burhan J

[1] I have considered the submission of learned counsel for the aforementioned accused at the close of the prosecution case in support of her contention that the accused David Laimoye has no case to answer. I have also considered the submission of learned counsel for the prosecution who submitted that the accused had a case to answer.

[2] The accused has been charged with Manslaughter under section 192 of the Penal Code.

- [3] In the case of ***R v Stiven 1971 SLR No 9 at pg 137*** it was held what court has to consider at the stage a no case to answer application is made is whether;
- a) there is no evidence to prove the essential elements of the offence charged.
 - b) whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict
- [4] ***Archbold in Criminal Pleadings Evidence and Practice 2008 edition at page 492*** sets out the principle in a no case to answer application.
- “A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, if properly directed, could convict.”*
- [5] In ***David Sopha & Anor v Republic SCA 2/1991*** the Seychelles Court of Appeal held:
- “In considering a submission of no case to answer, the judge must decide whether the evidence, taken at its highest, could lead to a properly directed jury convicting the accused. If so, the case should be allowed to go to the jury.”*
- [6] The main contention of learned counsel for the defence is that the crane which was parked had not moved but the truck which was parked at a right angle to the crane had moved resulting in the death of Mikel Figaro. Learned counsel for the prosecution contended that according to the evidence of Steve Mwuara he had seen his parked truck move from side to side and he had noticed the top side of the crane come over the truck and noticed the deceased caught between both. The evidence certainly does not show the parked truck moved sideways on its own and pinned the deceased against the stationery crane.
- [7] When one considers the evidence in this case it cannot be said that the evidence of the prosecution witnesses have been so discredited by cross examination that no reasonable tribunal could convict. It cannot be said that there is no evidence to prove the essential elements of the offence charged.

[8] Therefore for the aforementioned reasons this court is satisfied that a prima facie case in respect of the charge exists against the accused in this case and that there is no merit in the contention of defence counsel that the accused in this case has no case to answer. For the aforementioned reasons this court is of the view that the accused does have a case to answer in respect of the charge framed against him.

[9] Therefore this court proceeds to call for a defence from the accused in respect of the charge of Manslaughter framed against him.

Signed, dated and delivered at Ile du Port on 6 March 2015

M Burhan
Judge of the Supreme Court