

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO33/2016

[2016] SCSC 893

THE REPUBLIC

versus

JUDE JOUBERT
Accused

Heard: 10 & 11 November 2016

Counsel: Mr. G. Thachet, Assistant Principal State Counsel for the Republic
Mr. A. Subramanian, Assistant Principal State Counsel for the Republic
Mr. C. Andre for the first accused

Delivered: 14 November 2016

RULING

Vidot J

- [1] The accused, Jude Joubert is charged with the offence of murder contrary to section 193 and read with section 194 of the Penal Code. The particulars of offence are that Jude Joubert of Barbarons, Mahe, on the 18th day of May 2016 at Beau-Vallon, Mahe, murdered Jimmy Denis.
- [2] At the close of the prosecution case, Mr. C. Andre, counsel of the accused, moved the court on a submission of no case to answer. The argument of the defence is that the

prosecution has not discharged the burden of proof as required by law to establish the elements of the offence in that the evidence adduced is so tenuous in character and that it has been discredited that a properly directed jury will not convict.

[3] The principles for consideration on a submission of no case to answer are well settled in the case of **R v Gailbraith [1981] 73 Criminal Appeal Report**. In that case it was held that for such a submission to succeed the court should be satisfied that;

- i. There is no evidence that the crime was committed by the accused; or
- ii. The evidence adduced is so inconsistent and tenuous in nature; or
- iii. A jury properly directed could not properly convict on the evidence.

[4] The principles laid down in **R V Galbraith (supra)** were adopted in several domestic cases. These include **R v Stiven (1971) SLR 137**, **R V Marengo (2004) SLR 166**, **R v Matombe (No.1)(2006) SLR 32** and more recently in **R v Gerard Hoareau CR79 of 2014**.

[5] Therefore at that stage if the court was to rule that as a matter of law there is no evidence on which the accused could be convicted, the judge shall direct the jury to enter a verdict of not guilty. In the case of **R v Hoareau (supra)**, Chief Justice Twomey makes reference to **Green v R (1972) SLR 55** in which Sauzier J had the following to say in respect of what constitutes “*no evidence*” as provided for under section 294(1) of the Criminal Procedure;

“The consideration which apply at that stage are purely objective and the trial court is not asked to weigh the evidence. At that stage it is only necessary for it to find that a reasonable tribunal might convict.”

[6] Mr. Andre’s submission rests heavily on the fact that there was no independent evidence to corroborate the Confession of the accused that was admitted as evidence in the court. It is indeed settled law that a confession requires corroboration; see **R v Anna [2007] SLR 270**. It is however necessary that the independent evidence implicates the accused in some material particular.

[7] Mr. Andre argued that since there was insufficient evidence adduced against the accused that would establish the elements of the offence then the submission should succeed and therefore his client be declared not guilty of the charge levelled against him.

[8] On his side Mr. Thachet, Counsel for the prosecution most strenuously argued that the prosecution had adduced sufficient evidence that corroborates the confession of the accused and therefore the accused should be called upon to present his defence. In particular Mr. Thachet invited court to consider the following which he considered to be corroborative evidence in support of the confession;

- i. Presence of the accused at Beau-Vallon on that fateful evening;
- ii. The fact that as per his statement and forensic evidence adduced before court, the white T. Shirt that the accused wore that night had no blood stain at all;
- iii. That according to Nathalie Mancienne after she had noticed the deceased on the ground where a crowd had congregated, she noticed the accused amongst the crowd.
- iv. The medical evidence that the deceased death was caused by the traumas inflicted on him which came from different directions
- v. The admission made by the accused on facebook messages to Christopher Pouponneau as per snapshots (exhibit P17E) lifted from the accused mobile phone.

[9] Therefore, after giving due consideration of the above, in order to find that the accused has a case to answer, the court must satisfy itself that on the evidence on record so far adduced, by the prosecution, there is credible evidence to establish the elements of the offence. There must be evidence that connects the accused to the offence. I conclude that the presence of the accused at Beau-Vallon, the night of the incident, a fact that is not in dispute does not offer sufficient corroboration that the accused is the perpetrator of the murder of the deceased. I hold the same opinion as far as the absence of any trace of

blood on the accused T-Shirt. It does not provide sufficient evidence on which a properly directed jury will convict.

- [10] As regards Nathalie's Mancienne's allegations that she noticed the accused amongst the crowd that had congregated around the deceased when he was discovered on the ground, I find this bit of evidence tenuous in character particularly since it is not reflected in her statement to the police which had been admitted as exhibit (D3). In any case, it cannot corroborate the accused confession because there is no suggestion in the confession that after the incident that the accused had remained amongst the crowd gathered around the deceased's body. I don't believe that a properly directed jury will convict on that part of Nathalie Mancienne's testimony.
- [11] I now move to the last two points placed forward by the accused as providing corroboration to the accused's statement. It is correct that in the accused's statement he has averred that he administered several hits to the deceased. Dr. Fonseka, pathologist also confirmed that the injuries suffered by the deceased, Jimmy Denis were a result of several hits.
- [12] The accused also made certain admissions via facebook conversation averring that on the 18th May 2016 at Beau-Vallon he had been involved in a fight. He also found out that the victim of the fight had passed away. It is to be noted that there is no record of any other person, apart from the deceased, who had been found with injuries from which he died at Beau-Vallon on 18th May 2016..
- [13] In Cross on Evidence (page 528), it is stated that when a dis-serving statement is made in a criminal case, by an accused to someone not in authority, it is said to be an admission and that a party's statement adverse to his case is received as proof of the truth of their contents in civil and criminal proceedings. Cross goes on to state; "an accused person's answers to matters put to him may properly be used, not only for the sake of any admissions or recognition they may contain or imply concerning particular facts, but also for the sake of any unintended proof they may afford that the accused had a conscious guilt.

- [14] Based on the foregoing under paragraphs 12 and 13 above this court is satisfied that the admission and the evidence as per the injuries sustained by the deceased provide sufficient corroboration of the confession of the accused (exhibit P8). This court is strongly persuaded that a properly directed jury may convict on these aforementioned pieces of corroborative evidence.
- [15] Therefore, the submission of no case to answer fails and it is hereby ruled that the accused has a case to answer.

Signed, dated and delivered at Ile du Port on 14 November 2016

M Vidot
Judge of the Supreme Court