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**IN THE SUPREME COURT OF SEYCHELLES**  
**Criminal Side: CR 69/2015**

[2017] SCSC 235

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**THE REPUBLIC**

versus

**MICHEL ANGE DODIN**  
Accused

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Heard: 15<sup>th</sup> of March 2017  
Counsel: Mr. Chinasamy for the Republic  
Mr. Nichol Gabriel for the accused

Delivered: 15<sup>th</sup> of March 2017

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**JUDGMENT**

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Nunkoo J

**[1]** The accused is charged of the following offence:

**Count one**

Attempt unlawfully to cause death of another contrary to section 207(a) of the Penal Code and punishable under the same section.

**Particulars of the offence**

Michel Ange Dodin, 43 years old, on the 5<sup>th</sup> June 2015, in the district of providence, Mahe attempted unlawfully to cause the death of Paulette Cedras.

### **Count 2**

Acts intended to cause grievous bodily harm contrary to section 219(a) of the Penal code and punishable under the same section.

### **Particulars of the offence**

Michel Ange Dodin, 43 years old, on the 5<sup>th</sup> of June 2015, in the district of Providence, Mahe with intention to cause grievous bodily harm to Paulette Cedras, caused grievous bodily harm to Paulette Cedras by use of a metal bar.

Section 377 of the Penal Code provides as follows:

*When a person, intending to commit an offence, begins to put his intention into execution by means adopted to its fulfilment of his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.””*

- [2] At the close of the case by the prosecution, the defence has moved that there is no case to answer.
- [3] The guiding principle for the court in deciding whether there is or there is no case to answer is clearly enunciated in ***Archbold, Criminal Pleadings Evidence and Practice 2012 Edition, 4-363***  
*‘a submission of no case to answer should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict’.*
- [4] In the case of R V Stiven, 1971 SLR 137, it was held what the court has to consider at the stage of no case to answer 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 on it.

**[5]** The question I have to decide is (a) whether there is no evidence or (b) that the evidence for the prosecution has been so discredited or is manifestly unreliable that no reasonable tribunal could safely convict on it.

**[6]** First I am bound to look at the evidence adduced by the prosecution in support of the offence with which Accused stands charged.

**[7]** The prosecution called one Henry Betioux as its first witness who was working as security officer at the same place as the victim. He was the last person to have seen her on that day in the morning at around 8 am when he went home and he was the first person to have seen the victim lying almost unconscious in the afternoon of 5 June 2015. In fact he deponed to say that the victim had said that she was not feeling well that day and requested him to relieve her earlier that day. When he reached the site and as he opened the guard room he saw that his colleague was lying amidst blood on the floor and was in a semiconscious or almost unconscious state. He called his superior ie his boss as he put it. Police arrived on the spot and the victim taken to hospital.

**[8]** The next important witness was the medical doctor who produced his report and deponed quite lengthily on the condition of the victim and the seriousness of the injuries sustained by her. She was admitted in the ICU.

**[9]** He explained that the CT scan revealed what the doctor termed “disuse axonal injury”. She had multiple laceration cuts over the skull and shoulder injury. According to him this is a bit complicated and happens from shock to the brain inside the skull and this makes it harder for patients to recover after head injury. She also had swelling on the neck on the second CT scan. She was kept sedated for three days and when it was attempted to awaken her to see her neurological functions she did not wake up and a new CT scan was

done. This showed thrombosis in one of the major veins of the neck that was blocking blood from draining out of the brain. This had caused the neck to swell and fever.

**[10]** In view of this she was kept sedated and antibiotics had to be changed. A special surgeon who is specialized in blood vessels and abnormalities was requested to review the patient. Around 19th June a new CT scan was done and it was found that the patient was waking slowly. She was kept on a ventilator using a procedure known as tracheostomy and around 27 June when she was removed from the ventilator her neurological recovery was quite poor. She had developed recurrent pneumonia and had to be treated for that also. She was discharged on 10<sup>th</sup> November and the right side which was paralysed was still weak.

**[11]** He stated that it was luck and timely medical treatment that saved her.

**[12]** In cross examination it was suggested to the witness that the injuries could be caused by someone hitting against the wall and that the laceration on the patient's head could have been caused by such acts. The witness favoured a history of assault.

**[13]** The main witness was the victim herself. She deponed in detail as to what happened to her in the 5<sup>th</sup> June. She started work around 7 am and later in the day when she was patrolling in front and at the back she came across a man and she told him that he was not supposed to be there but the man said that he had come to beat her. He slapped her in the face, strangled her and beat her with the iron bar on the head and shoulder. She collapsed and did not know what happened after that. She stayed in hospital for five months. She also stated she did not feel like before and could not use her right hand anymore. She stated she stayed in hospital for 5 months.

**[14]** She identified the accused as the one who assaulted and stated she had lived as husband wife with him years ago.

- [15] The Defence has submitted that mensrea or intention is required for the attempt of committing any offence. In the present case the intention must be to cause death of another or kill another.
- [16] The defence submission is that there is no suggestion that accused had the mensrea or any intention to kill the victim.
- [17] It also submitted that the victim contradicted herself about the colour of the clothes that the accused was wearing. Defence has submitted that there was no camera, finger print or eye witness.
- [18] Defence has rightly submitted that it is the evidence as a whole that should be assessed in a submission of no case to answer.

The prosecution has a duty at this stage to adduce sufficient evidence on which a reasonable tribunal might convict the accused. The evidence taken as a whole was not in any way seriously challenged or contradicted by defence though minor contradictions were singled out by the defence. The evidence of the medical doctor on the seriousness of the injury and his assertion that the injuries sustained on the skull were fatal and also with regard to injuries sustained to the neck and the blood clot in the vein were life threatening and it was only luck and timely medical treatment that saved her stand unchallenged. The evidence of the victim that it was the accused who assaulted has not in any way been discredited to the extent of being disbelieved. The prosecution has established a prima facie case against the accused.

- [19] This court therefore proceeds to call for a defence from the accused in respect of the charge laid against him.

Signed, dated and delivered at Ile du Port on **15<sup>th</sup> of March 2017.**

S Nunkoo  
**Judge of the Supreme Court**