

**IN THE SUPREME COURT OF SEYCHELLES**

**CriminalSide: CO53/2015**

**[2017] SCSC 269**

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**THE REPUBLIC**

versus

**NEDDY LAGRENADE**

First Accused

**SAVIO PAUL**

Second Accused

**DANIO LESPOIRE**

Third Accused

**RODDY LESPOIRE**

Fourth Accused

**HENDRICK HOAREAU**

Fifth Accused

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Heard: 6 March 2017  
Counsel: Mr Khalyaan with Mr Ananth, Attorney General for the Republic  
Mrs Amesbury for the First Accused  
Mr Gabriel for the Second, Third, Fourth and Fifth Accused  
Delivered: 24 March 2017

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JUDGMENT

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McKee J

[1] The Accused were charged with the following offence:

COUNT 1

Statement of Offence

[2] Act intended to cause grievous harm, contrary to section 219[a] as read with Section 23 of the Penal Code punishable under the same.

Particulars of offence

[3] Neddy Lagrenade of Roche Caiman, Mahe, Savio Paul of Roche Caiman, Mahe, Danio Lespoire of Au Cap, Mahe, Roddy Lespoire of Au Cap, Mahe, and Hendrick Hoareau of Plaisance, Mahe on 16<sup>th</sup> August 2015 at Roche Caiman Mahe, with common intention and with intent to cause grievous harm and caused grievous harm to Marie Herminie of Roche Caiman, Mahe.

[4] All the accused pleaded not guilty to the charge and the matter proceeded to trial. Witnesses were heard and at the end of the prosecution case No Case to Answer submissions were made by Counsel. I dismissed these Submissions. The Election was explained to each accused. The First Accused elected to give sworn evidence. The remaining accused elected to give unsworn statements from the dock. None of the accused called witnesses. All counsel made closing submissions.

[5] The first witness for the prosecution was Mrs Marie Herminie. She stated that she was in her house at Roche Caiman on the evening in question and heard swearing outside her house in the vicinity of her shed by intruders who had already entered the garden area. There were five persons. She saw the first accused, the fifth accused, the second accused and two other persons, who are brothers. All carried items in their hands. A crowd had gathered nearby. She went out and saw that these persons had smashed flower pots on the ground. She recognised the first accused since he was also a resident of Roche Caiman . She estimated that she has known him for sixteen years. She also recognised the second and fifth accused; they also stay in Roche Caiman and she has known them for a long period of time. She did not know the names of the third and fourth accused but knew they were brothers. They did not reside in Roche Caiman. However she recognised their faces.

She was aware that they were friendly with the second accused and visited him at weekends. She identified all five persons as the accused in the dock.

[6] She confronted the group of five accused in the garden and asked what was going on. It was at this time that she was hit on the forehead with a piece of cement block. She identified the first accused as the person who threw the piece of block. The impact of the block on her face led to the loss of her left eye. She estimated that the distance between them when the block was thrown was the distance between the witness box and where the prosecuting counsel stood, which was about 2 to 3 metres. She knew the nickname of the first accused to be “Kwacko”. She fell down after being struck and was taken into the house. Family members came from the house, her husband went to confront the group but they ran away. She recalled that, apart from immediate family, her brother was close by and should have seen her being struck by the block. She stated that her husband kept possession of the cement block. Thereafter the police arrived and she was taken to the hospital. She had an operation for the removal of her left eye. She understood that there had been an earlier incident at the shop at Roche Caiman involving her husband and a friend of her husband and this resulted in the arrival of the accused at her house.

[7] She was cross-examined and fully explained her family situation. Her husband is a fisherman and, although they are divorced, still resides under the same roof. She has a home brewing business. She denied that she was a heavy drinker or drunk at the time of the incident. She agreed that she had follow-up medical treatment after her operation. She stated that her husband is Terence Landry and his brother is Simon Landry. She stated that she could see the group of persons in her garden by the light on her shed and they were close to her. She stated that she had not seen a separate incident between her husband and the first accused at her property when it was suggested to her that her husband had thrown fuel at the first accused and then lit the fuel. She suggested that this occurred after she had been hit. Mrs Herminie was satisfied that her identification evidence was correct although , it would seem, that she may have known the first accused more by his nickname than by his proper name. She stated that the first accused had arrived holding a machete but had not used it. He had picked up the piece of cement block from the ground. She again reiterated that she could see her assailants by the light

from the shed and remained firm on her identification although she accepted that she had not formally identified them on the day she sustained her injury.

[8] She was cross-examined by Counsel for the remaining accused. She agreed that she had had no prior trouble with any of the intruders. She again confirmed that she recognised her assailants by the light from the shed on her property. She again said that any incident between her husband and the first accused would have occurred after she had been assaulted. When she came from the house she saw all five accused throwing things close to her veranda. They had been carrying “tools” ie, a machete and lengths of wood. She denied that there had been an attempt to settle this matter by a compensatory payment.

[9] Police Officer Brizilia was next to give evidence. He arrived at the scene after the incident was finished. He picked up a piece of cement block close to the veranda and he produced the block as an exhibit to the court. The crowd which had gathered was still present on his arrival and there was continued swearing. He and the husband of Mrs Herminie went with her to hospital. Thereafter he returned to the scene. He observed a broken table and broken flower pots. On his return he carried on with his enquiries and he was told by Mrs Herminie’s family that there were *four* persons involved who should be arrested. In particular, his evidence was that on the way to the hospital Mrs Herminie advised him that it was the first accused who had thrown the piece of cement block. Later he formally arrested the fourth accused at a house in Roche Caiman not far from the scene. He identified the fourth accused in court as the person he arrested. The fourth accused was with a group of persons at the time of arrest. He identified the second and third accused as the persons who were arrested at the same time. The fourth accused said nothing to the police officer following his arrest.

[10] In cross-examination, he said there was lighting at the scene but outside “it was a bit dark”; he remembered that the veranda was lit. He did not see any of the accused at the scene but the members of the family advised him of the names of the assailants. He could give no explanation why the exhibit block did not show blood stains. He was aware that the first accused had made a report at Mont Fleuri Police Station that lighted fuel had been thrown at him. He was not present at the arrest of the first accused. He confirmed that he arrested the fourth accused at Roche Caiman although his normal residence was at Au

Cap. He confirmed that Mrs Herminie told him she knew the first accused as Kwacko. He got to know the proper names of the second, third and fourth accused after their arrest. He stated that Terence Landry had not told him about a fire, although he smelt burnt fuel at the scene.

[11] The next witness was a police officer Steve Jupiter. He also went to the scene after the incident occurred. He helped to disperse a crowd of people who had remained there. He also saw broken flower pots. He produced clothing of Mrs Hermnie as an exhibit. He saw marks which could have been blood.

[12] The fourth witness was Terence Landry, the husband of Mrs Herminie. He is the skipper of a fishing boat. He was advised by telephone by a friend, one Versange, of an incident at the shop in Roche Caiman. He then went to the shop to make enquiries and then returned to his house. He was sitting on his veranda and saw a group of five persons arriving at the gate of his house. He saw the first accused when he opened the garden gate. All carried items like a machete, iron bar and a block. He could see by the light under the shed although it was not entirely dark. He could see the faces of the five persons . He knew two of them very well, they were also fisherman. He knew the first accused as Kwacko and a man called Savio whose nickname was Ti blan. He later found out that a third member of the group was a cousin of the first accused called Hendrick.. He has known the first accused for some seventeen or eighteen years and the man called Savio since he was a child. In court he identified the first accused, the second accused called Savio otherwise known as Ti blan and the fifth accused as all being present in the garden that evening.. He recognised the other two assailants as the third and fourth accused. He stated that the first accused opened the garden gate followed by the other four persons. The first accused threatened him with the machete and the other four persons were throwing rocks and breaking flower pots. He stayed inside the house and Mrs Herminie went outside. He said that the group came close to the house, he estimated the distance to be some four metres, and he went to get the cup of fuel. He came back, threw the fuel on the ground and lit it. It was at that time that his wife came from the house and the first accused threw the block which hit his wife. During this time rocks continued to be thrown. The blocks were part of the constructions materials being used to repair a wall. He saw the first accused throw the rock but did not actually see it strike his

wife but saw her on the ground. After the rock struck his wife it broke into pieces on impact with the ground. He stated that another occupant, a Mr Renaud, was also struck by a rock on his face. Multiple rocks were thrown. The police were called. He denied that he or his wife were drunk.

[13] In cross-examination he confirmed that his wife made and sold local brew. He described his family. He said that a lot of flower pots on the outside wall and the veranda were broken by rocks. He recollected that when the police first arrived the accused were still within the general crowd outside the property. He later found out that the first accused had made a formal complaint to the police that he had thrown fuel at him. He explained that he threw fuel on the ground and then lit it. He could not comment on the suggestion that the first accused had been assaulted near his house. He knew the first and second accused but only by their nicknames of “Kwacko” and “T-blan”. He confirmed that nothing was broken inside the house. He denied that his wife sustained her injuries because of inter-family fighting. He said that in addition to the first accused Ti blan and two others took the flower pots and were smashing them. He could not say that the rock produced as an exhibit was the rock which struck his wife. He said that the second accused and the two others were arrested first followed by the first accused. In re-examination he said he lit the fuel on the ground with matches. His wife was dragged into the house after she was hit.

[14] The next two witnesses were Simon Landry and Jose Fanchette. After some evidence was taken from them they were declared as hostile. I disregard their evidence. It has no evidential value.

[15] We then heard from Ms Terryna Landry. She was at the house, her parents’ house, at the time of the incident. There are some eight or nine family members staying in the house. She was able to say that the man called Versange had had an argument at the shop. Her father tried to telephone him. She was inside the house when she heard noise outside with people calling her father’s name. She said it was the five people in the dock who she knew but only by their nicknames and that they lived around Roche Caiman. They were already inside the gate. Her father approached them and then retreated. She was standing at the kitchen door. She saw the persons throwing things, including flower pots. She

estimated that more than five people came through the gate. They tried to enter the house. She specifically mentioned Ti blan as one of the persons who entered her property. She recognised him since she attended school with him. They were throwing flower pots, chairs, rocks and anything they could find. She identified Ti blan as the second accused. She also saw the first accused throwing things. Later her father went to the gate and her recollection is that by this time the intruders were outside the gate. She saw Kwacko throw a rock, her mother turned around and the rock struck her on the face. She recalled a group of people throwing things. Shortly afterwards the police arrived. As a result of information received the police arrested the second, third and fourth accused. She said that she saw Kwacko holding a machete and a man called Hendrick with a stick, although she doesn't really know the man called Hendrick. She said there were a number of people present and at the time it was a little bit dark.

[16] She was subject to cross-examination. She had her mother outside the house next to a wall at the front next to the veranda. The block came to rest in the veranda after it struck her. She saw the intruders for the first time inside the gate. She was downstairs in the house immediately before the incident occurred. She did not see the incident involving her father. She reiterated that she was with her mother when her mother was struck by the rock. She said that everything happened really fast. She could confirm that on prior occasions there have been family disputes and police intervention. She denied that flower pots had been thrown during any inter-family dispute. She stated that the man Renaud was also struck by a rock .She did not see any fire burning outside.

[17] The Court then heard from a former police inspector, Ron Marie who took a cautioned statement from the first accused. Defence Counsel objected to the admissibility of this statement and a voire dire was held. Police Officer Barbara Denis also gave evidence in the voire dire. The first accused elected to give sworn evidence in the voire dire but called no witnesses. I ruled that the voire dire was inadmissible.

[18] The final witness for the prosecution was Dr Roland Barbe. A Doctor Capetillo had treated Mrs Herminie on her arrival at hospital but he has since left the country. Doctor Barbe is the leading Ophthalmologist, the consultant in charge and came to explain the

medical reports on Mrs Herminie. The left eye had been severely damaged and had to be removed by surgical operation. Dr Barbe was of the opinion that this was a severe injury.

[19] Thereafter the Prosecution closed its case. Submissions of No Case to Answer were made which I dismissed.

[20] The election was explained to all accused. The first accused elected to give a sworn statement. The remaining accused elected to give an unsworn statement from the dock. None of the accused elected to call witnesses.

[21] The first accused gave sworn evidence. He has lived at Roche Caiman for sixteen years. He knows Mrs Herminie and family. He has had no prior trouble with the family. He was with friends on the day in question and on advice from a relative went back to Roche Caiman and met with the man Versange. There was an argument and he left. He later heard that "Landry" was looking for him so he returned to Roche Caiman again and spoke with his sister. He then decided to go to the Landry household. He was in his car with the second, third and fourth accused. The fifth accused was not with them in the car. At the house it was a little bit dark and he saw Landry, that is, the husband of Mrs Herminie. Landry was armed with a machete who cursed at him. He did not see a little can of fuel and Landry threw it over him. He ran before the fuel was lit and reported the incident at the police station. He also said he was slapped by Landry. He was mostly outside the gate but entered a little bit into the yard, he never saw Mrs Herminie, he never threw rocks. The second third and fourth accused never left the car. When he left some other people were arriving. He denied that he threw the rock which struck Mrs Herminie and he denied that the second third and fourth accused were involved. He stated that any prior trouble he may have had with Landry was minor and involved an argument about fish traps.

[22] The second accused in his unsworn statement stated that he was with the first accused earlier in the day. He was present during the argument with Versange and in the car which went to the Landry property. He did not alight from the car. He smelt fuel on the clothing of the first accused when the latter returned to the car. He went in the car to the police station. The third accused and fourth accused gave similar evidence by unsworn



statement. The fifth accused also elected to proceed by unsworn statement. His evidence was that he was never present at the scene.

[23] FINDINGS.

[24] I have considered all the admissible evidence in this case.

[25] I find that this incident occurred in the garden of the house occupied by Mrs Herminie and Mr Terence Landry and family at Roche Caiman. I find that it occurred when it was not fully dark. I accept the evidence of the prosecution witnesses that there was light in the area in question from the veranda of the house and a shed situated in the garden area. At the material time a crowd of people arrived at the house acting in a noisy manner and this alerted the occupants. A small group entered through the gate into the garden. The evidence of Mrs Herminie and Terence Landry was that five persons entered while Terryyna Landry considered that this group numbered more than five persons. The remaining persons gathered outside the property. In what had become a highly charged situation I find that it have been difficult to estimate the exact number of persons. In any event, by this time Mr Landry was on the veranda and shortly afterwards was joined by his wife and daughter. I find that there was initially an exchange of foul language and then members of the group started to throw flower pots which broke and other loose items in the garden.

[26] The evidence of Mrs Herminie, Terence Landry and Terryyna Landry is that they recognised the first accused and second accused as in the group participating in this disorderly behaviour and destruction of property. The first accused was also carrying a machete. All three persons stated that they recognised these two accused since they also were long time residents of Roche Caiman. Terryyna Landry could also say that she recognised the second accused since she had attended school as him.

[27] The first accused has given sworn evidence that, while he had been on the scene, he had been outside the gate most of the time although he may have stepped inside the garden a short distance. In his unsworn statement the second accused said that that whilst he arrived with the first accused and others in a car driven by the first accused, he had throughout the whole incident remained in the car. I disbelieve this part of his evidence. I

find that Mrs Herminie, Terence Landry and Terryna Landry have given identification evidence based on recognition. I find that this recognition was made in acceptable lighting conditions. All three witnesses knew the two accused and this, in these circumstances, supports the correctness of the identification. I reject as untrue the evidence of the first accused and second accused that when they said that they did not enter into the garden area. I find that the first accused was trying to minimize his involvement and participation in this whole matter. I disbelieve the second accused when he stated that he remained in the car. I find that he lied to the court since he was unable otherwise to account innocently for the evidence that had already been given against him. I find that the first accused and second accused did throw flower pots and other loose items in the garden and that the flower pots were damaged and broken.

[28] I find that Terence Landry, in an attempt to stop the illegal behaviour and the breaking up of his property elected to find some fuel with a view to thereafter lighting it to keep the intruders at bay. He threw some unlit fuel on the ground which splattered on to the first accused. By this time the intruders were also was throwing blocks or partial blocks towards the house trying to break a window. These cement blocks came from a wall which was being repaired. I accept the evidence of Terence Landry and Terryna Landry that at this juncture Mrs Herminie was standing just outside her house and it was then that Mrs Herminie was struck by the rock. Terence Landry saw the first accused throw this rock but not when it struck his wife. He turned around to find his wife on the ground. The first accused was about four metres away from him when the rock was thrown. Terryna Landry corroborated the evidence of her father. She saw the first accused holding a piece of block and throw it. She shouted to her mother and saw when she turned and was hit on the face. She suffered the injury to her eye which led to her losing her sight in that eye.

[29] I accept the evidence of Terence Landry and Terryna Landry that it was the first accused who threw the piece of block which struck Mrs Herminie on the face. I disbelieve the first accused when he denied full involvement in this matter and in particular I reject his denial that he threw the piece of block which struck Mrs Herminie.

[30] I look now to the involvement, if any, of the third, fourth and fifth accused. This was a highly charged situation with wholesale disorderly behaviour and the breaking of flower

pots and other items in the garden. In respect of the third and fourth accused Mrs Herminie did not know their names; they did not stay in Roche Caiman but she identified them only in the dock as being present that evening. Terence Landry also did not know them but identified them in the dock as being there. Terryyna Landry could only say that she knew them by nicknames and identified them in the dock. Their evidence was that they had travelled by car to the house but remained in the car during the incident. I heard similar evidence in respect of the fifth accused. Mrs Herminie said that she knew him. Terence Landry said that he found out later, presumably from a third party, that the fifth accused had been present. Terryyna Landry said that she really didn't know the fifth accused. In his unsworn statement the fifth accused denied that he was present. I bear in mind that Terryyna Landry estimated that more than five persons entered her garden area. PC Brizilia said that his information was that only four persons were involved. I find that the identification evidence in respect of the third, fourth and fifth accused is poor, amounted really to a dock identification and falls below the required standard in respect of their presence and involvement in this matter

- [31] The charge faced by the five accused is committing an act intended to cause grievous harm contrary to section 219[a] of the Penal code. I find that the injury to and loss of an eye constitutes grievous harm. In order to succeed with this particular charge the Prosecution has to prove common intention and intent to cause grievous harm.
- [32] I find beyond reasonable doubt that the first accused was a participant in the disorderly behaviour and the damaging of property in the garden of the Landry family and also that he later threw a piece of block which struck Mrs Herminie.
- [33] I find beyond reasonable count that the second accused fully participated in the disorderly behaviour and the damaging of property in the garden of the Landry family. However, I find that the first accused was acting on his own when he threw the piece of block which struck Mrs Herminie. I find that there is insufficient evidence to infer that the second accused was a party to this particular action or, had the intention jointly with the first accused, to inflict grievous harm on Mrs Herminie.
- [34] I find that, due to a lack of identification evidence, there is no evidence against the third, fourth and fifth accused in respect of the charge libelled.

- [35] I look again at the charge laid against the first accused. I find that he threw the piece of block that caused grievous harm to Mrs Herminie. However this has to be considered along with the other evidence that rocks were also being thrown generally in the direction of the house. The first accused is charged under section 219[a] of the Penal Code, where the question of intention is crucial. In my opinion the Prosecution have failed to prove beyond reasonable doubt that, at the time of throwing the piece of block, the first accused had deliberately aimed at Mrs Herminie with the specific intention of injuring her. Rather, I find that the piece of block thrown by the first accused was thrown at the house but Mrs Herminie was in the line of flight and was struck by the missile. In these circumstances, the Prosecution has failed to prove the material ingredient of intention required by section 219[a].
- [36] However I look further and to section 221 of the Penal Code which reads as follows:
- [37] “Any person who unlawfully does grievous harm to another is guilty of a felony, and is liable to imprisonment for a period of ten years.
- [38] I also take into consideration the case R v Hoareau SLR 1970 5 and in particular paragraph 3 on page 7 as per Judge Sauzier “A charge under section 221 of the Penal Code does not require proof that the accused intended to cause grievous harm as this is not an element of the offence. The question of intent is only raised in the case of a charge under section 219[1] of the Penal Code. To substantiate a charge under section 221 there need only be an unlawful act on the part of the accused which has resulted in grievous harm to another person”.
- [39] I find that the first accused did act unlawfully by behaving in a disorderly manner, damaging property and throwing the piece of block which struck Mrs Herminie causing her grievous harm. Consequently, I find the first accused guilty and convict him of the alternative and lesser charge of causing grievous harm contrary to section 221 of the Penal Code.
- [40] In respect of the second accused, I find that the facts do not substantiate a conviction for the offence charged. However I accept the evidence of Mrs Herminie, Terence Landry and Terryyna Landry that flower pots were broken even although the police did not

produce same as exhibits. I find that the second accused was fully involved in this vandalism. Consequently, I find that the second accused wilfully and unlawfully destroyed and damaged the property of Mrs Herminie, namely flower pots, and I find the second accused guilty and convict him of the lesser charge of Damaging Property contrary to section 325[1] of the Penal Code.

[41] For the reasons already stated, I find the third, fourth and fifth accused not guilty of the offence for which they were charged and acquit them of this charge.

Signed, dated and delivered at Ile du Port on 24 March 2017

C McKee  
**Judge of the Supreme Court**