

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO27/2015

[2018] SCSC

THE REPUBLIC

versus

GODFREY JIMMY ALBERT

First Accused

TERRY POINTE

Second Accused

Heard: 5-10-2017, 6-10-2017, 13-11-2107 and 17-11-2017
Counsel: George Thachett, Assistant Principal State Counsel for the Republic
Mr. Daniel Cesar Attorney at Law for the first accused
Mr. Nichol Gabriel Attorney at Law for the second accused
Delivered: 14 February 2018

JUDGMENT

Burhan J

[1] The accused Godfrey Albert and Terry Pointe were charged as follows:

Count 1

Housebreaking contrary to and punishable under Section 289 (a) read with Section 23 of the Penal Code (CAP 158).

Particulars of offence are that, Godfrey Jimmy Albert 37 year old male Gardener of Corgate Estate, while working at the residence of the British High Commissioner in Seychelles, at the early morning of 23rd July 2014, at Curio Road, Bel Air, Mahe with common intention with a person unknown to the Republic, broke and entered into the dwelling house resided by Mr Richard Skoll & Ms Lindsay Skoll, British Nationals with intent to commit felony therein namely stealing.

Count 2 *(In the alternative to count 1)*

Aiding and Abetting in Housebreaking contrary to and punishable under Section 289 (a) read with Section 22(c) of the Penal Code (CAP 158)

Particulars of offence are that, Godfrey Jimmy Albert 37 year old male Gardener of Corgate Estate while working at the residence of the British High Commissioner in Seychelles, on 22nd July 2014 enabled or aided another person unknown to the Republic by unlocking the door and burglar gate to the bedroom, moving the mattresses with the leverage of the Chester drawer among such other instances, wherein a person unknown to the Republic broke and entered into the dwelling house resided by Mr Richard Skoll & Ms Lindsay Skoll, British Nationals at the early morning of 23rd July 2014, at Curio Road, Bel Air, Mahe with intent to commit a felony therein namely stealing.

Count 3

Stealing from dwelling house contrary to and punishable under Section 264 (b) read with Section 23 of the Penal Code (CAP 158).

Particulars of offence are that, Godfrey Jimmy Albert 37 year old male Gardener of Corgate Estate, while working at the residence of the British High Commissioner in Seychelles, at the early morning of 23rd July 2014, at Curio Road, Bel Air, Mahe with common intention with a person unknown to the Republic, stole from the dwelling house resided by Mr Richard Skoll & Ms Lindsay Skoll, British Nationals various precious jewellery worth GBP 20,550, SCR 1000 and GBP 100.

Count 4

Retaining other property knowing or having reason to believe that the same to have been feloniously stolen, taken, obtained contrary to and punishable under Section 309 (1) of the Penal Code (CAP 158).

Particulars of offence are that, Terry Pointe 21 year old male unemployed of St. Louis, Mahe, in the month of August 2014, at Belonie, was found to retain an amethyst, (3 purple stones) necklace knowing or having reasons to believe the same to have been feloniously stolen or taken or obtained.

- [2] Both accused denied the charges against them and trial proceeded against the accused persons.

Evidence of the Prosecution

- [3] The prosecution opened their case by calling witness Maggie Dubel, the investigating officer in the case. She stated she had obtained a statement under caution from the 1st accused Godfrey Albert. The statement was produced as P1 and the translation as P1a, in the absence of any challenge from the defence. Witness further stated she had recorded the statements of other suspects and she was the exhibit officer in respect of the exhibit in this case, a necklace. She stated the necklace was photographed by Mr. Omblime and handed over to Mrs. Lindsay Skoll. Further the statements of Jemina Tirant, Wilhelmine Souris, recorded during the investigation who were not witnesses for the prosecution, were produced by the prosecution at the request of defence counsel as P2a, P2b and P3, P3a and P6, P6a and P4, P4a respectively. The statement of the 1st accused under caution was produced as P1 and P1a and the statement of the 2nd accused under caution was marked as P5 and P5a in the absence of any challenge.
- [4] Witness, Maggie Dubel, the investigating officer, identified the 1st accused as Godfrey Albert and the 2nd accused as Terry Pointe. She admitted that the incident was reported to them on 22nd of July 2014 and the 2nd accused was cautioned on 22nd of September 2014. She further stated that she had recorded the statement of the cook, one Padayachy, but he was not arrested. She denied there was interference in respect of the cook from higher police authorities and stated she was only following instructions in not arresting him. She

further admitted that nothing was recovered from the 1st accused and his prints were not found on the necklace, nor was his name mentioned by the person from whom they had recovered the necklace. She admitted, that in her statement, Mrs. Wilhelmine Souris had stated that she had worked with the British Embassy for a period of 15 years and had asked Mr. Albert the 1st accused to help her move the furniture. In cross examination she further admitted that Jemina Tirant too had stated that the furniture was heavy and she had not moved them and had never cleaned the windows or opened the doors and that if Godfrey were to come, it would be to change a bulb but she added, in her presence, he had not gone upstairs.

- [5] Mr. Robin Omblime stated he was an Inspector previously working at the SSCR (Scientific Support and Crime Record Bureau) Mont Fleuri. On 23rd of July 2014, he had visited the scene of a burglary at the house of the British High Commissioner, Mrs. Lindsay Skoll, at Curio road, Bel Air. He had been met by Mrs. Skoll who had given him a briefing on what had happened. He had carried out a fingerprint examination of the scene and also had proceeded to photograph the scene of the incident. He had photographed the scene and produced the photographs as P7 (1 to 22). He described each and every photograph taken by him. He stated he had lifted a fingerprint from a chest of drawers and he marked the point from where the finger print was seen as X on photo15. Thereafter, he had taken steps to lift the finger print from the chest of drawers, labelled it and produced the finger print lifted as P8. On 14th of August 2014, he had received from Corporal Timothy, a set of finger print and palm impressions in the name of Godfrey Albert. He produced same as P9. He had proceeded to compare the impression he had lifted labelled by him as A, with the left palm impression of the finger print form of Godfrey Albert, P 9. He had found the palm print impression lifted from the chest of drawers at the scene of the incident of burglary, identical to that of the left palm impression on the finger print form of Godfrey Albert. He had also made enlargements of both impressions and made a comparison chart produced as P12. On comparing the two, he had found 10 points of similarities between both impressions and therefore he could confirm that the palm print lifted from the chest of drawers at the scene of burglary, was the same as the left palm impression taken from Mr. Godfrey Albert, the 1st accused. He also identified the photograph of the necklace in item 1 and produced same as exhibit

P13. He further gave his opinion that the left palm print lifted by him indicated that the person was not attempting to lift it, but was instead pushing either the mattresses or the chest of drawers as shown in the picture.

[6] Mr. Omblime further stated that a print could remain as long as it is not disturbed. It could be disturbed by dust tampering with it. He stated that normally fingerprints on drawers are very difficult to be lifted for prints but in this case, the minute he powdered the chest of drawers, the print became visible which meant that the print was fresh and not more than two weeks old.

[7] Witness admitted that the necklace was found with his ex-sister in law Marie-Paul Lesperance. He had questioned her upon seeing it as he had visited the burglary scene two weeks earlier and could appreciate that the necklace she had was a very expensive one. She stated she had received it from one Terry Pointe.

[8] Witness further stated he had recovered partial prints from the points of entry, but did not deem them to be good prints for the purpose of identification. The other prints he was able to lift did not match that of the 1st accused. There was a partial foot print on the bin but it did not come up good to make a case of it. He stated he had powdered the whole chest of drawer in the front and sides and there was no other print found. He admitted he had not powdered the back of the chest of drawers and stated there could have been prints if someone had used two hands to lift it. He also admitted he had not checked the bulbs to see if they had finger prints. He stated he powdered what he felt was relevant to the scene. He further explained that even though the surface of the drawer was not a good surface, the print had developed fast, indicating it was a recent print. He insisted this print was not more than two weeks old. He further stated after lifting the print on that day, he had to wait for 5 months to compare it, as he had to wait for suspect prints, which he received from Corporal Timothy Hoareau. At the time he took the print, he did not know it belonged to the 1st accused.

[9] The next witness, Corporal Timothy Hoareau, stated he was working at present in the Criminal Investigation Department and on the 13th of August 2014, he had taken a set of finger prints from the 1st accused Godfrey Jimmy Albert, in connection with a case of burglary. He explained the procedure adopted by him and marked the consent form as

P14. He identified P9 as the finger print form on which he placed the fingerprints of the 1st accused. Under cross examination, he stated the name of the 2nd accused did not appear on document 2D1, produced on behalf of the 2nd accused.

[10] The next prosecution witness Ms Marie-Paul Lesperance stated that a necklace which contained three stones was sold to her by one Terry Pointe. She identified Terry Pointe as the 2nd accused. She identified the necklace in photograph P13 and stated her brother in law Mr. Omblime, had informed her, it was a stolen one and taken it for the purpose of confirming that and after confirming the fact that it was stolen from the British High Commissioner's house, he had taken the necklace and handed it over to the police. The day she had met Terry Pointe at St Louis, he had stated he had picked up the necklace at Barrel Discotheque and taken it from his pocket and showed it to her. He had wanted Rs 200 for the necklace but as she did not have money, he had told her to keep it until she got the money to give him. She had not seen him thereafter. She admitted she was made a State witness for the necklace and affirmed the fact that it was Terry Pointe who gave her the necklace.

[11] Mr. Bonne giving evidence stated that he was the security officer on duty at the British High Commission the date of the robbery. On 22nd of July, he had reported for work at 8.00 a.m. The Nepalese guard who he had come to relieve, had told him there was a lady and gardener working inside. He had seen the gardener, the 1st accused, working in the garden that day. He admitted he knew there was a cook too. He also admitted the maid would at times ask witness to come and assist with the watering of the plants.

[12] Thereafter, the evidence of Mr. and Mrs. Skoll were taken by Video link (Skype). Mr. Skoll stated he was serving as a police officer at Scotland Yard between August 2012 and March 2015 and he had accompanied his wife, who was the British High Commissioner to the Seychelles and were residing at the British Residence in Curio road. He stated on 22nd July 2014, he and his wife had gone to bed around 11.00 p.m. He recalled his wife closing the security gates and door in the room and had placed her passport and some jewellery in a safe next to the bed. He had fallen asleep and around 04.45 hrs, he had awakened and noticed a hand disappearing through the curtains on the nearest security gate which was normally locked and he found this very strange. He had heard a rustling

noise on the enclosed veranda and thought it was his son and called out, “William is that you?” He had heard more rustling and realized something was wrong. He jumped out of bed and went through the nearest security gate and opened the curtains to find a figure disappearing out of the window onto the flat roof outside the window. He stated it was a small figure, about 5ft 6 inches, 100 pounds, wearing a yellow scarf wrapped around his head, with only his eyes showing. The intruder was wearing a red T-shirt and dark trousers. Witness had banged on the window so hard it had broken and he had shouted “attack, attack, attack.” He had gone back to warn his wife and family and the intruder had escaped. He shouted to the guard and phoned the police who arrived about 15 to 20 minutes later.

[13] Witness produced a sketch plan (P15) showing the room, veranda, security doors and security grills. He explained that he had seen the hand disappear from security grill 2. He stated when they went to bed, his wife had locked security gate 1 and they never checked security grill 2, because it was always locked. The curtains had been drawn on security grill 2 and there were two heavy mattresses behind it on the outside. He stated someone had opened this security gate 2 and moved the two mattresses to one side to allow entry into the room. He stated the lock on security grill 2 was on the inside and the keys were on the chest of drawers inside the bedroom. He had thereafter noticed that the safe next to the bed was open and had been ransacked. A large quantity of jewellery was missing and the handbag had been taken and left on the balcony, also referred to as the enclosed veranda.

[14] Witness Mr. Skoll further stated that the only persons who had access to the house were the gardener, the 1st accused, the temporary cleaner, Jemina and his mother in law, Linda and his son. He stated the cook Patrick Padayachy and house keeper Marie also referred to as Wilhelmine Souris had resigned a month earlier. He stated Godfrey Albert, the 1st accused was the gardener working for them at the time and he was aware the 1st accused had a key to the backdoor the day before the incident occurred, to access the house for water. He stated the balcony, also referred to as the enclosed veranda area, had not been cleaned and was more of a storage room. This area he stated was not cleaned by the previous house keeper Marie or Jemina, the temporary cleaner. Only the downstairs area and bedroom was cleaned by them. Marie when cleaning the bedroom, would open the

security grill 1 and the windows to allow fresh air in. He stated that the 1st accused should not under any circumstances have been in the bedroom or balcony area. He identified the areas mentioned by him from the photographs. He further stated that inside the bedroom there was a chest of drawers on top of which there was a small gold fabric jewellery box with a false bottom. It was here where the keys to the safe were kept. Therefore whoever had opened the security grill gate also knew where the keys to the safe were kept. He admitted under cross examination that the cleaner Marie had a bad shoulder and she would request Padayachy the cook and possibly even the gardener, to help her with the furniture.

- [15] The next witness, Mrs. Lindsay Skoll, stated she was a British Diplomat working for the Commonwealth Office between August 2012 and August 2015 and she was her Majesty's British High Commissioner to the Republic of Seychelles. She stated she was living in the official residence of the British High Commissioner at Curio Road, in Bel Air. She corroborated the evidence of her husband that she had entered the room through security gate 1 and the door, then locked both and kept the keys on the chest of drawers and then gone to bed. She too stated the closed veranda area was a storage area containing boxes, suitcases and two very heavy mattresses that were leaning on security grill 2. She was awakened by the voice of her husband shouting "attack, attack" and she could hear him banging on the window. She heard the window breaking. It was a very traumatic and scary moment for her and she had put her hand under the pillow to get her Blackberry to call the police but it was missing. The land line too was not working. She had run out of the bedroom and told her son to stay with the grandmother in one room. While her husband called the police, she had called Bruce who was the Chief Superintendent at the time and he had contacted Minister Joel Morgan and the police had arrived in 10 minutes. She had asked the guard whether he had called the police and he had said no. She had gone back to the room and switched on the lights and described what she saw as a scene of devastation in front of the safe. The safe was open with jewellery boxes and things all over the front of it. Her watch and engagement ring had been taken from the chest of drawers. She had gone through security grill 2 and seen all her belongings and her handbag on the floor. Her handbag had been ransacked and the sliding window on the far right side was open. She had given a statement and thereafter

she had seen her gardener, the 1st accused, arrive for work. She stated she was extremely fond of Godfrey and they had treated him as a very good employee. She was crying and had told him what had happened to them but she noticed he had not looked remotely interested, which surprised her, and he had said “God is good” with half a smile and walked away. She further stated the 1st accused had left the previous evening after work and come back as usual the following morning.

[16] The next thing she knew was that the 1st accused had begun to use the jet hose to wash outside the dining room where the green bin had been moved to get access to the roof, and she found this to be suspicious behaviour as it was an area he would not usually wash. Her husband had to tell him to stop which he did. Finally, when his finger prints were discovered on the chest of drawers, they had decided to stop him. She stated on 22nd July 2014, Jemina had been working with them for a month from 23rd of June 2014 and on 22nd July 2014, Jemina had left before the gardener and her mother had gone to collect her son, William, from school in the afternoon. Therefore the 1st accused Godfrey, would have been alone in the residence with the security.

[17] She admitted Jemina was a contract cleaner who worked for a number of hours each day and her duty was to clean the house, particularly the downstairs area. She had cleaned and dusted the bedroom too. She stated the 1st accused would have helped to move the heavy dining table downstairs, lift the garden chairs and the living room chairs, but he had no reason to go upstairs or to the bedrooms which was inappropriate for a gardener to do so. She also stated one cannot casually or suddenly access the bedroom. To do so, one had to go from the kitchen into the official living room, to the official hallway to turn and go up a large flight of stairs and at the top of the staircase there was also a secure gate, which was sometimes locked as well. She reiterated the fact that Marie would not clean the storage area but only open the windows and the security grill 1 and door for fresh air to circulate. She further referred to a day after the incident, when the chest of drawers were eventually moved and there was a load of dust under it, it was dirty and she was embarrassed and she could see the imprint in the carpet as it was so heavy. The chest of drawers was a heavy piece of furniture and not easily movable. She also stated that this was not an opportunist crime as the person knew where the keys were hidden in the false bottom of the jewellery box, knew how to open the safe, where the cash was in the

bedroom, and the fact that the security grill was opened in advance were all indicators to show it was premeditated. The 1st accused had been working with them for 1 ½ years and was her favourite member of her staff but his behaviour after the incident was very strange. She further stated the burglar had gone through all the items and selected the high value items only.

[18] Witness Lindsay Skoll further stated that the value of the items stolen were around 20,500 UK Pound Sterling, including her engagement ring and her grandmother's ring and other family pieces which were irreplaceable. She produced the list of items as P16. She stated she had received a necklace back which she identified from the photograph. She described the necklace in detail and stated its value was 1500 UK Pounds Sterling. She further stated to her knowledge there was no occasion for the 1st accused to come up the stairs to the corridor where the chest of drawers were. This was a private area. The public area was separate where functions were held.

[19] She stated that the 1st accused whilst working was given a key to the back door to access water. However, that door had two locks and in the evening she would double bolt it, secure both locks so that even a person with a single key could not enter. She stated that Godfrey had come back to her property after the incident and her husband had conversations with him, but he refused to comment. In re-examination, she stated that he did come the day after the incident and his reaction on hearing about it was extraordinary. He had returned later to collect his things when her husband had given him a chance to explain himself.

Evidence of the Defence

[20] Thereafter, the prosecution closed its case and the defence commenced. In defence, the 1st accused Godfrey Albert gave evidence under oath. He stated he was a gardener by profession and he was living at Corgate Estate, which was not a good area, but he had never been charged with a criminal offence before. He would go to church and prayer sessions. He admitted he liked his job as gardener for the British High Commission as he would be praised for his work and people appreciated him. He stated he had worked for his lawyer Mr. Daniel Cesar, Frank Hetimier, Justice Laura Pillay and Mr. Ronald Cafrine and there were no incidents of burglary in their houses. He further stated at the

British High Commission other than gardening, he would also help in the polishing of the silver wear. When the housekeeper did the general cleaning he would help her place the furniture in the house. He stated that he had helped Marie, the housekeeper, in general cleaning and she was present with him at all times. He could not recall helping Jemina. He stated there was one occasion he was asked to change a bulb by the mother of the High Commissioner but he could not recall where it was. He further stated he had no intention of disappointing the High Commissioner and he had never spoken to anyone else concerning the place he works or his job. He stated he would accept his print being on the furniture because Marie did ask him to move the furniture in the house. He denied being in the High Commissioner's room and stated to go upstairs one would need to get past a gate and a dog. He denied using the High Commissioner's residence phone to call Marie. He admitted that Wilhelmine Souris also known as Marie had left the job one month before the incident. He further stated that Jemina had never asked his assistance to move the furniture. She had worked about two weeks prior to the incident. He admitted he was working at the residence on 22nd July 2014. He stated he would only enter the house on the authorization of Marie. He further stated he was afraid of the dog as it would bark at him.

[21] The other defence witness was Wilhelmine Souris also known as Marie, the ex – housekeeper of the British High Commission. She stated she had been working for 15 years as the housekeeper at the British High Commission. She had worked for 5 High Commissioners beforehand. She stated she knew the accused, Godfrey Albert. She knew him as a tender and loving person and that he was always ready to come and help. When she would need help to move furniture, she would always call for Godfrey or Patrick to assist her as she had a problem with her arm and she was undergoing physiotherapy. Whatever she did would always be done on the instructions of the High Commissioner. She stated that she would ask Godfrey to help move the chest of drawers upstairs as it was on a velvet carpet. She identified the chest of drawers from the photographs. She stated that if the chest of drawers had been moved, it would be placed on the same place as Mrs. Skoll did not want other marks on the carpet. She stated that the 1st accused had never opened any of the Trellidors to go inside the room. She stated that Mr. and Mrs. Skoll were lying, if they had said that they had never given instructions for her to ask

Godfrey to come upstairs to help her. She stated that Mrs. Skoll had treated her well at the beginning but not so later on. It was the mother of Mrs. Skoll who would telephone her. She stated she had left the High Commission 1 month and two days when her house was filled with armed guards one morning. Her son was arrested and he had spent one night in a cell. She also stated she was not given a reference after she left the High Commission. She stated the 1st accused was an exemplary person.

[22] Under cross examination, it was suggested to her that she was bitter and angry with the British High Commissioner. She admitted it was a month prior to the incident that she had left. She admitted therefore she would not know what had happened in the British High Commission on 22nd July and whether the 1st accused had entered the balcony or the bedroom of the British High Commissioner. She stated when she worked there from the kitchen, one could access the entire house. She stated one did not need a key to go upstairs. To access the balcony one had to go through the bedroom. It is apparent from her evidence that when one goes up the staircase, one comes to a big gate and after the gate there are two corridors leading to the main master bedroom and the other leading to the VIP rooms and another room. She admitted she could access the room from the stairs and there was no need to use keys. She further stated if there were guests no one would be allowed to go upstairs. From the room to the storage area and balcony one had to use a key to go out from inside the bedroom. She stated two days prior to her leaving, she had called the 1st accused to help her clean the balcony. She admitted she had stated in her statement that she could not recall the day but said it was because she was angry at the time she was giving her statement. She denied she was telling a lie on this issue. She stated the dog was a friendly dog. She stated when Mr. and Mrs. Skoll were not there, she would keep the Iron -gate from the staircase to the bedroom area closed. She stated she was not drunk when she worked.

[23] The next witness Garry Tirant, stated he was from Hangard Street and he was the brother of Jemina Tirant, who worked as a cleaner at the British High Commission and she was the cleaner working in the British High Commission at the time of the incident. He stated he too was arrested in relation to this incident but was released the same afternoon. He stated this was very disturbing and stated he had met the 1st accused for the first time in his life, in Court. Thereafter, the 1st accused closed his defence. The 2nd accused chose his

right to remain silent from which no adverse inference should be drawn. Both parties tendered oral submissions thereafter.

Analysis of the Evidence and Findings

[24] Having thus carefully considered the evidence before Court, the evidence of Mr. and Mrs. Skoll clearly indicate that a person had entered the bedroom of their residential house situated at Curio Road Bel Air occupied by them, around 04.30 hrs on 23rd July 2014. The intruder had entered through the sliding windows from the enclosed veranda area also referred to as the balcony or storage area as shown in P7 photographs 11 and 12. It is apparent from the evidence sketch plan P15 and P7 photographs 4, 6 and 7 that outside these sliding windows was a roof top. Mr. Skoll had been awakened when the intruder was exiting the bedroom from security grill 2, shown in P15 and raised the alarm. The intruder had run through the sliding window onto the roof top and escaped. The police had arrived and subsequently on an inventory taken by Mrs. Skoll it was revealed jewellery worth approximately 20,550 Pounds Sterling together with cash set out in document P16 had been stolen. It is also borne out in evidence that at the time of the incident Mrs Lindsay Skoll was the British High Commissioner in the Seychelles.

[25] The evidence of Mr. and Mrs. Skoll is that the incident was premeditated (pre-planned). Their evidence revealed that the sliding windows and security grill 2 (shown in P15 and P7 photographs 15 to 19 from various views) which usually remained locked from the inside had been opened by someone to facilitate the entry of the intruder. The evidence reveals the key to security grill 2 was on a chest of drawers inside the room accessible only to persons inside the house. Two heavy mattresses which were leaning on the security grill 2 which would obstruct anyone attempting to enter through security grill 2 had been pushed away from the grill as shown in P7 photograph 15 and 16, to facilitate the opening of the security grill 2. Further a fishing rod which Mrs. Skoll states was leaning on the mattresses had also been deliberately moved. She also stated that this was not an opportunist crime as the person knew where the keys were hidden in the false bottom of the jewellery box, knew how to open the safe, where the cash was in the bedroom, and the fact that the security grill was opened in advance, were all indicators to show that it was premeditated. Having considered the evidence before Court, I am

satisfied beyond reasonable doubt that the intruder, who entered the house did facilitate or had a facilitator to assist in the said housebreaking, by doing acts prior to the actual breaking and entering which would assist the commission of the said offence. The definition of breaking and entering under section 288 of the Penal Code, includes entry via an opening in a dwelling house which would not normally be used as a means of entrance (i.e. an open window). Having considered the evidence of these two witnesses, I am satisfied on the consideration of the evidence of Mr. and Mrs. Skoll that that all the elements of the offence of House breaking have been proved beyond reasonable doubt.

[26] Thereafter, investigations into the said incident began which was conducted by the officers of the Criminal Investigation Department and the SSCRB and it was observed that access to the roof top had been gained by placing a garbage can and climbing on same as depicted in P7 photograph 3 and 5. The finger print experts were called in and Inspector Omblime had been able to lift a clear left hand palm print from the chest of drawers in the storage area outside the bedroom shown in photograph 15. Subsequent finger print investigation revealed that the print was identical to the left hand palm impression of the 1st accused Mr. Godfrey Albert. At the time of the incident, Mr. Albert was the gardener working in the premises of the High Commission. Most importantly, the evidence of the expert witness on fingerprints revealed that the finger print was not more than two weeks old.

[27] It would be pertinent at this stage to consider the evidence of the expert witness Inspector Omblime, who states that the left palm print of the 1st accused was found on the chest of drawers in the storage area close to the security grill 2, the grill that was left open to facilitate entrance of the intruder. He categorically states that the palm print was of recent origin as the print developed quickly when the surface of the chest of drawers were powdered. He further stated the print could not have been more than two weeks old. Though subject to lengthy cross examination, his evidence stood firm on this issue. He stated further as an expert, he could say that the manner in which the palm print was placed on the chest of drawers was as if a person was placing his hand on the chest of drawers to get leverage to push the two mattresses or the chest of drawers. The evidence indicates two heavy mattresses were moved to facilitate entrance through security grill 2. The evidence of the prosecution before Court does not indicate there was any recent

movement of the chest of drawers. Having lifted the palm print from the chest of drawers, his evidence indicates it was a perfect match to the print taken from the 1st accused Godfrey Albert the gardener.

[28] When one considers the evidence of Mr. and Mrs. Skoll it is apparent that the 1st accused Godfrey Albert was their gardener. Mrs Skoll stated the 1st accused would move the heavy dining table downstairs, lift the garden chairs and the living room chairs, but he had no reason to go upstairs or to the bedrooms and it was inappropriate for a gardener to do so. She also stated one cannot casually or suddenly access the bedroom which was upstairs in a private area. To do so, one had to go from the kitchen into the official living room, to the official hallway to turn and go up a large flight of stairs and at the top of the stairs was a security gate. She further stated on 22nd July 2014, Jemina had left before the gardener and her mother had gone to collect her son, William, from school in the afternoon. Therefore from the evidence it is clear, the 1st accused Godfrey Albert, would have been alone in the residence with the security on the 22nd July 2014 in the afternoon hours, before the house breaking occurred that night.

[29] It also is clear from the evidence of Mrs. Skoll that the 1st accused had been working with them for 1 ½ years and was her favourite member of her staff but his behaviour after the incident was very strange. That very morning soon after the incident, he had come to work and as he arrived, he had begun to use the jet hose to wash outside the dining room, where the green bin had been moved to get access to the roof. She found this to be suspicious behaviour as it was an area he would not usually wash. Her husband had to tell him to stop which he did. It is clear from the evidence of Mr. and Mrs. Skoll that the gardener, the 1st accused, had no right to be in the private area of their bedroom and it is borne out from the evidence that the only access to the storage room where his print was found on a chest of drawers, was through the bedroom and no other way.

[30] When one considers the evidence in defence of the 1st accused Godfrey Albert, who gave evidence under oath, he states that he had gone to the storage room to assist the earlier housekeeper Wilhelmine Souris also called Marie, when she was cleaning the upstairs bedrooms to assist her to lift and move the furniture. His evidence is corroborated by the evidence of witness Wilhelmine (Marie) who specifically states that he had moved the

chest of drawers for her to clean underneath it. However this evidence does not help him as Marie herself under oath admits she had left her job as house keeper one month prior to the incident. The palm print of the 1st accused was only two weeks old indicating he had gone to the storage room even after the housekeeper Marie had left her job. In his evidence under oath, he denies going to the bedroom or storage area with the new maid Jemina Tirant or after Marie had left. Therefore the only deduction one could come to, giving credit to the evidence of the expert witness testimony that the print was only two weeks old, is that the 1st accused Godfrey Albert is lying when he stated he had not gone to the bedroom or storage room for a period of a month. I therefore proceed to reject his defence.

[31] In the case of **R v Court (1960) 44 Cr App R 242**, it was held that identification by a finger print expert of a single finger print found at the scene of the crime could be sufficient by itself to found a conviction. In the case of **R v Gilbert [1997] SCSC 9**, it was held that once a court was satisfied that the accused's finger prints were found at the scene of the crime in the absence of an innocent explanation, or any explanation at all, the Court can convict on that evidence. In **Labrosse v R [2016] SCCA 35**, it was held by the Seychelles Court of Appeal that *“it is trite law that the value of fingerprint as evidential material to connect an accused to a crime is well known. If the evidence of a finger print expert is clear and convincing, a conviction could even be based solely on the fingerprint evidence without additional evidence connecting the accused person to the crime.”*

[32] It is also relevant to observe at this stage, the defence requested several statements which were recorded during the course of investigation, of persons not being called by the prosecution as witnesses, to be produced by the prosecution on the basis these statements were beneficial to the defence. The prosecution obliged. It appears the defence was unable to call Jemina Tirant as a witness but relies on her statements produced as P2a and P2b and P6 and P6a. In these statements however, she only confirms the version of the 1st accused in that he did not go upstairs with her and that she had not opened the doors near the safe nor the curtain in the bedroom. It is the view of Court, that this does not assist the defence but more the case for the prosecution as the prints were only two weeks old and therefore it only substantiates the fact that the 1st accused had gone upstairs in her absence and it was not Jemina who had opened the security grill or windows.

[33] When one considers the evidence of defence witness Wilhelmine Souris (Marie) the housekeeper, it is apparent she was bitter and angry with Mrs. Skoll the High Commissioner as she had to leave her job after 15 years. She admits in her own evidence she was angry as her son had been taken in for questioning after the incident and she had not received a reference for her service. Her evidence that the 1st accused did lift pieces of furniture including the chest of drawers on which his print was found, does not affect the prosecution case, as her evidence is relevant to a period one month before the incident and not the two weeks immediately prior to the incident. According to her own evidence she had left one month earlier. In her evidence she also admits that one could gain access to the upstairs without a key.

[34] When one considers the evidence of Marie-Paule Lesperance who was initially produced as an accused, it is clear that she had received the stolen necklace from the 2nd accused Terry Pointe. He had told her he had picked it up at the Barrel Discotheque. He had wanted SR 200 for it. Mrs. Skoll identified the chain as belonging to her, which was stolen during the burglary at the British High Commission. I find the explanation of the 2nd accused given to witness Marie-Paule as to how he came across such a valuable necklace, somewhat lame and unbelievable. Even if it is to be believed, he should have made every effort to trace the owner by informing the police rather than to surreptitiously attempt to sell it for SR 200 knowing very well he was not the owner of the necklace. It is clear that a lame excuse was given and the chain was sold at a low price as the 2nd accused was aware it was stolen property and wanted to get rid of same from his possession. I am satisfied beyond reasonable doubt that the said necklace was stolen property and the 2nd accused knew and had reason to believe it was stolen **Poris v R (1987) SLR 45.**

[35] It appears by a coincidence that Marie-Paule Lesperance who received the necklace from the 2nd accused was the former sister in law of Inspector Omblime. The finger prints at the scene of the incident were taken very much before the necklace was found. Therefore I see no affect that this would have had on the investigation and evidence of Mr. Omblime, the expert witness in this case who is a respected officer and whose expert evidence has been accepted in many cases of offences of similar nature. I find his evidence clear and convincing. I also note that the evidence of Mr. and Mrs. Skoll

indicate that the sliding windows overlooking the rooftop had been left open to facilitate entry. However it is in evidence that one of the windows broke when Mr. Skoll banged on the window shouting “attack attack.” It appears that this broken window has created some confusion as Mr. Omblime in his evidence refers to a forced entry.

[36] In the case of **National Coal Board v Gamble (1958) 3AER Devin J held** , “...*aiding and abetting is a crime that requires proof of mens rea, that is to say, of intention to aid as well as knowledge of the circumstances and proof of the intent involves proof of a positive act of assistance voluntarily done.* In the case of **Republic v Wilby Robert Crim Side 8 of 1991**, it was held the extent and degree of the abettor’s activities and their proximity to the actual crime, would determine the intention or knowledge in proving the charge of abetting. The expert evidence in this case clearly shows that the finger print evidence indicates the person was attempting to use the chest of drawers for leverage to move the two heavy mattresses to facilitate entrance to the bedroom. The evidence of Mr. and Mrs Skoll indicate that the sliding window and the security grill 2 had been left open by the abettor to facilitate the intruder to enter the bedroom. I am satisfied therefore that there was an intention to aid and positive acts were done to aid the intruder in breaking and entering into the said dwelling house of the British High Commission. The finger print evidence identifies the 1st accused as the abettor and indicates the proximity he was to the scene of aiding and abetting.

[37] In the case of **David Zulu v The People (1977) ZR 151 SC** it was held in order to feel safe to convict the Court must be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only an inference of guilt. Having considered the entirety of the evidence in this case, I am satisfied beyond reasonable doubt that the inculpatory i.e. incriminating 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 similarly satisfied that there are no other co-existing circumstances which would weaken or destroy the inference before drawing the inference of guilt based on circumstantial evidence and that the prosecution has excluded any alternative possibility that might point to the innocence of the accused.

[38] For all the aforementioned reasons, I will proceed to reject the evidence of the defence and accept the evidence of the prosecution witnesses which I find is corroborative and un- contradictory in nature. When one considers the evidence in this case, this Court is of the view that as the evidence indicates the housebreaking occurred between the hours of 7.00 p.m. and 5.30 a.m, the offence of burglary has been established beyond reasonable doubt but however the prosecution has brought in a lesser charge of House breaking. I also note, that neither Mr. nor Mrs. Skolls were able to identify the intruder as the 1st accused. I am of the view based on the aforementioned reasons that the prosecution has proved beyond reasonable doubt all the elements contained in the alternative charge in Count 2 and in the charge contained in Count 3 against the 1st accused. Further I am satisfied that the prosecution has established joint enterprise as envisaged in section 22(c) of the Penal Code beyond reasonable doubt. I proceed to find the 1st accused Godfrey Albert guilty on Count 2 and Count 3 and convict him on both Counts. I am also satisfied beyond reasonable doubt on consideration of the evidence in this case as set out above, that the prosecution has proved beyond reasonable doubt all the elements of the charge contained in Count 4 against the 2nd accused. I proceed to find the 2nd accused Terry Pointe guilty on Count 4 and convict him of same.

Signed, dated and delivered at Ile du Port on 14 February 2018

M Burhan
Judge of the Supreme Court

