

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO06/2017

[2018] SCSC 290

THE REPUBLIC

versus

JANNY NOURRICE

Accused

Heard: 11-09-17,18-10-17,25-10-17 and 7-12-17.
Counsel: Mr. Khalyaan Karunakaran, State Counsel for the Republic
Mr. Anthony Juliette Attorney at Law for the accused
Delivered: 23 March 2018

JUDGMENT

Burhan J

[1] The accused Janny Nourice has been charged as follows:

Count 1

Act intended to cause grievous harm, contrary to Section 219 (a) of the Penal Code (Cap 158), punishable under the same.

Particulars of offence are that, Janny Nourrice, a 59 year-old resident of Anse Aux Pins, Mahe, around 1700hours on 10th February 2017, at the residence of his son, Darrice Nourrice, armed with a machete, hit and cut Darrice Nourrice, causing lacerations to his head, amounting to grievous harm.

- [2] Mrs. Priscilla Esther stated she was employed as a security officer and lived at Anse Aux Pins with her step mother, step brother and her three children. On the 10th of February 2017 around 17.05 hrs, she was talking with the father of her child Darrice Nourrice when Janny the accused, who was the father of Darrice who lived in the same house but in a different section, had come in and begun insulting Darrice. Darrice had ignored him and gone out to get his shirt from the line as his daughter could not find it. Witness stated that Janny had a machete in his hand and he too had gone outside swearing at Darrice. She had shouted for Darrice to be careful and then she stated “he had got Darrice with the machete” and she had seen blood on the face of Darrice. She had shouted for assistance from the neighbors and called the Central police station. The police and ambulance arrived.
- [3] She further stated that Darrice and his father did not get along and even on earlier occasions there had been instances of him threatening but no actual physical violence. She had known Janny for 7 years and only when she intervened in their quarrels would Janny say things to her. Under cross examination, she admitted that Darrice is a police officer and a big built man. She denied when she comes from Praslin she would try to take control of the house. She denied being instrumental in the ill feelings between father and son. She had not seen Darrice hit the accused with a bottle. She had seen both of them rolling on the ground behind the house where there were corrugated sheets and other items lying around. She admitted there was a fight and Janny too had a wound on his head, but she had not seen Darrice hit him.
- [4] Witness Marie Claire Dodin stated that she was the mother of Darrice and the accused Janny was the father of her children. She stated an incident occurred regarding a bottle of lotion and the accused who was passing by and not involved in the conversation had stated “where is he that fat cunt, that fat pig.” She stated Janny was drunk as he always was and Darrice had told her “mummy please tell dad to stop.” She had told him to stop

but Janny had gone and taken a machete and begun to sharpen it. He had come to the door and she had pleaded with her son not to go out and locked the door. Darrice had gone out with his bag and was leaving then she heard Priscilla shouting Janny had cut Darrice. She had seen from the window Darrice had blood pouring and he was on the ground. Darrel, a friend had come and helped Darrice who was bleeding. She had not seen the accused. She stated there was bad blood between the two since Darrice was going to school. It had become worse when Darrice had brought home a lady (1st witness Priscila) from Praslin with the children and left them in the house and then he had moved on to find another partner. She had come with one child but thereafter had two more. She admitted under cross examination that Darrice was a big man compared to the accused. It was pointed out in cross examination that she had not mentioned in her statement to the police that the accused had said “gro pilon” or “gro Koson”. She denied she was fabricating evidence to help her son. She denied that she and Priscila and Darrice had ganged up against Janny. She admitted she was trying to hold Darrice and trying to prevent him going out but he was bigger and he was able to free himself and it was that time Janny had a machete and was outside near the door.

[5] Mr. Darrice Nourrice stated he was a police officer and living at Le Niole and stationed at Central police station. He stated on the said day, he was having a conversation with Priscilla and his mother and children when Janny had interfered and insulted him saying “he is over with that fat guy and today he will kill that gay guy”. He had ignored him and gone out and in front of the house but in the corridor in front of the house, the accused had attacked him with a machete on the forehead and he had gone back and there were empty tomato sauce bottles which he had thrown at the accused in defence. A boy living next door had come and separated them and he could not remember what happened thereafter and remembered next being in hospital. At the Anse Royale hospital, they had bandaged him.

[6] Under cross examination, he admitted he heard screaming at the time he was attacked. He admitted the accused was his father and much smaller than him. He stated he was not aggressive and if his mother had said so it was not correct. He denied he had gone out to fight and admitted his father had not used the words “I will kill you.” He stated he had seen his father at the casualty after the incident also having a bandage. After he received

treatment, he had a scan taken and he went home after receiving some pills. He further stated he had no problems with his father and had come out of the house to go take a bus to the town area as he was on duty that day.

[7] The next witness John Antat produced the statement under caution of the accused as P1. He admitted the accused had been given a form to go to the hospital but could not trace and produce the medical certificate of the accused. He stated the initial treatment of the victim Darrice Nourice was at Anse Royale and he was referred to Victoria Hospital thereafter. The defence produced the statement of Christian Jean Paul Hoareau's as D2. He further stated that Janny Nourice had been taken to Mont Fleuri police station.

[8] Police Officer Julino Nourice stated he was working at Anse Aux Pins police station on the 10 February 2017. When he arrived at the scene of the incident, he examined Janny Nourice and found there was blood on his face coming from an area of his head and his left arm. He had given him a medical form and he was transported in a police vehicle to Victoria hospital. They had received a call from the Command Centre informing the Centre of a fight. He described the cut as bleeding but could not tell how deep it was. He stated Janny was a bit aggressive and had come out from inside the house with a knife which they had seized. He stated both injured parties were taken to different hospitals as there was a fight between them and they could not be kept together. He stated the medical form that was filled up in the Victoria Hospital by the doctor in respect of Janny Nourice was not returned. It appears from his evidence, the said form was never collected from the hospital either by him or the investigating officer. Thereafter the prosecution closed its case and the accused chose his right to remain silent and did not call witnesses.

[9] It must be borne in mind that no adverse inference should be drawn from the fact that the accused chose his right to remain silent.

[10] Having thus carefully considered the evidence before court, I observe that the evidence of Darrice the victim is that his father the accused Janny Nourice on the said date had first sworn at him and then assaulted him with a machete. It is clear from the evidence that as a result of the assault, the victim Darrice Nourice sustained a bleeding cut injury to the head. The evidence of Darrice is supported by the evidence of Priscilla, the mother of his children and his own mother Marie Claire Dodin, the concubine of the accused when they

state that they had seen the accused with a machete in his hand and he was swearing at the victim. It is apparent from the evidence of the prosecution that the aggressor was the accused. The evidence of the victim is corroborated on this issue. According to the evidence before Court after swearing at the victim Darrice, when the victim had gone out of the house to go to work, the accused had hit him with a machete and in defence, the victim had thrown empty bottles of tomato sauce lying around outside the house on the accused and in the ensuing scuffle, the accused had himself received injuries.

[11] Learned Counsel for the defence has shown that the aggressor the accused was very much smaller in size than the victim and it is apparent on observing them in Court. It is also apparent from the cross examination that the words “I will kill you” were never uttered by the accused. There is no evidence medically to indicate grievous injuries were caused to the victim even though a dangerous weapon was used. It is apparent from the evidence led by the prosecution that the victim was released from hospital the same day. I also note that no medical evidence was called by the prosecution. I also observe that the evidence reveals fights between the two, father and the son were of frequent occurrence. On consideration of the evidence in its entirety, I am of the view that the evidence proves beyond reasonable doubt all the elements in a charge of unlawful wounding under section 224 (a) of the Penal Code. The necessary intention as envisaged under section 219 of the Penal Code is lacking proof.

[12] I therefore proceed to find the accused guilty of the lesser charge of unlawful wounding and proceed to convict him of same.

Signed, dated and delivered at Ile du Port on 23 March 2018

M Burhan
Judge of the Supreme Court