

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC ... 946
CR01/2018

REPUBLIC
(rep. by Hemanth Kumar)

versus

JEAN-YVES DODIN
(rep. by France Bonte)

1st Accused

DANNY GEORGE KILINDO
(rep. by Karine Dick)

2nd Accused

FULBERT LABROSSE
(rep. by Nichol Gabriel)

3rd Accused

Neutral Citation: *Republic v Jean-Yves Dodin & Ors* (CR 01/2018) [2019] SCSC... (17 May 2019).

Before: Dodin J.

Summary: Robbery with violence – section 280 read with section 281 – common intention - section 23 of the Penal Code.

Heard: [30 July, 17 September, 12 December 2018, 25 January, 1, 15, 22 March 2019]

Delivered: [17 May 2019]

ORDER

The three accused persons are found guilty of the offence of robbery with violence and convicted accordingly as charged.

JUDGMENT

DODIN J.

[1] The accused persons Jean-Yves Dodin, Danny George Kilindo and Fulbert Labrosse stand charged with one count of robbery with violence contrary to section 280 read with section

23 and punishable under section 281 of the Penal Code. The particulars of the offence are that on the 1st January, 2018, the three accused persons acting with common intention, at Maruthi Store, Grand Anse, Mahe attacked Ambazhagan Ramasamy, aka Ambu Pillay, the shopkeeper and Chandrasekaran Prakash, an employee and robbed the shop of SCR 7,000 by taking the money from the cash counter.

- [2] From the testimonies of Ambazhagan Ramasamy and Chandrasekaran Prakash, on the 1st January 2018 they decided to close the shop Maruthi Store at around 10pm instead of their usual closing time of 9.30pm. Earlier they had notice the three accused persons outside the shop and occasionally one of them would come into the shop to purchase something. They started cleaning the shop at 9.30 whilst simultaneously serving the occasional customers who ventured into the shop. At around 9.43pm the 3rd accused came into the shop and suddenly grabbed Chandrasekaran Prakash by the throat, pushed him to the floor and started hitting him all over. The 2nd accused came in and held Chandrasekaran Prakash's arm in a locking position behind his back whilst the 1st accused went to the counter and stole money from the counter amounting to around Seychelles rupees 7,000. Hearing the commotion Ambazhagan Ramasamy came to assist Chandrasekaran Prakash and was also attacked by all three accused persons. Eventually they managed to force the three accused out of the shop and called the police. After the police had attended to the scene Mr Ramasamy and his employee were taken to the hospital for treatment by police
- [3] The Court viewed video recordings of the incident inside the shop which corroborated the testimonies of Chandrasekaran Prakash and Ambazhagan Ramasamy in terms of the assault upon them by the 3 accused persons.
- [4] The prosecution submitted that the acts of the three accused persons as witnessed from the video recordings and as testified to by the two victims established beyond reasonable doubt that the three accused persons had the intention to rob the shop and committed the robbery as intended by them at scene. Learned counsel submitted that after the two victims managed to push the three accused persons out of the shop and the accused persons had ran away from the scene they checked the counter and came to know that SR 7000/- was missing from the cash counter after this attack on them by the accused persons. Learned counsel

submitted that police officer Ms. Irine Alissop who attended the scene viewed the video footage at the shop and confirmed the identity of the three accused persons involved in this robbery.

- [5] Learned counsel submitted that the evidence adduced by the prosecution against the three accused persons is overwhelming and proved the case against all three beyond reasonable doubt. Learned counsel moved the Court to convict all three accused persons as charged accordingly.
- [6] Learned counsel for the 1st accused submitted that the prosecution has failed to satisfactorily establish the identity of the 1st accused and that there is no evidence of loss of money or that it was the 1st accused or any of the accused persons who took the money from the till. Learned counsel submitted that as there is doubt as to the identities of the accused persons and doubt as to whether money was stolen or who stole the money, the Court must interpret these doubts in favour of the accused persons. Learned counsel moved the Court to acquit the 1st accused accordingly.
- [7] Learned counsel for the 2nd accused submitted that the prosecution has not proved its case beyond reasonable doubt. Learned counsel referred the Court to the case of *Woolmington v DPP [1935] AC 462*. “It is not for the prisoner to establish his innocence but for the prosecution to establish his guilt”. She submitted that this is a case of mistaken identity and that the second accused did not commit the offence. Learned counsel attempted to show that there was a contradiction between the testimony of Ambazhagan Ramasamy and the video footages which do not show the second accused as identified by the Mr. Ramasamy, strangling Prakash or attacking anyone. Learned counsel submitted that this incident happened really fast and there is a high possibility that he was mistaken as to who attached him. She referred the Court to the case of *Rose v The Republic (2016) SLR 683* where Fernando JA dissenting, stated “*Dock identification is an unsatisfactory procedure and should be relied on only with extreme caution*”.
- [8] Learned counsel submitted that in respect of the SR 7000/- missing from the counter none of the video footages shows money being taken from the counter. The footage showed someone attempting to go over the counter, being kicked off and walking out empty-

handed. There is no evidence to prove that money was stolen. Learned counsel moved the Court to dismiss the charge against the second accused.

- [9] Learned counsel for the 3rd accused adopted the submissions made for the 1st and 2nd accused persons as relevant to the 3rd accused and moved for dismissal of the charge against the 3rd accused accordingly.
- [10] The relevant provisions covering the offence of the nature as charged are sections 280, 281, 282 and 283 of the Penal Code.

Definition of robbery

"280. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed "robbery".

Punishment of robbery

"281. Any person who commits the felony of robbery is liable to imprisonment for eighteen years.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes, or uses any other personal violence to any person, he is liable to imprisonment for life"

Attempted robbery

"282. Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony, and is liable to imprisonment for fourteen years.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes, or uses any other personal violence to any person, he is liable to imprisonment for life."

Assault with intent to steal

"283. Any person who assaults any person with intent to steal anything is guilty of a felony, and is liable to imprisonment for ten years."

[11] Section 23 of the Penal Code states:

“23. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”

[12] Other relevant provisions applicable in this case are sections 156 and 157 of the Civil Procedure Code which provide for the conviction of a lesser offence contained in the more serious offence charged.

When offence proved is included in offence charged

“156.(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

(2) When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.”

Person charged with any offence may be convicted of attempt.

“157. When a person is charged with an offence, he may be convicted of having attempted to commit that offence, although he was not charged with the attempt”.

[13] In this case of robbery with violence, there is no dispute that three young men attacked Chandrasekaran Prakash and Ambazhagan Ramasamy inside the shop Maruthi Store at Grand Anse, Mahe on the 1st January, 2018, at around 9 43pm. The contention of the defence is that the attackers were not the three accused persons and there was not sufficient identification of the attackers. I take careful note and warn myself of the danger of convicting a person relying on identification evidence.

[14] I make reference to the statement of Lord Wigery CJ in the case of *R v Turnbull 1977 QB 224*, on the issue of identification:

"All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger. In our judgment, when the quality is good, as for example when the identification is made after a long period of observation, or in satisfactory conditions by a relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it; provided always, however, that an adequate warning has been given about the special need for caution. Were the courts to adjudge otherwise, affronts to justice would frequently occur. A few examples, taken over the whole spectrum of criminal activity, will illustrate what the effects on the maintenance of law and order would be if any law were enacted that no person could be convicted on evidence of visual identification alone."

- [15] In this case, three prosecution witnesses identified all three accused persons. The victims recognized them during the incident and identified them from the video footage and made dock identifications. Police officer Allisop also identified the three accused persons from the video footage and in Court maintaining that she had known all three for a long time as she grew up amongst them. There is therefore no question of a fleeting glance or a brief encounter.
- [16] I am satisfied beyond reasonable doubt that the persons who committed the robbery were the 1st, 2nd and 3rd accused persons. I am also satisfied beyond reasonable doubt that the 1st, 2nd and 3rd accused persons acted in concert, satisfying the elements of common intention as provided by section 23 of the Penal Code and used violence against the complainants inside the shop.
- [17] The question which remains outstanding is whether anything was stolen from the shop. The complainants testified that after the accused persons had left they verified the cash counter to find that the sum of Seychelles rupees 7,000 had been taken. Chandrasekaran Prakash testified that whilst he was being assaulted on the floor of the shop, he observed the 1st accused go to the counter and took money from the till. The video footage in fact

showed the 1st accused jumping over the counter where the cash till was but being pushed back by Mr Ramasamy. It is not clear from the footage whether he had managed to access and take the money from the till on that occasion but according to the witness the video footage is not the only time the 1st accused went to the till as the angle of the cameras did not focus only on the till.

- [18] Learned counsel for the 1st and 2nd accused submitted that since the video footage did not show the 1st accused or any accused take money from the till, then the court must find that no money was stolen. If that is the case, the accused persons only attempted to rob the shop but were unsuccessful. This leaves the Court to determine whether the accused persons committed the offence of robbery with violence as per section 280 and punishable under 281 of the Penal Code, or attempted robbery under section 282 or the much lesser offence of assault with intent to steal under section 283.
- [19] Having viewed and reviewed the footages carefully, I agree with the evidence of the prosecution witnesses that the coverage of the cash counter was not constant and may not have covered the instant when money was taken from the till. Video evidence is only one component of proof which may or may not be available in support of a case. It is a misconception to argue that without video coverage showing the commission of an offence conviction cannot ensue. The Court can still convict relying on credible direct or circumstantial evidence. In this case, I believe the prosecution witnesses testified truthfully in that respect and I believe them entirely.
- [20] I therefore find that on the 1st January, 2018, the three accused persons Jean-Yves Dodin, Danny George Kilindo and Fulbert Labrosse acting with common intention, at Maruthi Store, Grand Anse, Mahe attacked Ambazhagan Ramasamy, aka Ambu Pillay, the shopkeeper and Chandrasekaran Prakash, an employee and robbed the shop of SCR 7,000 by taking the money from the cash counter and that immediately before, during and after the robbery used violence against Ambazhagan Ramasamy, and Chandrasekaran Prakash by beating and causing injury to Chandrasekaran Prakash.

[21] I therefore find all three accused persons guilty of the offence of robbery with violence contrary to section 280 read with section 23 and punishable under section 281 of the Penal Code and I convict all three accused persons accordingly as charged.

Signed, dated and delivered at Ile du Port on 17 May 2019.



Dodin J

