

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 899
CO04/2018

In the matter between:

THE REPUBLIC
(rep. by Khalyaan Karunakaran)

Republic

and

TREVOR MATHIOT
(rep. by Alexia Amesbury)

Accused

Neutral Citation: *Republic v Mathiot* (CO 04/2018) [2019] SCSC 889 (11 October 2019)
Before: Burhan J
Summary: Criminal Law : Defence of Alibi and mistaken identity rejected. Accused convicted as charged.
Heard: 14 September 2018, 30 November 2018 and 14 February 2019
Delivered: 11 October 2019

ORDER

Accused convicted on both Counts.

JUDGMENT

BURHAN J

[1] The accused Trevor Mathiot has been charged as follows:

Count 1

Robbery with violence, contrary to Section 281, read with Section 280 of the Penal Code (Cap 158) and punishable under the same.

Particulars of offence are that, Trevor Mathiot, a 24 year old labourer of Belonie, Mahe, at around 0100hrs on 9th January 2018, at the residence of one Michelle Sabury, used violence against her and wounded her, and robbed her of a sum of USD200 and EUR100.

Count 2

Unlawful wounding, contrary to Section 224 (a) of the Penal Code (Cap158) and punishable under the same.

Particulars of offence are that, Trevor Mathiot, a 24 year old labourer of Belonie, Mahe, at around 0100hrs on 9th January 2018, at the residence of one Michelle Sabury, while trying to rob her, used violence and unlawfully wounded her.

[2] The accused denied the charges and the prosecution opened their case by calling witness Dr. Sriram Pugazhendi. He produced the medical examination report of Michelle Sabury who he had examined on the 9th of January at 3.15 a.m. The patient had superficial lacerations and swellings on the forehead, a laceration on her 3rd finger and swelling on the 5th finger of her left hand and a swelling on the shin region of the left leg. The medical certificate was produced as P1.

[3] Witness Michelle Sabury (Ms Sabury) giving evidence under oath stated that on the 9th of January the date of the incident, she had come home and was tired and had gone to bed around 7.00 p.m and 8.00 p.m. It had been a hot night and she was awakened by some texts coming in on her phone. Between awakening and dozing off, she heard around 1.00 a.m. her dog barking and she had seen a light on in the corridor and as her son was with her, she had called out and he had answered and then she had gone back to sleep. A few minutes later, she had felt someone was in the room and she had turned to her left side and seen someone squatting next to her wardrobe. She had got up and seen his face. The person had taken her bag and she had screamed. The person had run to the kitchen and when she reached the kitchen she had switched on the light. She had recognised him and called out to him by the name she knew him “Kolor why are you doing this”. She had told her son to call the police and the person had said “You are going to call the police on

me you mother fucker. I will kill you”. Then a struggle had ensured between her and the intruder and she had fought back and forth with him and fallen. She had managed to pull her bag and then she remembered there was a machete under her bed and she had tried to pull it out and the intruder had run through the burglar bars from an empty room opposite her room which had been opened by the burglar to gain entry.

- [4] She referred to an earlier incident about a year before, where on the request of his mother, she had given the accused some work and a neighbour had phoned her at work and told her that he was breaking into the house. She had come and reported the matter but stopped going further as they were neighbours. She said the person Kolor lives above from where she stays and sees him pass by her house every day. She stated his actual name was Trevor and she had known him since he was a small boy. She further stated that she still feels the after effects of the struggle she had on that day, as her spine has an inflammation and her little finger was still bent. She had called the police and they had arrived in 10 minutes. She had noticed her purse which contained 200 US dollars and 100 Euro was missing. She had removed the purse from her bag when she came home and kept it on the table.
- [5] Under cross examination, she stated that the corridor light was on and the street light reflects into her bedroom. She stated that the father of the accused Louis Mathiot came twice to meet her to tell her first that Swallen Basset and then Mazor and even one Pascal were the persons who had come to her house that night and that another person would take binoculars and look into her bathroom. It was suggested to her it was not Trevor who had come that day but another person as no injuries were found on him when he was taken to the hospital. She stated that she had never hit the intruder but only pulled her bag from him. It was first suggested to her that at that time 1.00 a.m, the accused was sleeping in the veranda of his mother’s house from 11.00 p.m. It was next suggested to witness that the mother had come at 11.00 p.m. and seen her son the accused sleeping in the veranda of their house and had opened the door to let him in the house and he had never got out again.

[6] Witness further stated that when she called to him as Kolor, he was facing her and there was only a table in the middle. She further stated his head was covered with a cloth but not his face. She stated she had seen the accused for the past twenty years daily, when he passed her house and she knew who she had seen that night. She reiterated that the light from the corridor coming through the door and the street light coming into the room was sufficient for her to be able to identify the accused. In her re-examination she further stated that when he was attempting to exit from the kitchen, the door had not opened and he had turned and been face to face with her and she had put on the kitchen light. It appears that the father of the accused had kept meeting her regularly after the incident and blaming others in respect of the incident.

[7] The next witness WPC Vanessa Cherry stated that she had gone to the scene of the incident at Belonie on the said date she had met Ms Sabury and her son. She had examined them and noticed Ms Sabury had a small scratch and a bruise on her forehead and on her arm and leg. She also noted the kitchen had been ransacked. Sergeant Jourdan Belle stated that he was one of the team of police officers who responded to the call from Ms Sabury that she had been attacked. On arriving at the house of Ms Sabury at Belonie, she had informed him that it was the child of Louis, nicknamed as Kolor who had attacked her. His mind had recollected the name and he had asked her if it was Trevor and she had said yes. He had thereafter gone to the house of Trevor with the other officers. He had knocked at the door and a woman had opened and he had gone in and found Trevor inside the living room sleeping. He had informed him he was under arrest and taken him into custody. When the accused asked what he had done he had explained Ms Sabury's complaint. He stated under cross examination that the distance from the house of the accused was like from where he is to the National Assembly. Witness stated at the time he arrested the accused, he was sleeping and he did not look like he was injured. He had not seen any suspicious cloth with the accused. The accused was arrested on the information given to them by the complainant Ms Sabury.

[8] The prosecution next called Shaun Joubert the son of Ms Sabury. He stated that he lived at Belonie and on the day of the incident a burglar had entered their house. He had gone around 1 or 2 in the morning to get a glass of water. He had been sleepy and heard his

dog barking. He had not seen anything at that time but after going to his room about 10 minutes later, he heard his mum screaming and he had come out of his room to see his mother fighting with Trevor who lived just above their house. He had known him since he was born. He had seen his mother fighting trying to remove her bag from his hand. The light had been on and the burglar tried to open the kitchen door but could not and returned to the corridor and the fighting continued. He had gone to his room to get his phone but could not find it and had come back and seen a piece of wood on the floor and picked it up with the intention of hitting it on the floor to scare the burglar. He had then run to help his mother but the burglar had run away through the window. He identified the accused in the dock as the burglar who was inside his house that night and fighting with his mother. He stated he was frozen with fear and had not helped his mother. He further stated only the burglar's hair was covered with something like a t-shirt. He stated in cross examination that the accused had tried earlier to break into their house and when his mother had told him this he had observed that day that the burglar bar was bent. He denied his mother dictated his statement at the police or that she had told him what to say. He further stated he saw the accused as the corridor had a light which was on. He stated he had seen a knife near a window but did not know whether it had been used to cut the burglar bars. He had not seen the accused entering the house but seen him only in the house. He had seen his mother falling several times when she was struggling with the burglar.

[9] Thereafter the prosecution closed its case. The accused gave evidence under oath and called witnesses.

[10] The accused gave evidence under oath stating he presently was working in the port on a boat and also would cut grass to earn a living. He stated he knew nothing about the incident about the breaking into the house of Ms Sabury. He stated he was at home on the date of the incident. He had been at home from 5 to 6 pm repairing the ceiling and thereafter his father had given him some money and he had thereafter gone to Belonie to meet a friend and arrived back at home around 7 pm or 8pm. He had knocked on the door but his father had been sleeping and sat outside in the veranda knowing his mother would come home. When she came around 11, 11.30 p.m, she had phoned his father who

was sleeping inside the house and his phone had rung and then when she knocked on the door, his father had got up and come and opened the door. It was around 11 to 11.30 p.m. when his mother came. They had entered the house and his mother had gone for a shower while he had his dinner and watched TV. He had then fallen asleep and felt someone waking him up. He could see police officers in the house. He had asked them what was going on and they had informed him that Ms Sabury had been attacked and she was stating it was he who had done it. He stated it was not him because he had been at home. His father and mother too had told them it could not be him as he was in the house and the house key was with his mother. He had explained once the mother locked the door she kept the key with her. The accused had accompanied the police and on the way they had told him that Ms Sabury had struggled with the intruder and had asked the police officers to verify whether the person they arrested had scratch marks as she had scratched the person during the struggle. They had removed his t-shirt and trouser at the station but not found any scratches on him. He stated he made a statement to the same effect and produced his statement a D1.

- [11] Under cross examination the accused stated that earlier on he had bought a bottle of whisky for his father and as his father had a leg problem. When he knocked, his father had not answered him. He had not wanted to trouble him and decided to wait outside for his mother. When his mother came, she had phoned his father and as the phone was in his pocket it vibrated and he had woken up for the vibration. He admitted he was outside until his mother came at 11.30 p.m. and had taken some steam, a Cannabis cigarette. He admitted after tapping twice, he had not gone round to see whether his father was at home. He denied he was not speaking the truth and stated his conscience was clear. He stated he could not see the house of Ms Sabury from his house. He stated his home had burglar bars around it and the back door lock was broken his father had sealed the door. He denied the suggestion, it was he who had broken into the house of the complainant. The accused further stated the name of the person who had gone to her house was Terry Esparon who would change dollars on the street and it was Terry's brother who had informed his parents of it.

- [12] The mother of the accused Eleene Mathiot next gave evidence on behalf of the accused. She stated she had earlier done two jobs and her night job would be at Fisherman's Cove. She worked in the laundry and she would be dropped home around 11.30 pm after work. She stated she was aware her son had been accused of breaking into Ms Sabury's house. She stated the night of the incident the police had come to her house. They had not found dollars or Euros in the house even though they searched the house. She stated when she came from work earlier that day Trevor was outside in the veranda and she had knocked and her husband had come and opened the door. She and Trevor had gone in and Trevor had his dinner and slept on the floor in the living room which he loved to do. She had locked the door and taken the keys to her bedroom. There was only one other door at the back which was sealed. The police had come around 2.00 a.m. and told them of the incident. She had said Trevor was at home sleeping. They had woken him up. She further stated that had Trevor done the act of attacking Ms Sabury, he would have been sweating and panting and out of breath. She stated that subsequently later on she had got to know it was Terry who had attacked Ms Sabury that night. This she got to know from Richard Esparon his own brother as the brothers had fought each other, he had come and told her.
- [13] Under cross examination, she stated Ms Sabury lived close by and she knew her and she had taken the accused earlier to the detox centre. However Trevor had escaped from there and from that day Ms Sabury would say that Trevor had shamed her. From that day they had not got along together and witness further stated that in their house there were burglar bars and her house was safe. She stated after she locked the front door, she had kept the key under her pillow and Trevor would sleep all over the house wherever he wishes to.
- [14] The next witness called by the defence was Louis Mathiot the father of the accused. He testified that the accused was his son and on the 8th of January 2018, they had been working on the ceiling repair in the house and had finished around 4.30 p.m. Witness gave the accused his son money to go and buy cigarettes and a small bottle of whisky and proceeded to cook the food. Trevor had come back and he had given him SR 150. He had his dinner and was watching TV whilst in bed when Trevor had come and called him but he had not gone as when he watches TV, he falls asleep and does not get up for anybody.

His wife was not at home and when she came, she had rung him and he had heard his phone ringing, he had got up and opened the door and seen Trevor sleeping in the veranda. At around 10 minutes past two in the morning, he heard knocking at the door and when he knew it was the police, the mother had unlocked the door and he did not get up from bed but saw a tall dark police officer enter the house. They had asked if Trevor was in and when they saw him they had taken him away saying Ms Sabury had said he had attacked her. He stated Trevor could not have gotten out of the house.

[15] Thereafter, the next day, he had met Ms Sabury who had told him about the incident and how she had struggled with the person who had come into her house and she didn't see the face but her mind told her it was Trevor. She had told him she had managed to scratch the person under his neck but witness stated there were no scratches when the police checked his body after removing his clothes. He had given Trevor SR 150 for the work he had done and he had gone to buy his "Stuff" when he came back, witness had not opened the door as he did not like him smoking it in the house. He stated there were two house keys one was with his wife and the other was in the store which was locked. He stated the key to his store was under some clothes and only he knew where it is. He stated he had not got up to meet the police as he did not see any reason to do so. He stated it is all lies and the story has been fabricated by Ms Sabury.

[16] Thereafter the defence moved to call their crucial witness Richard Esparon but though summons were served on him he had refused to come as according to the mother of the accused, he did not want to be in trouble with his family. Thereafter the defence closed its case and both parties made written submissions.

[17] Having thus carefully set out the evidence led by the prosecution and defence it is apparent that the defence of the accused is that he denies committing the said offence and states that the victim Ms Sabury had mistakenly identified him as the intruder that night. He further states he was not at the house of the victim that night breaking into her house and assaulting her but sleeping in his home with his parents. He calls both parents as witnesses to establish the fact that he was at home that night and his alibi.

[18] I will first proceed to deal with the question of identity. The identification has been challenged by the defence. The victim and her son both identified the accused on the basis that he was well known to them from birth as he stayed close by and would pass their house virtually on a daily basis. This fact was never denied by the accused it was even accepted. This would therefore amount to recognition rather than identification. No doubt recognition could be more reliable than identification but Court must warn itself that even in recognition mistakes could occur. However giving regard to the principles laid down in the case of **R v Turnbull [1977] Q B 224**, when such identification or recognition is challenged, Court must carefully scrutinise the following elements prior to accepting the said evidence in respect of identification. Court should analyse how long the witness had the accused under observation, at what distance and in what light. On analysing the evidence of the prosecution when one considers the evidence of Ms Sabury, it is clear that she was in close proximity to the accused as she struggled to get her bag back from him and there was also an exchange of words when she identified him and stated “Kolor why are you doing this” and told her son to call the police and the intruder had said “You are going to call the police on me you mother fucker I will kill you”. When the intruder had run into the kitchen and attempted to open the door and escape but had been unable to, the victim had put on the light in the kitchen and seen the intruder face to face and then struggled with him to get her bag. While this struggle was going on the victim’s son aged 15 years had also come on the scene and witnessed the accused struggling with his mother and he too identified the accused as he had grown up with the accused who lived close by. The police evidence also confirms the fact that as they arrived on the scene the victim had told them the nickname of the intruder Kolor and told that he was the son of Louis and Officer Belle had connected the name to the accused Trevor Mathiot. Therefore in the light of this evidence, it is clear this was an identification at close proximity, in clear light conditions of a person well known to both the identifying witnesses and was not a fleeting glance identification considering the evidence in regard to the ensuing struggle that occurred between the victim and the accused. Therefore the evidence of the victim in respect of the identification of the accused as the intruder which is corroborated by the evidence of her son is acceptable to this Court.

[19] Further it is the considered view of this Court that the accused's defence that he was at home as he had been locked in by his parents though supported by the evidence of his parents does not hold water. The evidence reveals that the father even though he heard the accused knocking at the door did not open it but kept the accused his son outside till 11.30 in the night till the mother came. Having kept his son free and unsupervised till so late it appears strange that both parents would suddenly during the time of the burglary only decide to have locked him in the house and kept the key under the pillow. I find this unbelievable. I am of the view therefore that this evidence was given by the parents as a desperate attempt to protect their child the accused, knowing the serious consequences ensuing from his act. The attempt of the father to persistently meet the victim and give different names of persons to mislead her stating they were the ones who burgled her house that night, is also another attempt by the parents to pass the blame onto another. Even though several dates were given to them at their own request to produce the witness whose brother was supposed to have committed the burglary he never came to Court. For all the aforementioned reasons this Court is satisfied beyond reasonable doubt of the identity of the accused as the intruder/ burglar and the prosecution has successfully been able to negative the defence of alibi by the accused **R v Anderson[1991] Crim LR 361 CA.**

[20] The next main issue raised by the defence was that there were no scratch marks on the victim. The victim clearly states in her evidence was that she never scratched the intruder but struggled to pull back her handbag back. The only persons who refer to the victim scratching the intruder are the accused, his mother and father and state, Ms Sabury told them. However Ms Sabury categorically when asked, stated that she was not hitting or scratching the accused but struggling to pull back her handbag from his clutches. Even the police when giving evidence do not mention that when they arrived on the scene the victim had informed them she had scratched the victim and he would be having marks on him. All she had done was to give the nickname of the intruder Kolor (son of Louis) who they knew as Trevor Mathiot. Therefore the defence that as the accused did not have any scratch marks on him, he could not be the intruder bears no merit.

[21] Further the fact that the accused was able to get back to his house and feign sleep is quite possible as both the victim and the accused were living in close proximity to each other as borne out in the evidence. The accused at a slightly elevated area to that of the victim. The police arrived 10 minutes after the call and first questioned the victim and got the necessary details and only then proceeded to the house of the accused. As the houses were situated close by and as the police took some time to come to his house, the accused had ample time to get back and feign sleep and therefore the accused need not have been sweating, panting or out of breath at the time police arrived as suggested by the defence.

[22] For all the aforementioned reasons, I reject the evidence of the defence. I am satisfied with the corroborated testimony of the victim in respect of the identity of the accused, the acts of breaking in and stealing and the acts done in unlawful wounding the victim Ms Michelle Sabury during such burglary which evidence is further supported by the evidence of the police officers who arrived at the scene and saw the house of the victim ransacked and noted injuries on the victim and the medical evidence. I therefore proceed to accept the evidence of the prosecution and reject the evidence of the defence.

[23] I am satisfied the prosecution has proved all the essential elements of the charges in both Counts 1 and 2 beyond reasonable doubt. I therefore proceed to find the accused guilty on both Counts and convict him of same.

Signed, dated and delivered at Ile du Port on 11 of October 2019

M Burhan J