

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 941
CO 74/2019

In the matter between

THE REPUBLIC
(rep. by Ms. Almeida)

Republic

and

BETTY MAY MICHEL
(rep. by Mr. France Bonte)

1st Accused

JEAN MICHEL
(rep. by Mrs. Alexia Amesbury)

2nd Accused

NELTA MICHEL
(rep. by Mrs. Alexia Amesbury)

3rd Accused

Neutral Citation: *Rep v Michel & Ors (CO 74/2020) [2020] SCSC 941*
Before: Burhan J
Summary: Act causing grievous harm – Common assault
Heard: 17th July 2020, 31st July 2020 and 10th August 2020.
Delivered: 11 December 2020

ORDER

This Court finds the 1st accused Betty May Michel and the 2nd accused Jean Michel guilty on Count 1 and proceeds to convict them of same. Further this Court finds the 3rd accused Nelta Michel guilty on Count 2 and proceeds to convict her of same.

JUDGMENT

BURHAN J

[1] The aforementioned accused persons in this case are charged as follows:

Count 1

Grievous Harm Contrary to Section 221 as read with Section 22 (a) of the Penal Code Cap 158 and Punishable under Section 221 of the Penal Code 158.

Betty May Michel of Anse Aux Pins, Mahe and Jean Michel of Ma Joie, Mahe, on the 28th October, 2017, at Ma Joie, Mahe, unlawfully and grievously harmed Ms. Stanna Esparon of Ma Joie, Mahe by means of fist blows and pushing causing the complainant to lose one of her upper teeth.

Count 2

Common Assault Contrary to Section 235 and Punishable under Section 235 of the Penal Code Cap 158.

Nelta Michel of Anse Aux Pins, Mahe, on the 28th October, 2017, at Ma Joie, Mahe, unlawfully assaulted, Janna Michel of Ma Joie, Mahe, by means of slapping the complainant.

[2] The prosecution opened their case by calling Stanna Esparon, a dentist nurse living at Ma Joie with Jean Michel the 2nd accused who was her partner at the time of the incident, since the past 19 years. She stated she had one daughter Janna Michel and also mentioned that her relationship with Jean Michel had its ups and downs and that there were several issues and that their relationship was not going well. She had been to the Social Services and Probation and now they both were living apart. The situation that caused a lot of damage

to their relationship was the incident in this case. She stated on the 27th of October 2017 she had come home early and gone out leaving her daughter Janna, to attend to some Creole activity as the Creole festival was on and thereafter had returned in a pirate taxi to pick up her daughter.

- [3] They had left and returned around 2 a.m. in the morning of the 28th October 2017. When she got down she heard loud music from her house. When she got closer to the house, she saw Jean Michel (3rd accused), Nelta Michel (2nd accused), Betty May Michel (1st accused) and another person a driver by the name of Barnsley. It is apparent from the evidence that Betty May and Nelta were the sisters of Jean Michel. They had been seated and Barnsley had been near the balcony and on the table there was a bottle of alcohol. The music was playing loud and she noticed they were tipsy but not drunk. Witness had asked Jean why these people were there at this hour making noise. Betty May who had an issue with her had walked up to witness had asked her what she was doing here. She had replied 'You come to see your brother at this hour, I am not aware.' Witness stated thereafter Betty May had jumped on her and she had tried to move away. She stated Jean Michel had pushed her and stopped her from going out and she had fallen on the floor in the verandah and hit her head. When she fell Betty May had come up to her when she was trying to get up and she had pushed Betty May and she had ended up on top of Betty May. Jean Michel had come and hit her on her side. Then Betty May had got up pressed her on the floor, sat on her and started hitting her on the face. Nelta had held her daughter towards the wall and her daughter had started to scream to leave her mother alone. When she was on the floor Betty May had hit her on the mouth and sat on her and urinated on her. Betty May had said "I bust your lip cunt of your mother, I bust your lip." Witness had tried to push her away but she had bitten her finger.

- [4] While this was going on Jean Michel had been applauding and saying to hit her and not let her go. Jean Michel had told Nelta Michel who was holding her daughter to suffocate her and not to let her go. Victim Stanna had managed to get off from under Betty May and had jumped over the balcony and gone away. She had met the neighbours and gone to the house of one Mr. Kilindo and taken a call and got the driver down and gone to hospital.

[5] She had looked for her phone and Janna but could not see her but later she had met her and gone with her to the casualty. At the casualty she had had a temperature. She had given her statement subsequently to the Central police, as on that day she was not fit. She had an X' ray taken and had been referred to the dentist regarding her tooth. She further stated that earlier Probation has advised Jean Michel not to bring his relations to the house.

[6] The next witness Janna Michel the daughter of the complainant and the 2nd accused stated she is 18 years old and living with her mother Stanna Esparon at Maldives. She stated earlier she had lived in Ma Joie with her father Jean Michel and mother. She stated on the 28th of October 2017 around 2 a.m. when she and her mother had reached the house her mother had asked her father why his sisters were there in the house with him when they were not supposed to be bringing such people to the house. Her father had not answered but said "Betty May there you go". Her mother had asked Betty May what she was doing there Betty May had not answered but got up and pushed her mother. Her mother had hit her head on the wall and they had begun to fight. The persons present at the time of the incident were her father and two aunties Betty May and Nelta. Her father had just looked on. She had tried to stop the fight but Nelta had stopped her and put her to a corner. She started to scream and scream. She had tried to bite Nelta who was holding her mouth to stop her screaming and as she was pressing her mouth and hurting her, she had bitten Nelta and then Nelta had slapped her. She repeatedly stated her father had done nothing and that it was Betty May who had pushed her mother and then sat on her. However at pg 38 of the proceedings of 17th July 2020 Janna states as follows:

"When my mother and Betty May was fighting they were turning on top of each other and my father removed my mother pushed her so that Betty May could get the chance to continue to beat her. When I was in the corner and my mouth was being held my father was doing nothing and he said continue to press on her to suffocate her."

[7] Ms Galina Garusha a dentist stated that she had worked for the Ministry of Health earlier as a dental officer. She identified her signature on the document and produced the medical certificate as P1. She explained that she had examined Stanna Esparon and observed that her tooth the left upper incisor had fractured and broken and what was remaining was the

root only. The crown of the tooth was damaged and just hanging and could not be re-cemented and was lost. The option available to her was an implant or a bridge. It is clear from her evidence that the said tooth was broken at the time of examination. Witness Lena Anacoura stated that she was the investigating officer in the case and had recorded the statement of Jean Michel. She produced the statement of Jean Michel as P2. There were no objections to it being produced. The statement of accused Betty May was also produced as there were no objections as P3. The English translations were also produced and corrected in open court. .

- [8] The prosecution next called Dr. Shiriam Kumar. He stated he had been on duty as the doctor in the casualty emergency department when one Stanna Esparon had come in around 2.45 in the morning on the 28th of October 2017. He had examined her and produced the medical report as P4. According to the report she had claimed she had been assaulted and on examination, it was observed her left arm was swollen and there was a bite mark on it. She had an abrasion on her left forearm and on the right index finger a swelling and had one upper incisor tooth missing and there was a swelling on the head about 2x2 cm in size. He produced reports and documents P4, P5 and P6. And P7.
- [9] There after the prosecution closed its case.
- [10] In defence the 1st accused gave evidence under oath. She stated that the 2nd accused was her brother and the 3rd accused sister. She admitted she had gone to her brother's place to get something and they had sat down and were talking when Stanna had come in and started screaming and swearing stating "You cunt of a mother what are these people doing here." She had said this three times. She had looked at her brother and sister specially her brother for him to keep quiet. They had been sitting in the verandah and Stanna had come up to her and pulled her hair and asked her "Tel soz your mother, what are you doing here?" She had replied there are other people here why do you only see me. Stanna had pulled the hair of the 1st accused at that time and the 1st accused stood up and then the fight had started. She stated the fighting was between Stanna and her and not the others. Under cross examination she stated the whole family knew the problem between Stanna and her partner Jean Michel. She stated the Probation Order not to visit the place, came after the fight occurred .She

stated she only stood up after her hair was pulled and not before as suggested to her. She categorically stated Jean Michel was not involved in the fight.


- [11] She produced document A1 as defence. The 2nd and 3rd accused chose their right to remain silent and thereafter the defence closed its case. Parties thereafter tendered submissions.
- [12] Having thus considered the evidence of the prosecution and the defence arising out of the cross examination and mentioned in the submissions of learned Counsel for all the accused, it is apparent that the main defence put forward is that the 1st accused was provoked into assaulting the victim as the victim had sworn at her. It should be borne in mind that provocation is not a defence in a charge of causing grievous harm. It may be a defence in murder which reduces the offence of murder to manslaughter. In this case though provocation is not a defence in the view of this Court, it may be considered as a factor in mitigation at the time of sentencing.
- [13] On considering the evidence of witness Stanna and her daughter, I am satisfied that it was the violent acts of the 1st accused Betty May Michel that resulted in grievous injuries to the victim Stanna. The medical reports of the victim produced by Dr. Shiriam Kumar indicate the injuries sustained by the victim. The evidence of Dr. Galani Garusha a dentist, indicate one injury was the breaking of the victim's upper incisor tooth which amounts to a grievous injury. The evidence of the victim that this injury was caused by the blows of the 1st accused to her mouth is corroborated by the evidence of her daughter Janna. The 1st accused does not deny hitting the victim but states there was a fight. Having considered the corroborated evidence of the prosecution which is further affirmed by the evidence of two independent doctors, including a dentist, I will proceed to accept the evidence of the prosecution and am satisfied beyond reasonable doubt that the prosecution has proved all the elements of the charge in Count 1 against the 1st accused Betty May.
- [14] The victim Stanna Esparon also speaks of the 2nd accused Jean Michel involving himself in the fight by pushing her resulting her falling and hitting her head and by coming and hitting her on her side. While she and Betty May were fighting, Jean Michel had been applauding and saying to hit her and not let her go. Jean Michel had also told Nelta who was holding her daughter to suffocate her and not to let her go. In her evidence Janna the

daughter of the victim states when her mother and Betty May were fighting and turning on top of each other, her father had removed her mother pushed her so that Betty May could get the chance to continue to hit her. Janna also states that when she was being held by Nelta in the corner who was also covering her mouth, her father Jean Michel had said to continue to press on her to suffocate her.

- [15] It is therefore clear from the corroborated evidence of the prosecution that Jean Michel also participated to a certain extent in the assault of the victim Stanna Esparon and therefore section 22 (a) of the Penal Code applies and he is also liable for the offence committed as he had the common intention to cause harm to the victim Stanna Esparon. This is clearly established by the acts of both Betty May Michel and Jean Michel. From the evidence before Court it is clear that the injury was caused to the victim as a result of the unlawful act of being beaten by the accused Betty May with the assistance and participation of the 2nd accused Jean Michel. As the prosecution evidence on these issues stand corroborated and no material contradiction exist, I will proceed to accept the prosecution evidence in this regard and reject the defence of provocation. I am therefore satisfied that the prosecution has proved all the elements of the charge contained in Count 1 against the 1st and 2nd accused beyond reasonable doubt.
- [16] In respect of the evidence against the 3rd accused Nelta Michel, it is clear that the evidence indicates that she was holding Janna against the wall and covering her mouth with her hand to stop her screaming. When Janna had bitten Nelta's hand as it was pressing her mouth and causing pain to her Nelta had slapped her. The evidence of Janna is corroborated by her mother who states Nelta was holding her daughter. I am inclined to accept the corroborated evidence of the prosecution on this issue and am satisfied that the elements of the charge contained in Count 2 against the 3rd accused Nelta Michel have been proved beyond reasonable doubt by the prosecution.
- [17] For the aforementioned reasons, this Court finds the 1st accused Betty May Michel and the 2nd accused Jean Michel guilty of the charge contained in Count 1 and proceeds to convict them of same.

[18] Further this Court finds the 3rd accused Nelta Michel guilty of the charge contained in Count 2 and proceeds to convict her of same.

Signed, dated and delivered at Ile du Port 11th day of December 2020


11/12/2020

Burhan J