

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 786
CR 54/2017

THE REPUBLIC
(rep. by Miss Rose)

and

Jean Paul Bastienne
(rep. by Clifford Andre)

Neutral Citation: *R v Jean Paul Bastienne* CR 54/2017) [2022] SCSC 786) 5 September 2022

Before: Govinden CJ

Summary: No case to answer submission dismissed.

Heard: 5th September 2022

Delivered: 5th September 2022

RULING

GOVINDEN CJ

[1] The accused stands charged as follows;

Count 1

Statement of Offence

House breaking with intent to commit a felony contrary to Section 289 of the Penal Code read with Section 236 of the Penal Code.

Particulars of offence

Jean-Paul Bastienne, aged 33 years, casual labourer residing at La Batie, Mahé was on the 9th day of October 2017 at La Gogue, Glacis, Mahé, did break and entered into the house at night at

about 01.09 his with an intent to commit felony, namely the offences of assault causing actual bodily harm.

Count 2

Statement of Offence

Act intended to cause grievous harm contrary to Section 219(a) of the Penal Code and punishable under the above said Act.

Particulars of Offence

Jean-Paul Bastienne, aged 33 years, casual labourer, residing at La Batie, Mahé was on the 9th day of October 2017 at La Gogue at night, with intent to cause grievous harm to the person namely Keeran Monthy, caused grievous hurt to the said person by hitting the said person with a small wooden table and fist blow, as a result of which caused fracture to the right side eyelid of the said Kareen Monthy.

Count 3

Statement of Offence

Assault to cause actual bodily harm contrary to Section 236 and punishable under the same Act.

Particulars of Offence

Jean-Paul Bastienne, aged 33 years, casual labourer residing at La Batie, Mahé was on the 9th day of October 2017 at La Gogue assaulted another person namely Antoinette Bastienne by means of fist blow where by caused actual bodily harm to the said Antoinette Bastienne.

Count 4

Statement of Offence

Abduction of a person in order that such person may be subject to grievous harm or knowing it to be likely that such person will be so subjected contrary to Section 245 of the Penal Code and punishable under the same Act.

Particulars of Offence

Jean-Paul Bastienne, aged 33 years, casual labourer residing at La Batie, Mahé was on the 9th day of October 2017 forcibly abducted the person namely Antoinette Bastienne with her children and subjected her to grievous harm by driving the passenger side of his car into an electric pole thereby causing her injuries.

- [2] The Learned Counsel for the accused have made a No Case to Answer submission at the close of the prosecution case. There is no contest between the parties as to what the settled law says on such an application in this jurisdiction which was succinctly captured in the now land mark case of *R vs Stiven 1971 SLR, at page137*, as follows; what court has to consider at the stage a no case to answer application is made is whether, (a) there is no evidence to prove the essential elements of the offence charged, (b) whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict. It appears that the Defence is submitting along this 1st of the two limbs, that the prosecution has not managed to prove an essential element of the offence.
- [3] However upon reading the submission it appears that such application is made only against the offence of Housebreaking offence under count 1 and that of the offence of causing actual bodily harm in count (3). Regarding the 1st one, it is submitted that “*the evidence adduced does not confirm that there was forced entry into the house by the accused*”. In respect of the other one, that there is no evidence to show that the accused person had any intent to cause “*actual bodily harm*”. Whether this was deliberate or accidental the fact remains that no such submission is made with regards to the offences of act intended to cause grievous harm in count 2 and abduction in count 4.
- [4] In his submission on whether there exists evidence to support the essential element intent intention to cause actual bodily harm, Learned counsel however refers to the evidence of Mr

Bethew in order to portray an apparent contradiction between his statement and that of the content of the photographs regarding the number of louvre blades supposedly removed by the accused when he broke in the house. It is clear that these evidence have no relevance to the submission regarding this count. Moreover, to compound the error, he made a wrong legal argument and he submitted that this itself shows at this juncture that the case has not been proven *beyond a reasonable doubt*.

- [5] Thereafter, he went on to submit that the contradictions in the statement of the victim (instead of her testimony) shows that she was not abducted and then he further submitted that there are no evidence of breaking into the house. These statements without reference to evidence or the lack thereof in support of each essential elements of each impugned counts condemn this submission of No case to answer and make it unsubstantiated.
- [6] I find at this stage that it cannot be said that the evidence of the prosecution witnesses have been so discredited by cross examination that no reasonable tribunal could convict on it. It also cannot be said that there is no evidence to prove the essential elements of the offences charged.
- [7] Therefore, for the aforementioned reasons this court is satisfied that a prima facie case in respect of the charges exists against the accused and that there is no merit in the contention of defence counsel that the Accused persons in this case has no case to answer. As a result, the court is of the view that he has a case to answer in respect of the charges filed against him.
- [8] Accordingly, this court shall proceed to call for a defence from the accused in respect of the charges levelled against him.

Signed, dated and delivered at Ile du Port on 5th September 2022

Govinden CJ

