SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CN 16/2021

In the matter between:

ERENIA ROMELIA MERITON **Appellant**
(Represented by Mr S. Rajasundaram)

and

THE REPUBLIC
(Represented by Mrs Lansinglu Rongmei)

Neutral Citation:	*Meriton vs Rep* (CN 16/2021) [2022] SCSC	(11th October 2022)
Before:	Adeline J	
Summary:	Appeal against conviction and sentence before the Magistrate's Court	
Heard:	(Submission) 26 June 2022	
Delivered:	11 October 2022	

FINAL ORDER

The appeal against conviction and sentence is dismissed as the grounds of appeal have not been made out to warrant quashing the conviction and sentence.

JUDGMENT

Adeline, J

[1] This is an appeal against conviction and sentence in CR 393/19 by the learned Magistrate sitting in the Magistrate's Court, brought before this court by one Erenia, Romelia, Meriton ("the Appellant") who had been convicted of one count of Threatening Violence, and sentenced by way of a Probation order pursuant to Section 5 of the Probation of Offenders Act, Cap 184.

[2] The background to this appeal is that the Appellant stood charge before the Magistrate's court with the following offences;

Count No1:

(i) Threatening Violence contrary to and Punishable under Section 89 (a) of the Penal Code.

As per the particulars of this offence, the said Erenia, Meriton of Fairview, La Misere on the 27th August 2018, at Fairview, La Misere, Mahe, Seychelles with intent to cause alarm to Christine Harter of La Misere, Mahe threatened her by means of insulting the said Christine Harter in an aggressive manner whilst holding a machete in your hand with intent to cause her harm.

Count No 2:

(ii) Damaging property contrary to Section 325(1) of the Penal Code.

As per the particulars of the offence, the said Erenia, Meriton of Fairview, La Misere, Mahe, Seychelles on the 27th August 2018 at La Misere, Mahe at the residence of Christine Harter wilfully and unlawfully damaged seven flower pots valued at SCR 500, being the property of the said Christine Harter.

[3] By a judgment of the Learned Magistrate delivered on the 28th September 2021, the Appellant (the accused at the time) was convicted for the offence of Threatening Violence but acquitted for the offence of Damaging property. On the 30th November 2021, the learned Magistrate sentenced the convict Erenia Meriton, by way of making a probation order against her on the following term, amongst others;

"The offender Erenia Meriton is required to be under the supervision of a probation officer for a period of two years and shall comply with all reasonable requirements

imposed on her by the officer assigned during that period". The Appellant has since appealed against both, conviction and sentence.

[4] The grounds as set forth in the MEMORANDUM OF APPEAL are the following;

(i) "The learned Magistrate erred law in failing to consider that both the counts of the offences that the Appellant was charge with relate to each other, and given the circumstance that he acquitted the Appellant on one count namely damaging property. The conviction and sentencing on another count namely Threatening with violence is therefore erroneous

(ii) The learned Magistrate's findings against this Appellant are lacking independent corroboration while no independent witness adduced any evidence against the Appellant when the offence alleged against the Appellant involved between two neighbours.

(iii) The learned Magistrate's reliance on PW2 as being corroborative is wrongly footed while the said witness was having vested interest, and

(iv) The learned Magistrate erroneously concluded a conviction on the Appellant while such conviction on one count is in consistent with the acquittal on another count".

[5] I have taken the liberty to peruse the learned Magistrate's Judgment as well as the record of the proceedings pertaining to this case now on appeal. A brief account of the facts as transpired in evidence, is that, on the 27th August 2018, the complainant in the case, one Christine Harter, (PW1) was tending to her garden along with one Innocent Bonne (PW2) at Fairview, La Misere, Mahe, Seychelles when she noticed that the Appellant, her neighbour, had approached her property and was seen on a boulder observing her from a distance not too far away.

[6] In view that PW1 had previously engaged with the Appellant and her ex-husband in respect of some administrative formalities to have a small plot of land close to her property surveyed, PW1 queried from the Appellant as to whether she has received any

feedback from the surveyor who was to carry out the survey works. The Appellant unexpected reaction in reply was to shout insults at PW1, accusing her of stealing her land by having tampered with the beacons.

[7] As the Appellant aggressively and verbally insulted the complainant, the Appellant walked closer towards her as she descended onto her property carrying with her a machete wielding the same in her hand and threatening PW1 with it. PW2, Bertrand, Emmanuel, Innocent, Bonne had to step in between them as the Appellant kept jabbing the machete at PW1. To protect herself from possible harm, PW1 picked up a bucket that was nearby on the ground and used the same as a shield as the Appellant, using the machete, knocked the bucket out of her hands.

[8] PW1 managed to avert possible physical harm because of the assistance she obtained from some workers who were working nearby the Appellant's property who came to her rescue by effectively restraining the Appellant.

[9] Bertrand, Emmanuel, Innocent, Bonne PW2 is a gardener who works part-time on the property of PW1, Mrs Harter. His part-time job entails, amongst other things, cutting the grass and looking after the garden's plants. He knows all of PW1's neighbours. As per his testimony, on the day of the incident on the 27th August 2018, he and PW1 were both working in the garden putting plants in pots.

[10] The Appellant as well as some workers were seen on her (the Appellant) property. She, Ms Erenia Meriton, was on the top of a boulder as PW1 was engaging in her gardening. PW2 testified, that twice and in a nice manner, PW1 tried to approach Ms Erenia Meriton to tell her something. Ms Meriton who was carrying a machete, in an aggressive manner, came down of the boulder and as she aggressively approached PW1, PW2 heard her saying things like "you slept with my husband, you stole my land, and you a racist".

[11] It was the testimony of PW2, that Mrs Erenia Meriton walked aggressively onto PW1's property as she attempted to get closer to PW1. Fear for her safety, as Ms Erenia Meriton

moved aggressively closer to her raising the machete, PW1 moved backwards. Workers who were close by watching the incident had to intervene. PW2 testified, that he had to use force to restrain Mrs Erenia Meriton, and that he remembers, that PW1 was at the time holding a bucket. He witnessed when Mrs Erenia Meriton hit the bucket with something and it fell down. PW2 also testified, that Ms Erenia Meriton did pick up some of the pots they had put plants in and smashed them on the ground.

[12] At the outset, I wish to remark, that the notice of appeal is fraught with ambiguities. At the introductory paragraph of the notice of appeal, the Appellant seeks to appeal against the sentence. She makes no mention of appeal against conviction. Yet, the memorandum of appeal discloses no grounds pertaining to the sentence which is being challenged. The grounds elaborated in the memorandum of appeal all point towards challenging the conviction. However, the relief being sought for is for an order of this court to quash the conviction and the sentence of the Appellant. Be it as it may, I have in this appeal considered, both, the conviction and sentence.

[13] I have read the submission of learned counsel for the Appellant with a view, amongst other things, to try and make sense of my understanding of the issues raised therein. The essence of learned counsel's submission, as far as I can gather, is that the learned Magistrate correctly concluded, that there were not enough evidence to convict the Appellant for the offence of damaging property, but erroneously concluded, that there were evidence to convict the Appellant for threatening violence by relying on the evidence of the same witnesses.

[14] Learned counsel submits, that since the facts pertaining to the two offences overlapped each other, acquittal of the Appellant for one of the offences and convicting the Appellant for the other was an error. In his written submission, learned counsel has this to say;

"The Appellant submits, therefore, that the court below is wrong in approaching two decisions for two different offences while both of the offences are as a result of one particular alleged incident against the Appellant"

[15] Learned counsel also submits, that the court below was wrong to rely on the evidence of the complainant and her employee to convict the Appellant, as nobody could have expected the employee not to give evidence in favour of the complainant/employer. Learned counsel argues, that there ought to have been independent witnesses testifying against the Appellant rather than the complainant and her employee.

[16] Learned counsel submits, that a careful reading of the testimony of Mr Bertrand Bonne, PW2, should have alerted the court of his vested interest in the case in order to ascertain the truthfulness of his testimony, and to establish whether or not he was bias. Learned counsel contends, that the court below did waive the rules of corroboration and did not follow it to convict the Appellant. Learned counsel has this to say;

"The Appellant further submits, that the approach of courts in relying on the necessity and the importance of corroboration cannot be different offences while the wrong approach of the court below in overlooking the corroboration ends with the conviction. The conviction is therefore erroneous in the humble submission of the Appellant".

[17] In her written submission, learned counsel for the Republic reminds this court, that the charge of which the Appellant has been convicted and sentenced is threatening violence contrary to Section 89(9) of the Penal Code that reads as follows;

"89. Any person who;

(a) Threatens another with any injury, damage, harm or loss to any person or property with intent to cause alarm to that person, to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do as means if avoiding the execution of such threat, is guilty of a misdemeanour and is liable to imprisonment for five years".

[18] Learned counsel submits, rightly so, that pursuant to Section 12 of the Evidence Act, the Rules of Corroboration is imported from the English Common Law, and that such import, is possible because of Section 12 that reads as follows;

"Except where it is otherwise provided in this Act, or by special laws now in force in Seychelles or hereafter enacted, the English law of evidence for the time being shall prevail"

[19] Learned counsel for the Republic proceeds to add, that there has never been a general requirement that evidence has to be corroborated in order to secure a conviction, and that "a conviction may be secured on uncorroborated evidence of a single witness or on uncorroborated evidence of any kind".

[20] Over the courts findings of facts, learned counsel cited a passage by Twomey J A in Flossel Marengo v Republic SCA 29/2018 (Appeal CO 18/2017) that "an Appellate Court will not readily overturn the factual findings of a trial court specially because the Appellate court is disadvantaged in that it has to weigh these matters with only the record of proceedings before it and cannot observe the witnesses at first hand to gauge their truthfulness". In this regard, learned counsel also cited the case of Akbar vs Republic 1998 SCCA 37, in which case the court stated the following;

"An Appellate court does not rehear the case on record. It accepts the findings of facts that are supported by the evidence believed by the trial court unless the trial Judge's findings of credibility are perverse".

[21] Submitting on the sentence imposed, learned counsel states, that the offence of which the Appellant has been convicted renders her liable to serve a custodial sentence, and that she presumes that the learned Magistrate imposed a non-custodial sentence upon taking into consideration the guidelines spelt out in the case of Lawrence & Another vs Republic 1990 …, and Kelsen Alcindor vs Republic … where in the latter case, the court held that "the punishment should fit the criminal as well as the crime, be fair to the state and the accused, and be blended with a measure of mercy".

[22] Based on learned counsel's submission, I cannot see any room for disagreement on the law as discussed.

[23] I have carefully considered the merit of this appeal. In my considered opinion, learned counsel for the Appellant's submission contains no real substance besides the proposition that the court should not have convicted the Appellant on the basis of the evidence of PW1 and PW2 without corroboration from what he calls "independent witnesses". In other words, that the principle relating to corroboration was not adhered to by the trial Magistrate. It is the finding of this court, that the evidence of PW1 and PW2 were corroborated to a material extent, and I do not venture to cast any doubt over the finding of the trial Magistrate that the witnesses were credible and that their evidence was of such nature that it constituted proof of the guilt of the accused beyond reasonable doubt.

[24] In R v Baskerville [1916] 2 KB658, Lord Reading CJ came up with this definition of the term corroboration;

"corroboration must be independent testimony which affect the accused by connecting or tending to connect him with the crime. In other words, is must be evidence which implicated him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it"

[25] Lord Reading proceeded to add, that corroboration need not amount to confirmation of the whole story related by the witness to be corroborated. It may consist of evidence directly or circumstantial which confirms that story in some respect material to the issue under consideration which implicates the accused".

[26] Our jurisprudence as well as the English jurisprudence and others, seem to suggest, that there should be a different approach to the rules of corroboration when there is an accomplice, and when considering the evidence of a single witness. In fact, it is well settled law in this country, that a conviction is still possible for a sexual offence based on

the sole testimony of the complainant/victim if its evidence has been cogent coherent consistent and worthy of belief. (see Raymond Lucas vs Republic SCA 17 of 2009)

[27] In the instant case, there was no accomplice, and there were two witnesses who testified against the Appellant and their testimony clearly corroborated each other. In a Mauritian case Rambhujan v R 1976 MR 256, de Ravel J had to consider whether two witnesses who were not accomplice but witnesses with purpose of their own to serve, their evidence should have been treated with caution. In his considered judgment, he mentioned that it was well established in England that independently of statutory exceptions there was a rule of practice whereby it was the duty of judges to warn juries that it was dangerous to find a conviction on the evidence of a particular witness or classes of witnesses when the evidence is corroborated in a material particular implicating the accused or confirming the disputed items in the case.

[28] I am satisfied, that after hearing the evidence of the two witnesses who testified for the prosecution in this case, the trial Magistrate satisfied himself that they were speaking the truth and as such, there was no evidential basis for him to look for further corroboration prior to accepting their evidence.

[29] As regard to the sentence imposed by the trial Magistrate, in view that learned counsel for the Appellant has not indicated what is wrong with the sentence imposed on the Appellant in the Memorandum of Appeal, nor canvased this aspect of his appeal in his submission, I find no good reason why I should comment on the sentence imposed by the learned trial Magistrate on the Appellant for her conviction for the offence of threatening violence.

[30] In the circumstances, therefore, the Appeal against the conviction and sentence is dismissed as the grounds of appeal have not been made out to warrant quashing the conviction and sentence.

Signed, dated and delivered at Ile du Port 11 October 2022.

_____

B Adeline, J