

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2023] SCSC ...  
CO 94/2021

In the matter between:

**THE REPUBLIC**

(*rep. by Ms. Leste*)

And

**HUBERT DELCY**  
(*rep. by Mr. Brian Julie*)

**Accused**

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**Neutral Citation:** *Republic vs Delcy* ( CO 94/2021) [2023] SCSC

(24<sup>th</sup> January 2023)

**Before:** Govinden CJ

**Summary:**

**Heard:**

**Delivered:** 24<sup>th</sup> January 2023

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**ORDER**

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**GOVINDEN CJ**

[1] The defence in this case has filed a no case to answer submission in pursuant to Section 183 of the Criminal Procedure Code. The simple ground for their no case to answer submission is that all complainants deponed that they did not recognised the intruder and cannot confirm that it was the Accused and that no other witnesses were called were adduced to connect the Accused to the offences charged.

[2] In other words the defence is simply submitting that there is no evidence to support an essential element of the offence charged namely that of identity of the Accused person as being the person who committed the breaking into the dwelling house in Count 1 contrary

to Section 293 and committing the burglary in the same house contrary to Section 289 of the Penal Code in count2.

- [3] This Court would have to base its decision on whether the evidence adduced so far is such that a reasonable Court might convict the Accused and not whether the Court if compelled to do so would at this stage convict or acquit the Accused. I refer to the case of ***R vs Leperre (1971)***.
- [4] In this case the knife allegedly used to commit the offence as testified by PW1 was found 25 metres from the scene of the commission of the offence. There is however nothing to connect the Accused with the said knife and no forensic evidence were retrieved from this weapon connecting him with the weapon.
- [5] The only credible identification evidence could have come from PW5. However when the Accused allegedly came into her room that night, his face was hidden with a t-shirt. She only saw his body. According to her she only recognise his body when she compared that with the body of the Accused in a photograph in the Court. She did that with regards to the shape of his body and his buttock cheek.
- [6] This being the identification evidence of the Accused so far on evidence I find that this is fit case in which I have to give myself the Turnbull direction as from the case of ***R vs Turnbull (1977), Queens Bench, page 224*** given the conditions of the identification. As the Prosecution case relies to a large extent on the identification of the Defendant as the perpetrator. I warn myself of the need to be cautioned before relying on the evidence of PW5. Having done so I find weakness in his identification. The witness is not familiar with the Accused. It is the first time that she saw him. His face was covered. He had no visible markings. She was simply looking at the naked body of a young black man for a short while at night, with limited lighting condition. I attach great doubt as to whether this amounts to a reliable identification and I would not rely on it.

[7] With no reliable and credible identification evidence the prosecution has failed to establish an essential element of their offences charged. A reasonable tribunal in the circumstances would not convict the Accused on this basis. Accordingly, I dismissed the charges and acquitted the Accused. All the remand conditions and others accordingly lapse.

Signed, dated and delivered at Ile du Port on 24<sup>th</sup> January 2023.

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Govinden CJ