IN THE SUPREME COURT OF SEYCHELLES

The Republic

Vs

Roy Bistoquet **Defendant**

Criminal Side No. 17 of 2007

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Mr. Esparon for the Republic

Mr. Bonte for the Defendant

D. Karunakaran, J

JUDGMENT

I will now proceed to give an extempore judgment in this matter, since the facts involved herein are simple and clear on record; they are also fresh in the mind of the Court. Hence, the evidence can easily be examined, the issues can effectively be determined and the judgment be delivered immediately, avoiding undue delay in our justice delivery system. Indeed, this attempt as I see it, is a balloon d'essai.

The defendant Roy Bistoquet stands charged before this Court with the offence of ***willingly and unlawfully setting fire to a house*** contrary to and punishable under Section 318 of the Penal Code.

The particulars of the charge read thus:

"Roy Bistoquet on the 28th day of March 2007, at Mont Plasir, Mahé wilfully and unlawfully set fire to the house owned by Josianne Albert"

The defendant denied the charge and the case proceeded for trial. He was duly represented and defended by learned counsel Mr. Bonte. The Prosecution called three witnesses to prove the charge against the defendant. After the close of the case of for the Prosecution, the Court ruled that the defendant had a case to answer. The defendant was put on election in terms of Section 185 of the Criminal Procedure Code. He elected to give unsworn statement from the dock.

The facts of the case which transpire from the evidence are these:
At all material times, the Defendant was living in concubinage with the complainant, one Ms. Sita Jacques (PW1) in a rented house situated at Mont Plaisir, Mahé. They were paying a monthly rent of Rs.300/- to the owner of the house one Josianne Albert. During the month of March 2007, the defendant fell sick. He had been hospitalized for a period of two weeks and the complainant was living only with her 15-year-old daughter in the house.

According to the complainant (PW1), on 28 March 2007 in the evening at around 9 pm she went out to visit one of her friend namely, Ms. Pierreline Francois (PW2), who lives in the neighbourhood. The complainant after charging her mobile phone at the residence of Ms. Pierreline, at around 9:00- 9:30pm returned to her own house. When she entered the house, the complainant to her surprise, saw the defendant lying on a mattress folding both hands behind his head and looking up. Since the relationship between the defendant and the complainant had been strained before, the complainant asked the defendant what he was doing there in the house. Because of the acrimonious relationship between the parties, an

argument ensued. The complainant further testified that during that argument, the defendant threatened her saying “I will set fire in your ass”. To avoid further escalation of the argument, she left the house and went back to the nearby house of her friend, Pierreline Francois (PW2). A few minutes later, when she returned to her house, she saw her house was on fire. The complainant testified, particularly the kitchen area of the house, where the defendant had been seen, was on fire. At the same time the complainant noticed the defendant was coming out of the house, whilst it was in flames. The complainant further testified that although she had lit a candle kept in the living room, it had been put in a small box filled with sand. It had no connection with the kitchen area. Although the complainant admitted in cross examination that she had left the gas cylinder regulator was open, the gas was not coming out since she had closed the cooker and no gas could leak from the system. Moreover, she testified that she had finished cooking at around 5:30pm and there was no leak of the cooking gas in the kitchen or elsewhere. In the circumstances, she categorically testified that the defendant was the one who set fire to the house that night. Having seen the house on flames, she rushed to the neighbour so as to call the police for assistance. Ms. Soultane Amice (PW3), a woman police officer testified that she received a call from the Central police station detailing her to attend the scene of fire following a complaint from the complainant. The officer (PW3) testified when she rushed to the scene, the Fire Brigade had already arrived and had extinguished the fire. The officer also met the complainant’s neighbour Ms. Pierreline Francoise on the scene.

The neighbour Ms. Pierreline Francoise (PW2) also testified in corroboration stating that the complainant had been in her house at the material time. That was, before she heard the complainant shouting that the defendant had set fire to the house. Ms. Pierreline Francoise (PW2) also testified that she saw the kitchen that

was on fire and all the material kept in the kitchen had been destroyed by fire and the Fire Brigade had extinguished the fire. She too, saw the defendant at the material time coming from the direction of the burning house. In view of all the above, the prosecution submitted that they have proved the case beyond reasonable doubt as the evidence disclosed the necessary mens rea and the actus rea required to complete the offense of arson in terms of Section 318 of the Penal Code. Learned State Counsel further cited the case of the Republic v/s S. Benstrong (1976) Case No: 1, in support of his proposition that the expression *wilfully and unlawfully* used in Section 318 implies either an actual intention to do a harm or recklessness as to whether such harm may occur or not; hence, it is sufficient that the act alleged may even simply be coupled with mere recklessness not necessarily with actual intention, which is required to complete the offence against the defendant in this case. According to the prosecution, all elements necessary to constitute offence of arson have been established by positive evidence adduced by the Prosecution. It has proved the case against the defendant beyond reasonable doubt.

Mr. Bonte, learned counsel for the defendant submitted that the case has not been proved beyond reasonable doubt. According to him, there is a possibility of the LPG gas leak from the cylinder, which might have diffused and might have reached the naked candle flames in the living room. As a result, the house could have accidentally got on fire. Also he submitted that since the Prosecution has failed to prove the case beyond reasonable doubt, the defendant should be given the benefit of doubt. Moreover, Mr. Bonte submitted that the complainant should have never left the house unattended since she claimed that the defendant had said that he would put fire in her ass, because of the misunderstanding between the parties.

I diligently considered the entire evidence adduced by the Prosecution in this matter. I gave a careful thought to the submissions of both counsel. Also I should mention here, this Court doesn't draw any adverse inference against the defendant for his election not to give any evidence under oath. Firstly, I note, the Prosecution is obviously trying to prove the case relying on circumstantial evidence in this matter. I bear in mind that any inference drawn by the Court from the circumstantial evidence should be irresistible, unequivocal, and reasonable and that must lead to the only inference of guilt of the defendant without any other inference to be drawn from the same matrix of facts and circumstances.

In this case I note the following circumstances as revealed from evidence, lead this Court to draw the only inference of guilt against the defendant in this case:-

1. There is unchallenged evidence on record that the complainant and the defendant were not in good terms during the time, the incident happened.
2. A couple of minutes prior to onset of the fire, the defendant had clearly stated to the complainant - whom I believe as a credible witness - that he was going to *set fire to her ass*.
3. At the time the fire started in the house, the defendant was the only person found therein with full of anger against the complainant.
4. As the fire started, the defendant was the one and only person, who was coming out the house as was seen by PW1 and PW2 at the material time and place.
5. The Proposition by Mr. Bonte that the gas (LPG) leak from the cylinder might have diffused appears to be highly improbable to happen. In any event, it is too remote to happen and highly farfetched.

6. Had there been any such gas leak, obviously the living room should have got on fire since it was the area, where a lit candle had been kept in a sand box.

In view of all the above, this Court draws the only inference that the defendant was the one, who must have set the fire to the house. Needless to say, he clearly indicated his intention to the complainant by saying that he was going to set fire to the private part of the complainant.

As a trial judge, since I rely upon the circumstantial evidence in this matter, I warn myself that before I decide upon conviction, I should be satisfied and find that the inculpatory facts are incompatible with the innocence of the defendant and incapable of explanation upon any other reasonable hypothesis other than guilt.

On the whole of the evidence, I am satisfied beyond reasonable doubt that the defendant did set fire to the house of the complainant on the 28th March 2007. In my view, the proposition of accidental fire as put up by Mr. Bonte is impossible and highly farfetched; to say the least, it is too remote to happen. Indeed, I found all three Prosecution witnesses appeared to be credible. Their evidence is cogent, reliable and corroborative in all particulars necessary to constitute and complete the offence of arson against the defendant. I believe all three witnesses in every aspect of their testimony. I do not believe the defendant in his unsworn statement to the effect that he didn't set fire to the house of the complainant. On the strength of the evidence, I conclude that the defendant out of anger and malice against he complainant has set fire to the house, which she had rented from one Josianne Albert, situated at Mont Plaisir. Undoubtedly, the defendant's act of setting fire to the residential house was willful and equally unlawful since setting fire to a residential house is an offense in law.

Before I conclude, I should mention here that the formulation "*proof beyond reasonable doubt"* does not mean "proof beyond the shadow of a doubt". This has been succinctly and lucidly defined by ***Lord Denning (then J.) in Miller Vs. Minister of Pensions [1947] 2 All. E. R p372&973*** thus:

"It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt….. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice"

In the final analysis, I find the evidence in this case is strong enough to base a conviction against the defendant in this matter. The case is proved beyond reasonable doubt. Hence, I find the defendant guilty of the offence of ***willingly and unlawfully setting fire to a house*** contrary to and punishable under Section 318 of the Penal Code. Accordingly, I convict him of the offence he stands charged with.

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D. KARUNAKARAN

JUDGE

Dated this 17th day of May 2008.