

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 32/2010

[2013] SCSC 67

THE REPUBLIC

versus

ANTOINE LABROSSE
Accused

Heard: 20-10-2010, 22-10-2010, 10-11-2010, 26-11-2010, 03-12-2010, 14-04-11,
02-06-2011, 22-09-2011, 05-10-2011, 25-10-2011, 09-11-2011, 10-04-2012

Counsel: Mr. Chinnasamy Jayaraj, Principal State Counsel for the Republic
Ms. Karen Domingue Attorney at Law for the accused

Delivered: 15 October 2013

JUDGMENT

Burhan J

[1] The accused in this case Antoine Labrosse has been charged as follows;

COUNT 1

Statement of offence;

Robbery with violence Contrary to and punishable under Section 281 of the Penal Code read with Section 23 of the Penal Code.

The particulars of offence are that Antoine Labrosse of Anse Aux Pins together with a person known to the Republic, namely Freddy Paul Oreddy on the 12th February 2010, at Foret Noire, Mahe, with common intention robbed Mr. Kannan Ponnusamy Pillay of a black briefcase containing more than R100, 000 in different denominations and at the time of such robbery used personal violence to the said Kannan Ponnusamy Pillay.

[2] *COUNT 2*

Statement of offence;

Committing an act with intent to cause grievous harm to a person contrary to Section 219 (a) of the Penal Code and punishable under Section 207 of the Penal Code read with Section 23 of the Penal Code.

The particulars of offence are that Antoine Labrosse of Anse Aux Pins, together with a person known to the Republic, namely Freddy Paul Oreddy, on the 12th day of February 2010, at Foret Noire, Mahe, with intent to cause grievous harm to the Mr. Kannan Ponnusamy Pillay, having common intention caused grievous harm to Kannan Ponnusamy Pillay.

[3] The accused denied the charges and the prosecution opened its case by calling witness Melville Molle who stated that about 8 to 9 months earlier he had been at his home at Foret Noire when he had seen the accused who he identified in open court running past his house. The accused had come towards him and he had seen him face to face. The accused had attempted to jump over rocks but had fallen at the third rock. Another person Mr. Oreddy too had come running and the accused after falling had got up picked up his bag and both had run away together. He identified the accused and further stated he knew him since he was a child. Witness admitted he was in good physical health even though he was 83 years of age. He admitted he was taking pills to be 100% mentally fit. He

stated one Mr. Tall had come and told him about the incident and the police had recorded his statement. Learned counsel for the accused pointed out the omission made by witness in that he had not mentioned the name of the accused Antoine Labrosse in his statement.

[4] The victim in this case Ponnu Kannan in his evidence stated he was the Manager of SSP at Foret Noire and had started work at 8 a.m on the 12th of February 2010 and part of his duty was to bank cheques and money. He stated he would bank the money in the MCB and Barclays Bank. On the 12th of February 2010 he had opened the shop as usual and around 8.30 a.m taken the money and cheques for banking with other documents. He had started his motorbike around 8.30 a.m and after answering a call from the Company Chairman he had proceeded on his way to the bank. Opposite the old Fresh Cut building at Foret Noire somebody had hit him. Due to the force of the blow he had received on the left side of his face, he had lost vision in both eyes instantaneously. The object used to hit him was a square piece of wood. He had not seen it properly but he stated after he had fallen down while he was feeling for his bag he had caught a square piece of wood. Prior to being hit he had seen one Paul Oreddy who used to come to purchase items from his shop standing near a building close by talking on a mobile phone.

[5] Witness further stated as a result of the blow his face, nose, eyes and chin were severely injured. He had lost his vision completely in his left eye as a result of the blow he received but after an operation partially received his sight back in the other eye. He was to deposit 140.000.00 (one hundred and forty thousand) in cash and described the cheques in his possession and the other documents namely a delivery voucher “Chalan” which at the time of the incident were in a bag. When he had fallen the bag he had in his possession had got lost. Thereafter somebody had helped him and the ambulance arrived and he was taken to hospital. Witness stated he had been unconscious till the next Thursday for almost a period of seven days. He was operated on and received only half vision in one eye and the other eye was replaced by an artificial eye as he had lost complete vision from the left eye.

[6] Under cross examination the victim Mr. Kannan affirmed the fact that one of his eyes had to be removed and they were able to do some repair on the other eye and he could see a

little. He further stated that the left side of his chin had been removed and his nose completely broken and that there was no bone inside his nose at present. He had gone to India for medical treatment. He stated he was hit while traveling in his motor bike. He further stated he had received the 2nd blow after he fell down from his bike and was looking for his bag. Somebody had taken the bag and left. He admitted he had not seen who had hit him or grabbed his bag. He stated he had seen Mr. Oreddy just 5 metres away from the place he was hit and all he saw before he was hit was a hand with a stick.

[7] Sharon Barra giving evidence stated that she was working at Printec Holdings Mont Fleuri and she used to take a short cut through the Rochon River to Mont Fleuri and pass next to the old Fresh Cut at Foret Noire around 9.00 a.m. On the 12th of February 2010, she had been walking with Marie Andre her friend when she had seen two men next to a wall. She had seen a motor cycle coming and the two men had hit the motor cycle driver with a piece of wood on his face and the motor cyclist had lost control and hit against the wall. She had witnessed the scene from about 30 metres away. One man had hit the motorcyclist who had fallen while the other person had taken the bag and run. She stated that the motorcyclist was the Indian man working in the Supermarket at Mont Fleuri but she could not identify the assailants. Witness was unable to identify the accused in open court. She stated the faces of the persons who attacked the victim were not covered. She admitted that in her statement to the police she had stated the person who had hit the accused was like Freddy Oreddy. Subsequently witness was recalled and she identified the long piece of square wood she had seen that day at the time of the incident.

[8] Sergeant Emille Fred stated he was working at the Mont Fleuri station at the time of the incident. He had received information of the robbery and immediately proceeded to the scene with officers PC Hollanda and PC Aglae. On arriving at the scene he had noticed an ambulance with some medical personnel attending to an Indian man who was covered in blood. The man had been on the right side of the road when going up at Foret Noire. He had noted the fallen motor cycle, the blood spatter and picked up the piece of wood lying by the side of the road which was used in the attack. They had conducted a search and found papers, documents and bank cheques which they had taken into custody. He stated the piece of wood was given to Sergeant Allisop.

- [9] Mr. Andy Tall next gave evidence and stated he lived at Foret Noire and on the 12th of February 2010 he had got up a bit late that day around 8.30 a.m and was preparing tea, when he heard a motor cycle coming and a noise of it being hit and it crashing on the wall opposite where he lived. He had heard someone screaming from the road. He had seen two men one taller than the other running but he could see the taller man better as there was a fence. The taller person had been running very fast with something in his hand. He further stated he had seen both of them run in the direction of the lane to Mr. Molle's house. Witness had approached the scene and recognised the Indian man as Kanna from the Sekkar's shop. He had seen him lying on the road side in the ditch covered with blood with the motor bike on top of him. Witness identified the accused in open court as the taller man he had seen running away from the scene. He had told his wife to call the police. The police and ambulance arrived thereafter.
- [10] Witness identified the piece of wood recovered at the scene. He admitted under cross examination that even though he had seen the two persons running his attention was on the victim. He had seen the full face of the tall one and stated he had seen the same accused three times before at Foret Noire with one Shirley not too long before the incident but never known him. Witness insisted he was not adding or subtracting anything and insisted he was telling the truth.
- [11] Thereafter the prosecution led finger print evidence by calling witnesses Joachim Allisop. He stated as a police officer he had received specialised training in this field and stated he had received certain documents recovered from an alleged scene of robbery in regard to this case. He had sprayed the documents and obtained latent impressions from four of the A4 size papers containing a list of commodities, from two bank statements, a Rising Sun invoice also from an MCB and a Barclay's bank cheque. He had labelled one impression A on the A4 size paper and produced it as P2 (a). He explained in detail the procedure how he proceeded to photograph and enlarge the print of this impression on the A4 size paper and also the left middle finger impression of the accused Antoine Labrosse which too had been received by him. Having photographed enlarged and mounted side by side both impressions they were sent for comparison to Superintendent Elizabeth.

- [12] Superintendent Elizabeth stated he was attached to the Scientific Support and Crime Record Bureau. He further stated he had compared the mounted finger impressions sent to him i.e the impression taken from the A4 size paper and the impression taken from the left middle finger of the accused Antoine Labrosse and found them to be identical. In his report P9 he had marked 10 points of similarities which agreed in sequence and details of ridge characteristics. He stated that the accused had been taken into custody at the time the documents were handed over to him for comparison. He further stated he could not recall if one Paul Oreddy too had been arrested at that time. The documents were handed over to him on the 13th of May 2010 at 13.30 hrs. He further clarified the fact that no two persons have been found to have the same finger prints.
- [13] Sergeant Emille Fred continuing his evidence, described the items he had recovered from the scene and identified the piece of wood, the cheques and documents marked P1 to P4 and P8 which had been scattered around the scene and stated that the document P2(a) on which the finger print of the accused was identified was found behind the wall of one Mr. Tall's house. All these documents were identified by the victim as what he had in his possession that day prior to being attacked and robbed. Sergeant Emille Fred stated he had personally handed over the exhibits to the officers of the Scientific Crime and Support Unit. He stated that he had handled these documents with his bare hands so he too had to give his prints to exclude his prints from those taken from the documents.
- [14] Dr Verma in her evidence as Consultant in charge of Ophthalmology verified the fact that the victim had lost his eyesight in his left eye and furnished the report of Dr. Ernest Ogbedo as P11. Thereafter the prosecution closed its case.
- [15] Learned counsel for the accused informed court that her client would elect to remain silent and both parties thereafter tendered written submissions. It is to be borne in mind that in terms of Article 19 (2) (h) of the Constitution of the Republic of Seychelles no adverse inference could be drawn from the fact that the accused chose his right to remain silent.
- [16] The main grounds urged by learned counsel for the defence is in respect of the identity of the accused. In her submissions she states that the evidence of Mr. Molle and Mr. Tall

cannot be relied on as they have identified the accused only in open court which identification is insufficient as no identification parade had been held. Learned counsel referred to the case of *Pragassen v R (1974) SLR 13*. She also submitted that the identification cannot be relied on as both witnesses had only seen the accused fleetingly as he was running. Learned counsel relied on the case of *R v Turnbull (1977) QB 224*.

- [17] The guidelines in identification as laid down in the case of *R v Turnbull (supra)* are that whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, a special need for caution arises before convicting on the correctness of the identification. A court should consider the possibility that a mistaken witness could be a convincing one. The circumstances under which the identification has been made should be carefully scrutinized by court before coming to a finding. In doing so the length of time, the distance, the light and whether the observation was impeded in anyway should be considered. Had the witness seen the accused before and whether he knew the accused and whether there was any discrepancy in the description of the accused given to the police in the statement by the witness are facts to be considered. Recognition must be distinguished from identification. The possibility that mistakes in recognition also occur even among close relatives and friends must be considered by court. The quality of the identification evidence and not the ‘quantity’ must be considered in the light of the circumstances under which the individual was identified which would include, the time of observation and whether in satisfactory conditions of light and unimpeded vision. Several witnesses might testify they had a fleeting glance of the accused in poor lighting conditions, therefore even though the identification is by several witnesses, the identification is still poor. In the event of the fleeting glance identification being poor, supporting evidence should be looked for. It is to be noted that Turnbull directions are not applicable to every case involving a minor identification problem but were only intended to deal with “fleeting glance sightings”. *Archbold, Pleadings Evidence and Practice 42nd edition pg 1000* refers to an example of a fleeting glance sighting: “Where X saw an accused snatch a woman’s bag he obtained only a fleeting glance of the thief’s face as he ran away...” also discussed in case of *Fabien Madeleine v Republic SC Crim App 1 of 2012*.

[18] When one considers the evidence of this case both witnesses Mr. Andy Tall and Mr. Molle have identified the accused in broad day light. Mr. Molle states he saw the accused face to face as he was running past him soon after the incident had occurred and the accused had tripped and fallen giving further observation time for witness. In addition witness Molle states he knew the accused since he was a small boy. Mr. Tall too stated he identified the accused as he was running away from the scene and he too had seen the accused prior to the incident about three times on earlier occasions. While Mr. Tall admitted he could not see the shorter person who was running with the accused as there was a fence, he stated he was able to identify the taller of the two persons running away from the scene of the crime as the accused in this case. Be that as it may it is apparent that the police were able to recover certain documents which were in the bag which had been taken away by persons at the time of the robbery and some of these were found discarded in the direction the accused had been seen running. The victim was able to identify one such document P2(a) as one which had been inside the bag which was stolen and according to the evidence of Officer Emille Fred, this document was one of the discarded documents taken into custody near the scene of crime soon after the incident. This document according to the evidence of Officer Joachim Allisop and Superintendent Elizabeth had the finger print of the accused. The only evidence before court that explains how the finger print of the accused came onto to this document which was stolen as gathered from the evidence of the prosecution is that he had placed it himself while he was running away from the scene. The fact that he was in police custody at the time the finger prints were being compared bears no significance in the absence of any suggestion or evidence that his finger prints had been forcibly placed on the documents. The evidence of Sergeant Emille Fred is that he categorically states the documents were in his custody and they were personally handed over to the officers of the Scientific Support Unit.

[19] When one considers the entirety of the evidence in regard to the identification of the accused in the view of this court there is strong finger print evidence which further establishes and supports the evidence of identification of the accused given by witnesses Molle and Andy Tall. For the aforementioned reasons the contention of learned counsel

that the evidence in respect of the identification of the accused should not be relied on bears no merit.

[20] It is pertinent to mention at this stage as borne out in the submissions of learned counsel for the accused that Freddy Paul Oreddy the name mentioned in the particulars of offence has already been tried and convicted in another trial. It is the contention of learned counsel that witness Sharon Barra in her statement to the police had stated that it was the accused Freddy Paul Oreddy who had committed the actual act of assault on the victim. It is however clear from her evidence in court that although she had witnessed the sequence of events as they occurred before her and her evidence corroborates that of the victim and is corroborated by other witnesses, her evidence in respect of identification cannot be relied on.

[21] Further perusal of the charge clearly indicates that both the accused have been charged read with section 23 of the Penal Code as well. Section 23 of the Penal Code sets out what common intention is.

“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”

[22] It must be remembered that section 23 lays down a principle of joint liability in the commission of a criminal act and is not a manner of committing an offence.

[23] Common intention envisages a sharing of similar intention entertained by the accused persons. Common intention requires a common meeting of minds or a sharing of similar intention before the offence is committed. Common intention could be proved by showing the conduct of the accused, that the two or more accused by reason of actually participating in the crime, some overt or obvious act, active presence, pre plan and preparation as well as immediate conduct after the offence was committed. Thus the preceding, prevailing and succeeding conduct of the accused could be analysed to determine whether they acted with common intention.

- [24] The evidence of the victim, witnesses including that of Sharon Barra indicate that two persons were seen laying in wait for the victim Ponnu Kannan and after assaulting him with a piece of wood and after collecting the bag they had run of together in the same direction. The victim identifies Paul Oreddy as the person who was standing a little distance away at the time of assault and he had seen a hand and a piece of wood at the time of the assault. It is apparent that all the acts as described by the prosecution witnesses clearly indicate that both persons, Antoine Labrosse and Paul Oreddy had been acting with common intention to commit robbery on the victim using violence. The manner of how the robbery was done i.e. by hitting the victim on his face with a piece of wood while he was riding a motor cycle, clearly indicate they had the intention to cause grievous harm or serious injury to the victim. It is apparent that their intentional acts did in fact cause permanent and grievous injuries to the victim Ponnu Kannan as borne out by the evidence of the victim and the medical certificate marked P10. The evidence therefore clearly establishes beyond reasonable doubt that the accused in this case was acting with common intention with Paul Oreddy in the commission of the aforementioned offences. For the aforementioned reasons the defence of the accused stands rejected.
- [25] The evidence of the prosecution witnesses stand corroborated on material facts pointing to the guilt of the accused. The contradictions are not material contradictions. Therefore this court will proceed to accept the corroborated evidence of the prosecution.
- [26] Having considered the evidence of the prosecution in its entirety this court is satisfied that the many threads or details of evidence in the case for the prosecution establish beyond reasonable doubt that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than that of the guilt of the accused. I am also satisfied that there are no other co-existing circumstances which would weaken or destroy the inference of guilt based on circumstantial evidence. I am satisfied the prosecution has successfully excluded any alternative possibility that might point to the innocence of the accused.

[27] This court is satisfied that the evidence in this case proves beyond reasonable doubt all the elements of both charges against the accused. As both charges against the accused have been proved beyond reasonable doubt the accused Antoine Labrosse is found guilty of both charges and convicted of same.

Signed, dated and delivered at Ile du Port on 15 October 2013

M Burhan
Judge of the Supreme Court