

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 53/2012

[2013] SCSC 75

THE REPUBLIC

versus

**LESLIE PAYET
CHRISTOPHER NICHOLAS
DAVE ROSE
KELLY DUBEL**
Accused

Heard: 12/03/2013, 03/07/2013, 15/07/2013, 19/07/2013
Counsel: Mr. Vipin Benjamin, Assistant Principal State Counsel for the Republic
Mr. B. Julie Attorney at Law for the first accused
Mr. N. Gabriel Attorney at Law for the second, third and fourth accused
Delivered: 6 November 2013

RULING

Burhan J

[1] I have considered the submissions made by both learned counsel on behalf of all four accused at the close of the prosecution case, in support of their contention that the aforementioned accused had no case to answer and the prosecution's reply in respect of same.

[2] In the case of **R vs. Stiven 1971 SLR 137** it was held what court has to consider at this stage 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 would safely convict.*

[3] In the case of **R vs. Olsen 1973 SLR No 5 at page 189** it was held that as to whether there is a case to answer should depend not so much on the whether the adjudicating tribunal would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict.

[4] **Archbold in Criminal Pleadings Evidence and Practice 2008 edition at page 492** sets out the principle in a no case to answer application.

“A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, if properly directed, would convict”

[5] All four accused have been charged with Robbery with violence contrary to and punishable under section 281 of the Penal Code read with section 23 of the Penal Code.

[6] The main contentions of both learned counsel for the accused were;

(a) *that all the accused have not properly identified by the witnesses.*

(b) *there is no evidence to prove the essential elements of the offence charged.*

[7] Learned counsels' main contention was that the identification of the accused was insufficient and cannot be relied on as both the complainants were afraid at the time and no identification parade was held subsequently. It is apparent that both witnesses have identified all the accused in detail and even described what each had done when they were being robbed. It is apparent that an identification parade could not be held as the accused refused to participate in it. Further the incident had occurred in broad daylight

and the two victims had seen them even prior to the act of robbery being committed as they were walking towards them. The evidence of the doctor also indicates injury had been caused to one of the victims namely Madhu Manoj.

[8] Although the 4th accused had stood and watched what was happening without actually participating in the robbery, the prosecution has charged all four accused under section 23 of the Penal Code as well. The evidence indicates at present that all four accused were acting as a single group prior to, during and after the robbery.

[9] For the aforementioned reasons it cannot be said there is no evidence to prove the essential elements of the offence charged and considering the evidence before court at present it cannot be said that the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal would safely convict. Therefore this court is satisfied at this stage that a *prima facie* case has been established by the prosecution against the four accused.

[10] For the aforementioned reasons this court is satisfied that there is no merit in the application that the four accused have no case to answer and holds that all four accused have a case to answer. Therefore this court proceeds to call for a defence from all the accused.

Signed, dated and delivered at Ile du Port on 6 November 2013

M Burhan
Judge of the Supreme Court