

**IN THE SEYCHELLES COURT OF APPEAL**

**JUSTIN BASSET**

**APPELLANT**

**Versus**

**THE REPUBLIC**

**RESPONDENT**

Criminal Appeal No: 3 of 2002

[Before: *Ayoola. P, Pillay & De Silva JJ.A*]

Mr. F. Elizabeth for the Appellant  
Ms. C. Hoareau for the Respondent



**JUDGMENT OF THE COURT**

*(Delivered by De Silva, JA)*

The appellant was convicted of sexual assault, contrary to and punishable under Section 130 of the Penal Code. The appellant was sentenced to a term of eight years' imprisonment. The appeal is against both conviction and sentence.

The first submission of Mr. Elizabeth for the appellant was that the prosecution has failed to prove one of the elements of the offence, namely, penetration of the vaginal orifice. Mondon, the complainant, repeatedly stated in her evidence that the appellant had "*sex with me.*". The case for the appellant was presented at the trial on the basis that he had sexual intercourse with Mondon but it was with her consent. More importantly, as rightly pointed out by Ms. Hoareau, Senior State Counsel, the medical report in respect of Mondon clearly states - "*Vaginal swab positive for spermatozoa*". Thus the oral evidence of Mondon is corroborated by the medical evidence. Therefore, this submission is devoid of merit.

The principal submission of Mr. Elizabeth was that the prosecution failed to prove that sexual intercourse took place without the consent of Mondon. This was indeed the central issue at the trial.

The evidence of Mondon was that on 19<sup>th</sup> October, 1998, while she was at home, she received a telephone call at about 10.30 am asking her to report to the Social Security Office. She went down to the road and she was offered a lift by the appellant who was driving a pick-up truck. The appellant was her neighbour and she was on good terms with him. She was seated beside him and, as they proceeded, the appellant turned the vehicle "*into the reclamation area*" saying that "*he was going to dump his rubbish bags.*" He removed two rubbish bags from the truck and suddenly threw a rope over her head, jumped on to her and told her "*let us do it.*" She said "*No, I have to get there by 12 noon.*" He told her that "*the Social Security Office did not ask you to report to the office.*" When questioned as to what happened thereafter she said:-

"that was when I had to let him have sex with me because he placed the rope around my neck, I was very frightened, I was crying whilst talking to him ... I was afraid that he would kill me" (Emphasis added)

It was suggested to her in cross examination that she agreed to have sexual intercourse with the appellant and "*in return you would not have to pay for the labour*" for carpentry work on a "*divider*". This suggestion was flatly denied and she further stated she had no intention of having sexual intercourse as she was "*on good terms with him and with his wife ... he has given me lifts before and he has never done that to me.*"

Once she released herself from the clutches of the appellant she ran up to the road and was able to get a lift from witness Belari to the Star

Seychelles Office where her aunt Zabe was working as a secretary. Speaking of the condition of Mondon witness Belari stated:-

“She was trying to hike a lift and was in a state of confusion. The blouse on her was crumpled and one or two buttons were open when I stopped the truck ... she was in a sort of furious state of mind. Like somebody who has passed through something, either somebody must have hit her ... She related to me what happened.”

Similarly her aunt Zabe described her condition in the following terms – “*She was in a state of shock and she explained what had happened ... she was crying.*” The evidence of Belari and Zabe is important for they both speak of the distressed condition of Mondon immediately after the incident. These two witnesses who speak of her distressed condition corroborate the testimony of Mondon that sexual intercourse took place without her consent (case of Alan Redpath 46 Criminal Appeal Reports 319). It is also in evidence that Mondon made a complaint to the police shortly after the incident. This too is a fact which tends to negative consent. Additionally, the presence of a stain resembling rope marks at the back of her blouse (exhibit P2) and the small bruises over the left clavicular region tend to negative consent on her part.


Mr. Elizabeth strongly contended that the medical evidence showed no signs of violence or serious physical injury and this proves that sexual intercourse took place with Mondon’s consent. On a consideration of the totality of the evidence the conclusion is irresistible that Mondon yielded through fear of death, once the rope was thrown round her neck. The facts reveal not consent but submission through fear. We accordingly reject the submission that sexual intercourse took place with the consent of Mondon.

As regards the appeal against sentence, we are of the view that a term of 8 years' imprisonment cannot be said to be manifestly excessive, having regard to the proved facts and circumstances of the case. The maximum term of imprisonment is 20 years and we are unable to hold that the learned trial Judge (Karunakaran J) has erred in the exercise of his discretion.

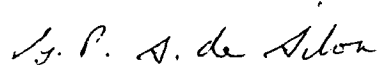
For these reasons the conviction and sentence are affirmed and the appeal is dismissed.



**E. O. AYoola**  
**PRESIDENT**



**A. G. PILLAY**  
**JUSTICE OF APPEAL**



**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 19<sup>th</sup> day of **December** 2002.