

IN THE SEYCHELLES COURT OF APPEAL

SCA No: 1(a) of 2004

JANE LABICHE

Appellant

V.S

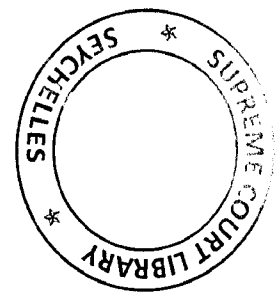
THE REPUBLIC

Respondent

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Before: Bwana, Hodoul, Domah, JJA
Counsel: Mrs. Antao for the Appellant
Mr. R. Govinden for the Respondent

Date of Hearing: 13 November 2006
Date of Judgment: 29 November 2006



JUDGMENT OF THE COURT

1. The Appellant was charged with Murder Contrary to Section 193 and Punishable under section 194 of the Penal Code, Cap 158. The particulars of offence allege that on 31 October 2003 at Pointe Larue, Mahe, the Appellant murdered one Hilary Labonte. By a majority verdict of 6 to 2, the Jury found her guilty. She was sentenced to life imprisonment.

2. The Appellant has raised five grounds of appeal which may be stated briefly as follows:-
 - 2.1 In his summing up to the jury, the trial judge failed to address the said jury on the defence accident...;

 - 2.2 The trial judge displayed bias in favour of the prosecution;

2.3 The trial judge erred in admitting the confession of the Appellant as there was sufficient evidence to prove that she had been induced into giving the statement ...;

~~2.4 The trial judge failed to sufficiently address the jury on the issue of Battered Woman Syndrome;~~

2.5 The trial judge failed to appreciate and to fully analyse the exact nature of the unlawful act that caused the death of the victim.

3. Ten witnesses testified on behalf of the prosecution and three witnesses for the Appellant. Nine exhibits were tendered in support of the prosecution case while two were tendered in support of the defence case. In her address before this Court however, Mrs. Antao stressed more on two points namely:-

3.1 The issue of bias as displayed by the trial judge;

3.2 The trial judge's failure to sufficiently address the jury on the two main defences - accident and battered women syndrome.

We will soon revert to the two grounds.

4. To appreciate the facts of this rather unusual case, a summary of the sequence of events leading thereto need to be stated here. The Appellant was a concubine of one Andrew Sophola. We should emphasize at the outset that the two were not

married. In the proceedings before the Court a quo, their relationship is interchangeably referred to as "boyfriend", "common law relationship"; "cohabitees"; and the like. They had a son out of their relationship.

5. ~~No sooner than later, the relationship developed problems.~~ It is not in dispute that Andrew Sophola constantly "battered" the Appellant especially following the latter's discovery that her boyfriend was "having an affair" with another woman (Megan Laira) who lived in the neighbourhood. The Appellant's attempts to win Andrew back failed. She was disturbed and depressed. She sought assistance from the probation department but she was told that they could intervene only if Andrew and the Appellant were married. As a consolation, she tried to get another man. But when Andrew found out, he made life worse to the Appellant. Several times she traced Andrew to Megan's bedroom which was in the basement of an all timber built house belonging to Melita Philomena Laira, Megan's sister. The situation became unbearable to the Appellant.
6. On the fateful night, she traced Andrew every where to no avail. She went into Megan's bedroom, tore her clothes and took a match box to light a cigarette. She put the cigarette on the table, took a piece of cloth to wipe her face. When leaving, she pushed everything that was on the table to the floor and left. That everything on the table included the cigarette that was lit. All the clothes and other things caught fire, eventually leading to the burning of that wooden house.

7. Several witnesses testified on seeing the house burn at that time of the night. A number of people were in the house at the time including the victim, Hilary Labonte. She had been sleeping on the mat. When the fire broke out, Melita had awakened her up but only to discover that Hilary never made it out. As it transpired, she was burnt completely beyond recognition. According to the evidence of Dr. Maria Zladkovitch, a pathologist who examined the body of Hilary, it was "in a state of carbonization ... having reached the last degree of burn which is the 5th degree burn, therefore badly charred." Police investigations established that the fire, which burnt the house, leading to the death of Hilary, "had been set on purpose."
8. It is apparent from the foregoing summary of facts that, first, the victim, Hilary died from the severe burns she suffered. Second, the burns were a result of the house set on fire. Third, the fire was started by the cigarette the Appellant had left on the table when she was tearing apart Megan's clothes and later on turn over the table, leaving the torn clothes and lit cigarette on the floor. They caught fire.
9. As stated earlier, the Appellant's side seems to raise two important defences namely - accident and battered women syndrome. We start with "accident". The jury was asked to find that the fire that subsequently gutted the material house was accidentally lit. We do note that there are two versions with regard to the cause of fire that destroyed the house. One such version is that of a match box having been used to light a cigarette. The other, as expounded by some witnesses, is that the Appellant was seen at the material time with a lit candle.

The Appellant herself insists that it was the cigarette that caused the fire. Later she showed an investigation police officer where she had thrown the material match box. Indeed it was recovered from there.

10. Was the fire, therefore, accidentally set or was it deliberately?

We have considered the evidence and the trial judge's views on the subject when summing up to the jury and find no fault. The fire was not accidentally lit. The Appellant ought to have thought of the outcome of her action. A claim that she "forgot" the burning cigarette on the table, is in our view immaterial. It may be argued that she was drunk, at the time - having taken quantities of alcohol some hours before. The defence of drunkenness or intoxication was not taken up: ostensibly in our view as it could not have helped the Appellant. The trial judge's approach on this subject is therefore proper. The defence of accident, which, in our view, is intended to remove the element of "malice aforethought", fails.

- 11.** The Battered Women Syndrome, is an interesting novel defence to offences of this kind. It is sometimes referred to as Battered Wives Syndrome or yet interchangeably, Battered Partners Syndrome. All the three originate from frequent and constant suffering suffered by a person, caused by his/her conjugal/partner in domestic violence. The trial court (and the jury) was asked by Mrs. Antao to examine the evidence in its totality and hold that the Appellant's sufferings at the hands of Andrew Sophola - her concubine - led to either cumulative provocation and/or battered women syndrome. Mrs. Antao did attempt to convince this Court that men and women behave

differently when it comes to provocation. That could be true but we are of the firm view that the ingredients of provocation are well known and settled. The trial judge had this to say (with regard to provocation) and in our view he was correct:

"For the accused to successfully raise a defence of provocation, he/she must lead some evidence to show on a balance of probabilities that what was said or done to him or her by the deceased caused her to suddenly and temporarily lose her self control and commit the act of killing. However where the killing is planned or premeditated the defence of provocation is not available to the accused. This is so even if the defendant has had to endure ill-treatment, physical and emotional abuse for a long period of time."

In **Thornton vs R** (1993) 96 Cr. App. R, it was held (and correctly so) that provocative acts in the course of domestic violence over a period of time which did not cause sudden and temporary loss of self control, did not amount to provocation in law. We believe this to be a response to the evolving theory of cumulative provocation and the battered partner's syndrome.

- 12. The Free Encyclopaedia** refers to Battered Women/Wife/Partners Syndrome as a state of any person who - *"because of constant and severe domestic violence usually involving physical abuse by a partner, becomes depressed and unable to take any independent action that would allow him or her to escape the abuse ... there is no consensus in the medical profession that such abuse results in a mental condition severe enough to excuse alleged offenders ..."*

In some jurisdictions, it has been held to be a defence where the accused uses force to defend himself/herself ... for self-preservation. It is, also agreed that battered partner's syndrome is a defence when –

- 12.1 As self-defence, reasonable and proportionate degree of violence in response to an abuse is used.
 - 12.2 As self-defence where the battered partner is justified in acting in self-defence but uses excessive force.
 - 12.3 Raised in cases of insanity, usually within the meaning of the MNaghten Rules.
 - 12.4 There is proof of diminished responsibility.
 - 12.5 There is medical evidence in support of the view that the accused actions (or omissions) were a result of the syndrome.
- 13.** We do acknowledge the existence of the syndrome and its application in Seychelles in an appropriate case. But this is not the appropriate case. First and foremost we are not hesitant to note that the Appellant was a disturbed and distressed woman in the days leading to this fatal incident. But what transpired as a result of her actions was not the use of force to defend herself but the use of force to attack and to commit such a grave crime, resulting in the death of a victim who had nothing to do with her conflict with Andrew. Further she was culpably unconcerned that

there were other people sleeping in the house at that time of the night. As such her actions would have grave consequences not only to those people but also to that wooden house. She should have realized as well that she had no right of access (in law) to the premises let alone at that late hour of the night.

- 14.** There is no medical evidence adduced to establish the state of mind of the Appellant at the time of the commission of the offence. It is on record that a psychologist visited her, some months later when the Appellant had already "cooled down." The issue was canvassed before the jury without any medical evidence in support of the fact that the accused was suffering from such a state of mind so that the court was unable to direct the jury to consider the issue at the time the accused was committing the offence.
- 15.** In our view therefore, the syndrome cannot be considered in favour of the Appellant so as to reduce a conviction of murder to that of manslaughter. The evidence before the trial court proved beyond reasonable doubt the offence of murder. The jury was correct in so holding.
- 16.** In so far as the grounds of appeal are concerned, we are firstly satisfied that there was no display of bias on the part of the trial judge that would have occasioned a miscarriage of justice. We further observe that at the end of the summing up, the trial judge informed the jury that his views were not binding to them. Secondly, it is clear on the record that the trial judge spent considerable time – in the course of the summing up – to review all the necessary factual and legal points involved in this case.

In our view, that approach was fairly balanced to both parties and in conformity with the provisions of section 264(1) of the Criminal Procedure Code, Cap 54. In brief, the trial judge did sufficiently address the jury on all important and fundamental points of the case.

17. In conclusion, this appeal fails. It is dismissed in its entirety. The Appellant to serve the prison term as imposed by the trial court. It is so ordered.


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S. J. BWANA
AG. PRESIDENT

I concur:


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J. M. HODOUL
JUSTICE OF APPEAL

I concur:


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S. B. DOMAH
JUSTICE OF APPEAL

Dated this 29 November 2006, Victoria, Seychelles