(11)

IN THE SEYCHELLES COURT OF APPEAL

SCA No: 10 of 2005

PETER OCTOBRE **Appellant**

V.S

THE REPUBLIC **Respondent**

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

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

JUDGMENT OF THE COURT

Bwana, AG. P.

1. The Appellant was charged with Murder contrary to section 194 of the Penal Code. It was alleged during trial that Peter Octobre on the 11th day of August 2003, in the district of Baie Lazare, Mahe, murdered one Wilna Dine. By a majority of 8 to 1 the jury reached a verdict of guilty. He was sentenced to serve a life imprisonment.

2. Dissatisfied with that finding, the Appellant has raised 5 grounds of appeal namely:-

2.1 The trial judge erred in that he failed to place before the jury the evidence of three defence witnesses (dw) that was material to the defence. In fact he failed to address his

mind to any and all evidence that was favourable to the defence.

2.2 The trial judge erred in that during the trial he displayed a bias in favour of the prosecution.

2.3 The trial judge failed to address the jury on the fact that the prosecution produced no murder weapon ... none of the two knives produced had the slightest traces of blood.

2.4 By not addressing the jury on the above, the trial judge failed to exercise his mind to the possibility that there were exonerating facts that would have benefited the Appellant.

2.5 The prosecution evidence was grounded on the statement made by the Appellant on 19 August 2003, despite the admission that such statements both outside and inside the court were lies.

3. The Respondent strenuously resists this appeal. It supports the findings of the trial court.

4. Facts leading to this unfortunate incident may be summarized as follows. The Appellant and the victim, Wilna Dine, were apparently lovers for a long period of time. They used to meet discreetly at a spot in the Roche Copra area of Baie Lazare district. On 12 August 2003, one Ezid Suzette, pw4, while going through a small path in the area, saw a body of a dead person in a hole. He reported it to Takamaka Police Station. The body

was later retrieved by the police and was identified as being that of Wilna Dine. It was examined by Dr. Marija Zlatkovic, pw 27, a medical doctor. She established two kinds of injuries – bruises and haematomas. She described the haematomas as having been the fatal ones. They included two stab wounds on both the left and right side of the neck. These wounds are said to have been caused by a sharp object. The stab on the left side of the neck is said to have been the fatal one as it reached the trachea and upon further internal examination, she found an inner dissection trachealomena. The right side wound was deep but it has gone only through the muscles.

5. Investigations carried out by the police at the scene led to the recovery of certain articles which were positively identified as belonging either to the Appellant or to the deceased. A day before the discovery of the body, that is on 11 August, one Jules Robinson, pw5, a police officer responsible for patrolling the Roche Copra area, had seen several people in the area. At round 2 p.m. he had seen the Appellant. He described the kind of clothes he was wearing and a cap on his head worn in such a way as to hide his identity. Pw5 could identify the Appellant as both live in the same area for many years. The Appellant's attire at the material time is also described by other pws, including Michel Fred, pw15, a driver of a "pirate" taxi who was called by the Appellant to collect him from near the scene. The following day, it is pw15's evidence, the Appellant asked this witness not to tell the police where exactly he had collected him the previous day.

6. Subsequently the Appellant was arrested by the police. All in all, he gave six statements to the police; three of these were cautioned statements. These are statements given on 15 August, 18 August and 19 August. The others, given on 4, 16 and 19 September may be safely said to be "simple statements." It is claimed by the appellant that his rights were not fully explained to him prior to recording the cautioned statements. That fact is disputed by the Respondent's side. We have examined the evidence on record in respect of this issue and are satisfied that the trial judge's decision in admitting the statements was proper in law. All the necessary prerequisites had been complied with. However, we do note, as the Court a quo did, that the statements contain contradictions. The Appellant himself admits that he told lies. The effect of telling lies by the Appellant has been described (in the **Goodway case**: (1993)4 All. E. R. 894 as follows:-

> *"Lies told by the accused may indicate a consciousness of guilt and in appropriate circumstances may therefore be relied upon by the prosecution as evidence supportive of guilt."*

7. However, the Appellant told the court that what he testified in his defence was the truth. The trial judge did consider this issue while addressing the jury. We are of the considered view that his directions to the jury in respect of this matter was proper.

8. We will consider now the grounds of appeal. The issue of the trial judge displaying bias (in favour of the prosecution) occupies a prominent position – both during trial and before this Court. It is described by Mrs. Antao to be in the form of admission of statements that had been made by the Appellant but in breach of the Appellant's Constitutional rights; disallowing questions the trial judge thought were in favour of the defence case while allowing those that tended to fence up the prosecution case even at times when procedure did not allow; and not placing before the jury the evidence of three defence witnesses that was material to the defence case.

9. We have considered the above claims in the light of the evidence on record and came to the conclusion that the trial judge's interventions at certain times of the trial did not amount to a miscarriage of justice. He had to guide the proceedings and direct the jury accordingly as to what were the issues and at which stage of the proceedings. We equally find no fault in his summing to the jury in respect of factual issues. The evidence on record with regard to the admission of statements manifests no irregularity. Concerning the evidence of the three dws – not being put before the jury, that did not, in our view, deny the Appellant of his material evidence, prompting unfairness to him. The same may be said of several pws that the trial judge did not make reference to their evidence in the course of summing up. Therefore, the trial judge's exercise of his discretionary powers by not making reference to the evidence of several witnesses (while summing up to the jury) was not adverse to the interests

of justice at large and to the Appellant in particular. Avory, J once said in the case of Sheaf (1925) 19 Cr. App. R. 46:

> *"When we once arrive at the conclusion that a vital question of fact has not been left to the jury, the only ground on which we can affirm a conviction is that there has been no miscarriage of justice on the ground that if the question had been left to the jury, they must necessary have come to the conclusion that the appellant was guilty."*

10. In so far as points of law are concerned, we are satisfied with the trial judge's directions on burden of proof, standard of proof, reasonable doubt, corroboration and analysis of the elements constituting the offence of murder.

11. The evidence on record also irresistibly point to the finding that it is the Appellant who committed the offence. His confession in his third cautioned statement is corroborated by the evidence of several pws. First there is the uncontroverted evidence that the Appellant and the victim were lovers for many years. Although they had other, publicly known relationship/cohabitation, the two used to meet secretly near the spot where the body of Wilna Dine was found. Second, according to pw5, the Appellant was seen near the scene of the murder on the fateful day. On that very day, and around the same time, the Appellant had contacted pw15, asking to be collected by his (pw15's) pirate taxi. Upon being picked up, the Appellant had the same clothes

and cap as described by pw5. He is described by pw15 as being absent minded and not willing to talk much. The Appellant's wife who was in the same pirate taxi at the material time, also received a similar reaction. When asked by his wife where he was coming from, the Appellant is on record as having replied: "bous ou labous, nou a koze lao ... - shut up we will talk at home ..." It should be noted that the Appellant was picked up by pw15 at a place about 5 to 10 minutes walk from the scene of the murder. Third, is the evidence of Gilbert Morin, pw20, an engineer with Cable and Wireless. He told the trial court how the communication system works. Acting upon a court order, he produced monitored calls between mobile telephones 591958 and 577894 on 11 August 2003. The first phone number belonged to the Appellant and the second one to the victim. Evidence was produced which proved that the two people made calls three times, leading to the time that pw5 testified to have seen the Appellant. The first phone call from the Appellant to Wilna was recorded at 9:26:44 a.m. The second one was at 10:08:56 and the third one was at 11:20:52 a.m. Later on, telephone 591958 made a call at 12:56:45 to 768320 and again at 13:05:27 hours. A last call in that direction was at 13:22:01 hours. Telephone 768320 belonged to pw15. Therefore this piece of evidence corroborates what pw15 testified as having received calls from the Appellant (around that time) asking to be picked up. The same version is stated by the Appellant in his cautioned statement dated 19 August. Fourth, is the evidence regarding the items recovered by the police at the scene of the murder. They included inter alia, two knives, a bracelet identified as belonging to the Appellant which he used to wear as

a protection against "froid". Both Dr. Perera (pw21) and Marija (pw27) confirmed that the cause of death was stab wounds in the neck region, caused by a sharp object. We are aware that the defence case raised an issue to the effect that there were no stains of blood seen on the two knives recovered from the scene. Upon consideration of this point, we are satisfied that there could be several reasons why no blood stains were seen from the knives. We can only speculate. What is important, however, is the fact that the injuries were caused by sharp objects. We do also note the Appellant's version on how and when he used the knife to stab the victim, twice in the neck region. Fifth, is the issue of whether the Appellant had sexual intercourse with the victim before the stabbing incident. A medical swab from the victim's vagina and rectum were negative. There was no semen. However, there is evidence which suggests that a used condom with semen in had been recovered from the scene. The Appellant himself states in the cautioned statement that they made love and then sexual intercourse before the fracas ensued. He says that the whole process took about 15 minutes. Thereafter, the subject of money came up. It would appear that it is this subject that led to the quarrel ending up with the loss of life on the part of Wilna.

12. All the above analysis of the evidence on record, leads to an irresistible conclusion, as did the majority of members of the jury, that Wilna Dine's death was a result of the stab wounds inflicted on her and that it is the Appellant who inflicted those stab wounds.

13. We therefore see no reason to differ with the findings of the trial court. We uphold both the conviction and sentence imposed. The appeal is therefore dismissed.

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S. J. BWNA
AG. PRESIDENT

I concur:

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J. M. HODOUL
JUSTICE OF APPEAL

I concur:

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B. DOMAH
JUSTICE OF APPEAL

Delivered on 29 November 2006, Victoria, Seychelles