

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

CN15/2023

(Appeal CR274/2022)

In the matter between:

**GARRY BONNE**  
*(rep. by Audric Govinden)*

**Appellant**

and

**Republic**  
*(rep. by Ms. Sophie Vel)*

**Respondent**

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**Neutral Citation:** Bonne v R (CN15/2023 Appeal from CR274/2022) (19<sup>th</sup> February 2026)  
**Before:** Madeleine, J  
**Summary:** Appeal against conviction and sentence  
**Heard:** Written Submissions  
**Delivered:** 19<sup>th</sup> February 2026

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**ORDER**

I allow the appeal under grounds 1,2,3 and 5 of the Appeal. I therefore quash the conviction of the Appellant and set aside the conviction of the Magistrates Court. Having allowed the appeal under grounds 1,2,3 and 5, the appeal under grounds 4 (alibi evidence) and 6 (against sentence) do not fall to be determined.

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**JUDGMENT**

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**A. MADELEINE J**

[1] This is an appeal against both the conviction and sentence of the Appellant by the Magistrates' Court for the offences of Breaking into Building and Stealing as per the charge reproduced below –

“COUNT 1

Statement of Offence

Breaking into Building contrary to and punishable under section 291(a) read with section 23 of the Penal Code cap 158

Particulars of offence

**Garry Bonne** of La Gogue, Mahe and **Antoine Mellon** of La Digue, on the 17<sup>th</sup> of April 2022, at ile Du Port, Mahe, ***Broke and entered into the Nou Laboutik liquor store*** under the responsibility of Sankar Balan of Belombre ***with intent to commit felony therein, namely stealing.***

COUNT 2

Stealing contrary to and punishable under section 260 read with section 23 of the Penal Code cap 158

Particulars of offence

**Garry Bonne** of La Gogue, Mahe and **Antoine Mellon** of La Digue, on the 17<sup>th</sup> day of April 2022, at ile Du Port, Mahe, at the NOU Laboutik liquor store, ***stole SCR154,100 (One hundred fifty-four thousand and one hundred Seychelles rupees) in cash, 342 Amstel beer can 500ml value SCR14,220.36, 222 Amstel beer can 330ml value SCR5871.90/-, 338 Amstel beer bottle 25cl value SCR7152.08/-, 160 Heineken bottle 250ml value SCR4232/-, 230 Heineken beer can 330ml SCR7302.50/-, 194 Heineken beer can 500ml value SCR8656.28/-, 252 Carlsberg beer 500ml value SCR 10,407.60/-, 202 Kingfisher beer 500ml value SCR7908.30/-, 240 Red Horse beer 330ml value SCR4538.40/-, 46 Haywards 5000 beer 500ml value SCR1759.96/-, 113 Phoenix Special brew beer 500ml value SCR4691.76/-, 8 Bavaria beer can 330ml value SCR217.92/-, 58 Hunter Premium beer can 500ml value SCR2193.56/-, 92 Tiger beer 330ml value SCR1999.16/-, 375 Tiger beer 50cl value SCR11,328.75/-, 48 Foster's beer can 500ml value SCR1988.16/-, 34 Guinness can 500ml value SCR1670.08/-, 193 Smirnoff black Ice can 330ml value SCR8024.94/-, 5 Glen Fiddich 12Y Whisky 1L value SCR4329/-, 4 Glen Fiddich 12Y Whisky 75cl Value SCR2657.52/-, 3 Grants***

*Whisky 75cl value SCR1032/-, 5 Glen Fiddich 12Y Whisky 75cl value SCR3321.70/-, 1 Grants Whisky 75cl value SCR 344/-, 24 JW Red Label 1L value SCR10,706.16, 7 JW Red Label 75cl value SCR2416.54/-, 6 JW Black Label 1L value SCR3600/-, 2 JW Black Label 75cl value SCR904.34/-, 4 JW Black Label 1L value SCR2400/-, 7 JW Double Black 1L value SCR5052.11/-, 2 JW Double Black 750ml Value SCR1088.70/-, 3 JW Blue Label 75cl value SCR10,173.90/-, 1 Chivas Regal 12Y 4.5L value SCR3228.96/-, 6 Jameson Whisky 1L value SCR3354.78/-, 6 Chivas Regal 1L value SCR3860.82/-, 4 Jameson Whisky 750ml value SCR1826.08/-, 4 Chivas Regal 75cl value SCR2176/-, 1 Jameson Gift Pack 700ml value SCR440/-, 3 Bacardi White Rum 1L value SCR1356.54/-, 5 Bacardi White Rum 750ml value SCR1704.30/-, 3 Bacardi Gold 1L value SCR1361.73/-, 3 Bacardi Gold Rum 750ml value SCR1035.63/-, 5 Grants Whisky 50cl SCR1320/-, 11 Grants Whisky 35cl value Scr2090/-, 6 JW Black Label 50cl value SCR2243.46/-, 8 JW Red Label 37.5cl value SCR1511.20/-, 4 Jameson Whisky 350ml value SCR848.72/- 4 Grants Whisky 20cl value SCR400/-, 12 JW aRed Label 20cl value SCR1200/-, 18 Jameson Whisky 200ml value SCR2287.08/-, 157 Red bull Energy drink 250ml value SCR3411.61/-, 57 Red bull Sugar free 250ml value SCR1238.61/-, 98 Red bull Gold 250ml value SCR1292.62/-, 3 Takamaka Bay Dark Rum 700ml value SCR703.02/-, 1 Captain Morgan Jamaica rum 1L value SCR400.93/-, 2 Captain Morgan Jamaica Run 750ml value SCR652.16/-, 3 Captain Morgan Spice Gold 750ml value SCR1017.39/-, 3 Havana club A/3/Anos Rum 70cl value SCR1224.96/-, 2 Jägermeister Herbal Liquor 70cl value SCR756.52/-, 2 Amarula Cream 1L value SCR720/-, 4 Amarula Cream 750ml value SCR1080/-, 127 smoking paper value SCR496.57/-, 39 Master smoking paper king size value SCR693.42/-, 30 Mantra Mix smoking paper value SCR459/- 12 Mac Baren Cherry Tobacco value SCR855.60/-, 1 Jack Daniels Whisky 3L value SCR2500/-, 5 Takamaka St-Andre Xtra Noir 70cl value SCR2247.80/-, 236 Bacardi Cola 330ml value SCR8651.76/-, 5 St-Claire 1.5L value SCR1000/-, 48 Eku can 500ml value SCR500ml value SCR2004.96/-, 968 Mahe King box value SCR47,557.84/-, 5 Bombay Sapphire Gin 750ml value SCR2039.15/-, 6 four cousins white 1.5L value SCR1068/- and 16 Jack Daniels whisky 70cl value SCR7763.36/-.*

*The grand total amount is SCR428,461.97, and all being under the responsibility of Sankar Balan of Belombre.”*

- [2] The Appellant was convicted and sentenced on 11<sup>th</sup> December 2023. He was sentenced to a term of imprisonment of 10 years for the offence of Breaking into building and 8 years for the offence of Stealing, ordered to run concurrently.
- [3] In addition, the Appellant was ordered to pay SCR428,461.97/- in fine in respect of Count 2 to the owner of Nou Laboutik Liquor Store during his prison term, in default of which he shall serve a further sentence of 16 months which shall run consecutive to the term of 10 years' imprisonment.
- [4] Dissatisfied with his conviction and sentence, the Appellant gave notice of appeal through the Prison Service on 18<sup>th</sup> December 2023 and filed his memorandum of appeal on the 23<sup>rd</sup> of September 2024.
- [5] The grounds of appeal are as follows –
1. *The learned Magistrate erred in law and in fact in determining that the accomplice evidence of Mr. Mellon was truthful, corroborated, reliable and credible to be relied upon.*
  2. *The learned Magistrate erred in fact in determining that the prosecution proved beyond reasonable doubt that the Appellant broke and entered the shop of 'Nou Laboutik' whereby proving count 1.*
  3. *The learned Magistrate erred in law and in fact in determining that the prosecution proved beyond a reasonable doubt that the Appellant stole the properties belonging or in the responsibility of Mr. Sankar Ballan, whereby proving count 2.*
  4. *The learned Judge erred in fact not to rely on the alibi evidence of the Appellant.*
  5. *The learned Magistrate erred in fact and in law to rely on the contradicting evidence between Mr. Mellon and Mr. Balan to find the guilt of the accused.*

6. *The learned Magistrate erred in sentencing the Appellant unfairly and excessively.*

[6] The Appellant therefore seeks the following reliefs –

- (i) An order to quash the conviction and sentence under both counts 1 and 2 of the charge;
- (ii) If conviction is upheld, an order that the sentence delivered is unfair and excessive and should be reduced.

[7] The Appeal has been heard by way of written submissions.<sup>1</sup> The Respondent's submissions were filed in the registry of the Supreme Court.<sup>2</sup> Their submissions are considered in the Court's analysis on the grounds of appeal.

#### The Evidence

[8] It is undisputed that there was a break in at 'Nou Laboutik 'Liquor Store at Perseverance petrol station on 17th April 2022, and that several items had been stole therefrom. These included cash, alcohol and cigarettes.

[9] The only facts in issue before the Magistrates Court were *who had broken and entered the Nou Laboutik liquor store and stolen on the said date and what items exactly had been stolen?*

[10] The prosecution's main witness was Antoine Mellon (AM). The learned Magistrate accepted the testimony of AM implicating the Appellant as truthful. In brief, AM testified that on 17<sup>th</sup> April 2022 at around 10-11 pm, the Appellant picked him from his home at Mont Buxton and drove to the Perseverance Petrol Station. The Appellant picked him up AM in a Kia Picanto, which the said AM had rented from Eden Car Hire. AM was used to renting cars for the Appellant. The Appellant had paid for the hired Kia Picanto.

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<sup>1</sup> 7<sup>th</sup> May 2025

<sup>2</sup> 19<sup>th</sup> May 2025

- [11] At Perseverance petrol Station, AM helped the Appellant to get inside the liquor shop through an opened window and then sat in the car waiting. On that night both the Appellant and AM wore long sleeves, and the Appellant had a mask on. The Appellant gave Antoine Mellon different items from the liquor store which consisted of different kinds of alcohol of an unknown quantity. They saw some people coming towards them and drove off to a place at La Gogue where there was construction 'things'. The Appellant and AM had put the items there and driven off.
- [12] The prosecution also called John Stanislas Dookley who testified that he extracted the CCTV footage of 17th April 2022 for the Perseverance petrol station and handed same to the police officers. The record shows that the CCTV footage was disclosed but for reasons best known to the prosecution, the footage was not produced at trial.
- [13] Brian Kilindo, the Director of the Trinity Investment which runs the petrol station, testified that the station is opened 24/7. He arrived at work at 7:00 and it was only when alerted by the liquor store owner that he found out that there has been a break in. He found the liquor store in a mess; items were missing and two small windows at the top were opened. The matter was handed over to the CID and extraction of footage was done by Mr. Dookley. He provided the police with the vehicle registration of a Kia Picanto, S27948, which he had found suspicious and followed on his way out of the petrol station that morning.
- [14] Robert Ralph Antoine, one of the owners of Eden Car Hire based at La Louise testified that in April 2022 he had rented a silver kia picanto bearing registration number S25748 to AM on an extended contract period. Initially for 2 days from 31<sup>st</sup> March 2022, and from 7th April until 18<sup>th</sup> April 2022. AM paid for the car hire at SCR.1200/- every two days and made a last payment of SCR1800/- on 18th April 2022.
- [15] The prosecution also called several police officers who testified as to their respective roles in the investigation of the incident of 17th April 2022. Corporal Maria Woodcock from Perseverance Police Station attended the scene on 17th April 2022 upon receiving a call from the command centre that there had been a burglary at the Perseverance petrol station. In cross-examination, she stated that the shelf inside the liquor store was not

completely empty and that there were some spaces in between the bottles and that there were also items in the freezer like Red Bull, alcohol, and beers.

- [16] Constable Janina Isadora Moustache testified that she was on mobile patrol on 17 April 2022 when she received a call from Corporal Woodcock at around 0934 regarding the incident, whereupon she proceeded to the perseverance petrol station. There she met with the shop owner and viewed the CCTV footage of the incident. She also testified that from inside the shop, she could see an opened window facing the mountain side and there were some empty spaces on the shelf. She could not recall whether the empty spaces on the shelf were large or small.
- [17] The Court notes that the prosecution did not produce any photographs taken at the scene, if at all taken. Likewise, the prosecution did not produce any evidence to show that prints have been lifted at the scene.
- [18] The prosecution next called Sergeant Harry Simeon of Anse Etoile Police Station who testified that on 18<sup>th</sup> April 2022, he was on patrol. At around 4:15, he received a call from Sergeant Dugasse requesting his assistance to attend a crime scene at Qunicy and to find one Mr Padayachy in relation to an incident that had taken place at Perseverance. Sgt. Simeon found Mr Padayachy at his residence at Qunicy. The property is not fenced and with the permission of Mr Padayachy he proceeded to search the property. They did not find anything inside the house but whilst searching outside, at about one metre away from the wall of the house he found a blue barrel. Inside the barrel, there were three bottles of Red Label of one litre and one bottle of White Bacardi of 750ml. They called Mr Padayachy who was inside to explain what they had found, and he denied any knowledge of the bottles. Mr Padayachy maintained that there are over a thousand people who access the area. In cross-examination by Appellant's counsel, Sgt. Simeon confirmed that the bottles were seized and handed over to another CID officer whose name he could not recall. No photographs had been taken of the scene or of the bottles allegedly recovered.
- [19] Sergeant Martina Dugasse testified that whilst on duty at the Perseverance CID together with other officers, she received credible information that the Appellant had been

involved in a break in. AM had informed that he had been involved in the first part of the offence while a person by the name 'Zimo' was involved in the second part. Upon investigation, they found out from the NIS that 'Zimo' is Didier Padayachy. Together with Sgt. Harry she proceeded to Quincy at around 1655. She confirmed Sgt. Simeon's description of the property, the search of the property with permission of Didier Padayachy, finding three bottles of Red Label of 1 litre and one bottle of Baccardi of 750 ml inside the water storage system outside the house and Padayachy's statement on being questioned about the bottles. In cross-examination by Appellant's counsel, the witness confirmed Sgt. Simeon's testimony that no photographs had been taken of the bottles and that the bottles had been handed over to another officer to send to the SSCRB for the purpose of lifting prints. No prints were lifted from the bottles, and they remain in the custody of the police.

- [20] The prosecution also called the shop manager of Nou Laboutik Express Private Limited at Ile Du Port petrol station. The shop manager is responsible for all purchasing, maintenance and staff monitoring of the shop. He testified that on Saturday 17<sup>th</sup> April 2022 he closed the shop at 11pm and in accordance with their procedure he left the days' cash and the Friday's cash inside the cash counter of the liquor shop. The total amount of cash left inside was SCR154,100/-. That night he followed the normal procedure including to send the details to his boss. The following day, the cashier called him to inform that the cash counter inside the liquor shop was opened, all the cash had disappeared together with the cigarettes ect.
- [21] The shop manager also testified that the police viewed the CCTV footage and took the extraction of the footage with them. They also lifted fingerprints. As shop manager he gave a report to the police detailing the missing items, the items that had been left behind, the value of the stolen items amounting being SCR.274,000/-, the cash taken from the cashier's counter in the sum of SCR.154,000/- and additionally he handed over a copy of the CCTV footage to the police. He confirmed that all the items referred in a copy of the charge shown to him were all the items stolen from the shop based on what was included in the report that was given to the police. He testified that he did not know the

denominations of the stolen cash. He only knows the value which corresponds to the two days sales.

[22] The shop manager also testified to what he viewed from the CCTV footage although same had not been produced in evidence.

[23] The court notes that neither fingerprint evidence nor the Nou Laboutik's report of the stolen items were tendered in evidence.

[24] The Appellant testified that he knew witness Mellon since the time that he has been using drugs and that he had helped Mellon with money to rent the car. He testified that he has also driven the car rented by Mellon. On 16<sup>th</sup> April he met Mellon after work at around 5 pm to go and buy drugs at Corgat Estate. They picked up his mother from work and dropped her off at home. Mellon came back at 8pm to pick Appellant and they went to the bar outside Barrell discoteque until after 11:15 pm and he met Mellon the next day at the Fishing Port. His mother and sister were in the house and the door was opened when he returned. The car stayed with Mellon until the next day the 17<sup>th</sup> April. In cross-examination, the Appellant maintained his version of event of the 16<sup>th</sup> April and stated that only his family will be able to confirm if they saw him that night.

[25] The Accused also called his mother, Julianna Bonne, and his sister, Isabelle Antoine, to testify as to his whereabouts on 16<sup>th</sup> April 2022. Accused mother, testified that the Accused lives with her at La Gogue and that on the 16<sup>th</sup> April, she last saw him at 08:00-08:15 pm when going to bed contrary to her police statement that she had not seen him on that day. She next saw him sleeping on the sofa at around 0:155 am on 17<sup>th</sup> April. Accused sister testified that she saw Accused home at 08:15 pm when she sent him to the shop to buy 2 cigarettes for her. She saw him when he returned at around 10:30 pm to 11 pm and saw him the next morning. The learned trial Magistrate did not attach weight to their testimonies to support the Accused's alibi.

### Analysis of Grounds of Appeal

#### Grounds 1,2,3 and 5

- [26] It is this court's view that Grounds 1, 2, 3 and 5 of the appeal concerns the trial court's assessment of the evidence leading to the Appellant's conviction under both counts of the charge. Grounds 1 and 5 imputes that the learned trial magistrate erred in relying on the evidence of witness Mellon and of witness Ballan to convict the Appellant. In respect of witness Mellon, the thrust of the Appellant's argument is that his evidence was not truthful and credible to be relied upon in the circumstances that he is a self-confessed accomplice and in view of material inconsistencies between his evidence and that of witness Ballan. As a result of these inconsistencies, the totality of the evidence against the Appellant fell short of proving the offences of Breaking into building and theft beyond reasonable doubt. The Appellant relied on *Republic v. Albert Marie*, *Republic v. Monthly* and *Charles & Ors v. Republic* to submit that a conviction should not be based solely on the uncorroborated evidence of an accomplice, especially where there are indications of unreliability or untruthfulness.
- [27] The Appellant relied on the court of decision in *DL v The Republic (SCA CR 23/2020)* to show that where there are material inconsistencies the doubt should go in favour of the Appellant.
- [28] The Appellant also relied on the Court of Appeal's decision in *Azemia v R CN 13/2023* where the Court of Appeal refused to rely on the sole evidence of identification of the Accused after the prosecution failed to produce the CCTV footage evidence given discrepancies in the testimonies.
- [29] It is submitted that similarly, in this case, the prosecution had failed to produce crucial CCTV footage, despite initially undertaking to do so. This failure, attributed to chain of custody concerns, reflects poor preparation. The Appellant argues the contradictions in this case are even greater, yet the trial court wrongly placed undue weight on AM's uncorroborated and inconsistent evidence. According to the Appellant, AM, a witness with motive to lie after charges against him were dropped, should not have been preferred over more credible testimony. The lack of CCTV, sales reports, and stock-taking records which witness Balan confirmed existed created serious evidentiary gaps. Thus it is submitted that the learned Magistrate erred in relying on speculative figures and

testimony rather than requiring concrete documentation. This lowered the evidentiary threshold to a balance of probabilities instead of the required standard of proof beyond reasonable doubt. These omissions prejudiced the Appellant, especially in light of the high value attributed to the alleged theft, which influenced sentencing. The prosecution has not proven either Count 1 (breaking and entering) or Count 2 (theft) beyond reasonable doubt, and the conviction should therefore be set aside.

- [30] In response, the Republic submitted that Grounds 1 and 5 of the appeal should be dismissed. First, it was not wrong for the learned Magistrate to rely on the evidence of an accomplice. The law permits conviction on uncorroborated accomplice evidence if the trial judge properly warns about its dangers, carefully weighs credibility, and finds the accomplice truthful (R v Marengo (2004), R v Emmanuel (2006), Jean Francois Adrienne v R (2017)). Corroboration is desirable but not mandatory if the accomplice's evidence is credible (Charles and Parekh).
- [31] The Republic further submitted that contrary to the Appellant's claim, the learned Magistrate did not accept AM's testimony blindly. AM voluntarily implicated himself and his account, including the use of the rented vehicle and details of the break-in on 17 April 2022, was consistent with other evidence and the locus in quo.
- [32] Second, the Republic submitted that no legal misdirection or unreasonable fact-finding occurred. The Republic's submissions' support the learned Magistrates reliance on the witness Ballan's testimony based on his observation of the CCTV footage that was never produced in court –
- “ {Mr. Sankar Balan's testimony} supported the occurrence of two break-ins, clarifying doubts about timing and quantity. The Magistrate based findings not only on Mr. Mellon's testimony but also on other witnesses (e.g., Eden Car Hire manager and Mr. Balan's CCTV observations).”
- [33] The Republic also responded that the alleged contradictions such as number of entries, access points, and the security guard's involvement were either immaterial, or satisfactorily explained. Regarding the prosecution's failure to produce CCTV footage,

the Republic submitted that “*the learned Magistrate had noted the Appellant’s counsel did not effectively use it during cross-examination*” and that “*the absence of footage was not fatal to the case since no evidence indicated it would exonerate the Appellant.*”

[34] The Republic further submitted that the Appellant’s reliance on Republic v Azemia (CN 13/2023) is misplaced because in that case where CCTV was central, “*here identification relied on live witness testimony, chiefly AM.*” Attempts to discredit AM based on unrelated testimony were properly weighed by the court. Following Republic v Monthly, the dangers of relying on accomplice evidence were appreciated but not overstated. In sum, the Magistrate’s assessment of AM’s credibility was reasonable, corroborated in material respects, and not undermined by inconsistencies.

[35] In respect of grounds 2 and 3, the Republic submits that the Learned Magistrate properly evaluated both direct and circumstantial evidence, finding that the Appellant broke into the premises. Minor differences in witnesses’ descriptions of the entry point reflect normal variations in perception and are not material contradictions. Both Mr. Mellon and Mr. Sankar Balan consistently testified that a break-in occurred, items were missing immediately after, and the appellant was present at the scene. These consistent facts support conviction beyond reasonable doubt, justifying dismissal of Grounds 2 and 3.

[36] The Republic further submitted that based on the reasoning of R v Anna (2007) SLR 170, the prosecution does not need to present a flawless case but show that the totality of the evidence satisfies the court beyond a reasonable doubt of the accused’s guilt. The Magistrate’s judgment reflects a proper application of the standard of proof. The Appellant’s presence at the crime scene, lack of plausible explanation, and missing items strongly support guilt. Therefore, Grounds 2 and 3 should be dismissed.

[37] It is trite that an Appellant court will not lightly interfere with the conviction and sentence imposed by the trial court. In the case of DL v R Fernando PCA expressed that an appellate court should be reluctant to disturb the findings of fact and credibility of a trial Judge. An appellate court would be in the right to disturb such findings where “*there has been no evaluation or critical analysis of the evidence by the learned Trial Judge but a mere reliance on the evidence and that only of the prosecutrix,*”.

[38] Fernando PCA also explained that the appellate court would be compelled to disturb the trial court's findings for factual errors having regards to the overriding principle in criminal law that the accused's guilt must be proved beyond reasonable doubt –

33. Factual errors may be errors where the reasons which the trial judge provides are unsatisfactory or where he overlooks facts or improbabilities. When evaluating or assessing evidence, it is imperative to evaluate all the evidence and not be selective in determining what evidence to consider. In the South African case of **S V Van der Meyden 1999 (1) SACR 447 (W) 450** it had been stated: *“What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false, some of it might be found to be unreliable, and some of it might be found to be only possibly false and unreliable, but none of it may simply be ignored”.*

34. I cannot close my mind to the well-known principle that the benefit of any doubt has to go in favour of the accused, especially when the overall picture arising from those doubts creates a reasonable doubt as to the guilt of an accused person. This Court had held in **Raymond Lucas VS The Republic SCA 17/09 [2011] SCCA38 (02 September 2011)** that it was not obligatory on the Court to give a corroboration warning in cases involving sexual offences before convicting an accused person, but when as in this case there are doubts in regard to the evidence of the prosecutrix and the case in its entirety; and which cannot be resolved and which leads up to a reasonable doubt I have no option but to give the benefit of that reasonable doubt to the Appellant.”

(Emphasis added)

[39] The need for the court to assess the totality of the evidence was also stressed by the court of appeal in *Geers v R (SCA CR 02/2023) [2023] (Arising in CO 27/2017) ((SCA CR*

02/2023) [2023] (Arising in CO 27/2017)) [2023] SCCA 65 (18 December 2023) where it held that –

“50. It is a trite principle of law that in arriving at a decision, a judge must assess the evidence adduced before court in its entirety - what seems in favour of the defence is as important as that which seems to be in favour of the prosecution case. A determination that an accused person had intent to traffic must be based on a holistic assessment of all the evidence before court. In the case before us, the judge was duty bound to evaluate the evidence in its entirety and based on his appreciation of all the evidence determine whether the Appellant possessed the cannabis with intention to traffic.” (Emphasis added)

[40] As regard’s accomplice’s evidence, the Court of Appeal in *Jean Francois Adrienne* and in *Dominic Dugasse v R (SCA 23 of 2016) [2018] SCCA 5* made it clear that in the same way as in sexual offences, it is no longer obligatory for the court to look for corroboration of the accomplice’s testimony unless there is an evidential basis for it –

“39. Thus it is clear that as per the English law of evidence presently, it is a matter for the judge's discretion whether any corroboration warning is appropriate in respect of a complainant of a sexual offence case, a case involving accomplice evidence or in respect of any other witness in whatever type of case.

40. There would need to be an evidential basis for suggesting that the evidence of the witness might be unreliable. Where some warning is required, it is for the judge to decide the strength and terms of the warning. An appellate court should be disinclined to interfere with the judge's exercise of his discretion save in a case where the exercise of discretion had been wholly unreasonable.” [Dugasse(supra)]

[41] Having addressed my mind to the above principles and to the evidence, I am of the view that the Appellant’s conviction for the offences charged under Counts 1 and 2 were

primarily based upon the evidence of self-confessed accomplice AM. Indeed, AM's testimony was subject to cross-examination by Appellant's Counsel. AM's testimony as to the break in at *Nou Laboutik*, which was not in issue at trial, and theft is corroborated by the evidence of Ballan to the extent that on 17<sup>th</sup> April 2022 he found that the shop had been broken into and that money and other items including cigarettes and alcoholic drinks had been taken from the shop.

- [42] The live issue at trial was who broke into 'Nou Laboutik' on 17<sup>th</sup> April 2022 and stole all the items listed in count 2 of the charge.
- [43] Prosecution had CCTV footage evidence of the break in and theft but failed to produce the same at trial. Such evidence would have corroborated the evidence of witnesses Ballan and Meilon as to the offences of 'break in' and 'stealing'.
- [44] On the issue of CCTV footage evidence, I reiterate the fundamental principle of our criminal justice system that it is the prosecution who bears the burden of proving accused's guilt beyond reasonable doubt throughout. It was therefore inappropriate for the learned Magistrate to state at paragraph [128] of his Judgment that it was open for the accused to produce the CCTV footage at trial during cross examination. The accused person does not have to prove his innocence to the charge, but it is for the prosecution to prove his guilt as per the charge.
- [45] In this vein, I also find that it was inappropriate for the learned Magistrate to state at paragraph [123] of his Judgment that "Even if the Court was to believe the testimony of accused no. 1 that he was in his bedroom in his house *he couldn't show before the court that somebody saw him at 2:00am in the house* apart from his mother as I find accused no.1 mother's testimony..."
- [46] The other issue with the CCTV footage is that notwithstanding that it was not produced in evidence, the learned Magistrate accepted and relied upon the evidence of witness Balan as to what he viewed on the CCTV footage. At paragraph [124] of the Judgment, the learned Magistrate, in dealing with the argument of Appellant's counsel (the

Accused) that there are contradictions between evidence of witness Balan and witness Mellon, stated that –

“What Mr. Mellon narrated of the incident occurred outside the shop and he would not be familiar of the structure inside the building whereas Mr. Sanker Balan narrates the incident which occurred inside the liquor shop who is familiar with the shop and the pantry/kitchen, *and he viewed the incident through the CCTV which occurred inside the shop where the said person coming down inside the shop through the panel in the ceiling connected to the pantry/kitchen.* Hence there is no doubt created in the mind of the court in the breaking and entering into the liquor shop. *It is pertinent to mention that accused no. 1 did break and enter the said liquor shop and stole alcohol cannot be denied from the evidence at hand.*”

[47] At paragraph [126] of the Judgment, the learned Magistrate again refers and accepts the evidence of witness Balan as to what he viewed from the unproduced CCTV footage –

“... but from the evidence of Sankar Balan, *he only mentioned that the person who came inside their shop the second time was the same who came in the first time and did not say anything about the person outside the shop waiting ....*”

[48] It is clear from witness Balan’s testimony referred to under paragraphs [53], [56],[57] of the Judgment that the above statement is based on what he viewed from the CCTV footage –

“[53] ...Mr Sankar Balan narrated that the person broke from outside ....., *he knew this because he checked the CCTV footage of the camera properly, there was only one person inside the shop.*”

“[56] *Mr Sankar Balan confirmed* in his cross examination that even though Mr Mellon an accomplice and the driver, said that it was not possible that all these items could be taken from the shop, *he saw the CCTV footage and the stealing by the thief took place two times that night and not once, first at 2:30 am and the second time early morning around 5 am* and he gave that CCTV footage to CID. Mr Sankar Balan confirmed that

the person who came inside the first time was the same person for the second time but does not know about the person standing outside.”

“[57] Mr Balan clarified that there was one person inside the shop and another person taking the items from the window after it was opened and was located into the car was parked near the window one by one as seen from the footage and has the footage for the second breaking in also. When Sankar Balan was suggested that Mr Antoine Mellon said that there is no way all these items were stolen, is it him who is lying or Mr Antoine Mellon is lying, Mr Sankar Balan clarified that he has the CCTV footage of the things being stolen twice 2:30am and also at 5 am. Mr. Sankar Balan was insistent that there was stealing done twice that morning and there was two persons.”

[49] Clearly, the learned Magistrate after having found that there was an evidential basis to look for corroboration of the testimony of witness Mellon, relied on the evidence of witness Balan to convict the Appellant for the offences charged –

*“103. The question before the court is whether the court can rely on the evidence of Mr Mellon for which the court can convict accused no.1 based on the evidence of an accomplice of the accused, and this court warns itself about convicting accused no.1 on the uncorroborated evidence of a person, Mr Antoine Mellon, when that person is an alleged accomplice of the accused no.1.”*


*[Paragraphs 104-110]*

[50] In looking for corroboration of witness Mellon from the testimony of Witness Ballan, the learned Magistrate disregarded material inconsistencies and relied on inadmissible evidence. The evidence of Witness Ballan to prove that all the items listed in the charge had been stolen by the Appellant was based on CCTV footage that had not been produced in evidence in accordance with the Evidence Act. Whilst relying on the evidence of witness Mellon to find the Appellant guilty, the learned Magistrate disregarded his evidence as to the items that were allegedly stolen in circumstances where there are so many shortcomings in the police investigations and prosecution.

[51] Based on this court's analysis of the evidence, there is a "*lurking doubt*" as to whether the Appellant's conviction should stand. I do not find that the prosecution proved the Appellant's guilt on both counts beyond reasonable doubt.

[52] Accordingly, I allow the appeal under grounds 1,2,3 and 5 of the Appeal. I therefore quash the conviction of the Appellant and set aside the conviction of the Magistrates Court. Having allowed the appeal under grounds 1,2,3 and 5, the appeal under grounds 4 (alibi evidence) and 6 (against sentence) do not fall to be determined.

Signed, dated, and delivered at Ile du Port, Mahe on the 19<sup>th</sup> February 2026.

  
A. Madeleine J

