IN THE SEYCHELLES COURT OF APPEAL

FRANCIS OLIVIA APPELLANT

V/S

THE REPUBLIC RESPONDENT

Criminal Appeal No. 4 of 1995

Before Goburdhun,P., Silungwe and Ayoola, JJA.

Mr. A. Derjacques for the appellant
Mr. S. Fernando for the respondent

JUDGMENT OF THE COURT

The appellant pleaded not guilty in the Supreme court to the offence of rape, contrary to section 130 as read with section 131 of the Penal Code. It was alleged in the particulars of offence that on or about September 16, 1994, at North East Point Village, the appellant had carnal knowledge of Maureen Elvina Valmont without her consent or with her consent which was obtained by force or by means of threats or intimidation, or by fear of bodily harm. He was tried, convicted as charged and sentenced to a prison term of 10 years.

Although the appeal is against both conviction and sentence, Mr. Derjacques, learned counsel for the appellant, has informed us that the appeal against conviction is withdrawn but that the appeal against sentence would proceed on the ground that the prison sentence of 10 years is not only lengthy but that it is also manifestly harsh and excessive.

The victim of the offence, Maureen Elvina Valmont, was a 15 year old girl when the trial in this case commenced on December 5, 1994, some 80 days after the commission of

have ranged between 3 years and 6 years. Among such cases are Marc Lespoir v. The Republic Cr. Appeal No. 8 of 1989 (5 years); Republic v. Franky Sinon Cr. Side No. 3 of 1991 (3 years); Robert Honore v. The Republic Cr. Appeal No. 3 of 1992 (6 years); and Yvon Marie v. The Republic Cr. Appeal No. 8 of 1993 (3 years). Cited also is the case of Godfrey Mathiot v. The Republic Cr. Appeal No. 9 of 1993 in which we reiterated the proper approach for an appellate court on sentencing.

Mr. Derjacques has submitted that the Doctor's testimony shows that there were no external physical signs of violence on the victim; that the appellant is a first offender and a young man of 27 years old who should be given a chance for rehabilitation as he would be receptible to change. It is further submitted that there has been no sudden upsurge in the incidence of rape cases in the country as to attract lengthy custodial sentences.

Whilst we appreciate the efforts of Mr. Derjacques in drawing our attention to the recent sentencing pattern in rape cases, it is important to underscore the fact that, in the final analysis, each case turns on its own merits. In this particular case, the appellant is not only a young man but also a first offender, some of the mitigating factors which were considered by the Supreme Court in assessing sentence. Further, although the crime of rape is an abomination, there were here no aggravating factors. In the circumstances of this case, therefore, we take the view that the sentence of 10 years is manifestly excessive. The appeal against sentence is therefore allowed; accordingly set aside and, in its place, a sentence of imprisonment for 6 years is hereby substituted.

Delivered on the 19th day of October, 1995.