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IN THE SEYCHELLES COURT OF APPEAL

ROGER AGLAE APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

Criminal Appeal No. 15 of 1997

(Before Goburdhun, P., Silungwe and Adam, JJA)

Mr. F. Bonte for the Appellant
Ms. L. Pool for the Respondent

JUDGMENT OF THE COURT
Delivered by Silungwe, J.A.

The appellant pleaded guilty to, and was convicted on, the alternative charge of wounding with intent, contrary to section 219(a) of the Penal Code, the particulars of offence being that on June 14, 1996, at Roche Caiman, Mahe, he unlawfully wounded Exianne Valmont, with intent to maim, disfigure or to do some grievous harm, by stabbing her with a knife. After giving the appellant credit for pleading guilty and being a first offence, the learned Chief Justice sentenced him to 4 years imprisonment.

The admitted facts of the case revealed that the appellant and the victim were, at the material time, living together in concubinage. Following an argument between the couple at home, on June 14, 1996, the appellant flung a bag containing a knife at Exianne. The appellant then proceeded to take a knife from the bag with which he stabbed Exianne just below her shoulder blade on the right side with the result that she fell down, bleeding profusely,

and was rendered unconscious. He tried to revive her but to no avail. He then dragged her into the bathroom and once again endeavoured to resuscitate her by throwing water into her body but she remained unconscious. Thereafter, the appellant reported the matter at Mont Fleuri police station and an ambulance conveyed the victim to the hospital in Victoria where she was admitted in the Intensive Care Unit. It was found that she had sustained punctured lungs and three hundred milimeters of blood had to be drained from the right chest cavity. She was put on intravenous antibiotics and stayed in hospital for about twenty one days. She has since fully recovered.

The only ground of appeal canvassed by Mr. Bonte, on behalf of the appellant, is against sentence on the basis that -

> *"The appellant being a first offender, the sentencer should have pronounced sentence after having obtained a report (social enquiry report). The learned trial judge erred in failing to obtain such a report."*

The pith of Mr. Bonte's argument is that before sentencing a youthful or first offender, the court must obtain a probation/social welfare report and that failure to do so is fatal. To reinforce his contention, he produced decisions in the following cases: David Cupidon v The Republic Cr. Appeal No. 17 of 1990; Jerris Dubel and Peter Bijoux v The Republic Cr. Appeal No. 14 of 1990; Gonzalves Jeannevol v The Republic Cr. Appeal No. 21 of 1991; and Allen Joubert v The Republic Cr. Appeal No. 28 of 1991.

The issue raised by Mr. Bonte is certainly a novel proposition. An examination of the cases cited above shows that they all share one common feature, namely, none of them is in support of the peremptory nature of Mr. Bonte's argument. In *Allen Joubert v The Republic*, supra, the appellant, a first offender, had been convicted in the Magistrate's Court of indecent assault on a female and his counsel's application to obtain a probation report before sentence could be passed had been refused. The appellant was sentenced to two years' imprisonment. On appeal to the Supreme Court against sentence, Perera, J.S, was entitled to observe that "In the circumstances" of that particular case, "the learned magistrate should have called for a probation report ..." Clearly, Perera, J.S., made no attempt, and properly so, in our view, to couch his observations in peremptory terms.

In any event, there is a sharp contrast between Joubert's case and the current one. In the former case, the learned counsel applied for a social welfare report but this was refused by the trial court; whereas in the case under consideration, no such application was ever made. In point of fact, when Mr Bonte was asked if there was anything to be said in mitigation, the record shows as follows:-

> *'Mr. Bonte: Your Lordship, the greatest mitigating factor in this matter is that he has shown remorse. I do not want to make heavy weather of this matter. I believe he is a first offender ... In case the prosecution intends to call for a report from the probation (officer) I would decline that because we are not going to appeal..."*

Of course, the ultimate decision as to whether a social welfare report should be called for rests with the court.

It is indisputable that social welfare reports are useful; and that there are suitable cases in which the interests of justice are best served by obtaining such reports before passing sentence, for instance, cases involving youthful, first, old or terminally ill offenders. In Seychelles, however, there is no legal obligation, statutory or otherwise, placed on a court to obtain a social welfare report for the purpose of assisting the court to pass an appropriate sentence. Although such reports are desirable, or even essential, in some cases (and where necessary, courts are encouraged to ask for them) calling for them is discretionary, not mandatory.

In the instant case, we do not consider that the learned Chief Justice can be faulted for having sentenced the appellant without obtaining a social welfare report as there was no impropriety in the implied exercise of his discretion. Consequently, the appeal against sentence is dismissed.

Dated this 14th day of August, 1997.

H. GOBURDHUN	A. M. SILUNGWE	M. A. ADAM
PRESDIENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Handed down
AD AMJA