IN THE SEYCHELLES COURT OF APPEAL

WILLS ESAIE APPELLANT

Versus

REPUBLIC RESPONDENT

Criminal Appeal No: 2 of 2000

....

Mr. F. Elizabeth for the Appellant

Mr. R. Govinden State Counsel for the Respondent

JUDGMENT OF THE COURT

(Delivered by De Silva JA)

The appellant has preferred an appeal only against the sentence imposed by the trial Court. The appellant was convicted in respect of two charges on his plea of guilty. The first charge was robbery with violence contrary to Section 280 of the Penal Code, read with Section 23 and punishable under the proviso to Section 281 of the Penal Code. The law provides a maximum sentence of life imprisonment for this offence. The second charge is sexual assault contrary to and punishable under Section 130(1) of the Penal Code, read with Section 130(2) (d) and Section 23 of the Penal Code. The maximum sentence provided by law is 20 years' imprisonment.

It is the contention of learned counsel for the appellant that the sentences are manifestly harsh and excessive and out of proportion to the offences committed.

The learned trial Judge (Karunakaran J) has in his order given his mind to the matters in favour of the appellant. Said the learned Judge, *"I*

note the defendant is relatively young. He has pleaded guilty to the charge saving the precious time of this Court. He is the father of two children. He has only one previous conviction for a similar offence last year."

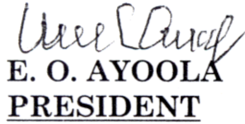
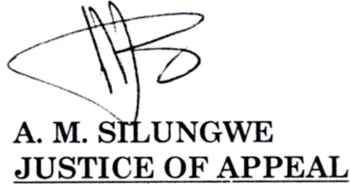
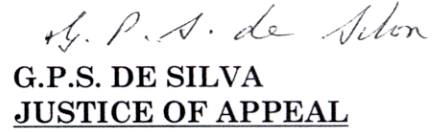
However, as rightly pointed out by the trial Court, there are several circumstances of aggravation of the offence which tell heavily against the appellant. The appellant together with another man had entered the bedroom of the victim at about 2 a.m on 2nd May 1999. Both were armed, one with a dagger and the other with a large knife. They ransacked the room and took the handbag, cash Rs.2500, and several valuable articles. They threatened the victim and forcibly had sexual intercourse with her. What is more, the appellant and his companion had indulged in perverted, unnatural and indecent acts to gratify their lust, as rightly emphasized by the learned Judge.

The medical evidence revealed that the victim had inter alia multiple lacerations of the anus. Thus it is clear that this is a case where the circumstances of aggravation far outweigh the matters that could possibly be urged in mitigation of sentence.

The quantum of sentence is essentially a matter which falls within the discretion of the trial Judge. An appellate Court is slow to interfere on the question of sentence, unless it could be shown that the Trial Judge has proceeded upon a wrong principle or has failed to exercise its discretion, or has exercised it improperly or wrongly. The cases relied on by learned counsel for the appellant are of little assistance as the circumstances of aggravation referred to above were not present in those cases.

In our view the trial Court has exercised its discretion fairly, having regard to the totality of the facts and circumstances of the case.

We accordingly hold that there is no valid and reasonable basis upon which we could interfere with the sentences imposed on the appellant. In the result, the appeal is dismissed.

E. O. AYOOLA	**A. M. SILUNGWE**	**G.P.S. DE SILVA**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated at Victoria, Mahe, this 3rd day of November 2000.