

IN THE SEYCHELLES COURT OF APPEAL

[Coram: M. Twomey (J.A) , B. Renaud (J.A), F. Robinson (J.A)]

Criminal Appeal SCA 13/2018

(Appeal from Supreme Court Decision CO 40/2017)

Kurt Loizeau

Appellant

Versus

The Republic

Respondent

Heard: 06 December 2018

Counsel: Mr. A. Juliette for the Appellant

Mr. G. Thachett for the Respondent

Delivered: 14 December 2018

JUDGMENT

B. Renaud (J.A)

1. By a judgment of the Supreme Court delivered on the 12th February 2018, in Supreme Court case CR 40/17, the Appellant herein having pleaded to the alternative count of assault occasioning actual bodily harm, contrary to and punishable under Section 236 of the Penal Code (Cap 158) was sentenced to undergo 3 years imprisonment and to pay a fine of SR50,000.00 following his plea of guilty, upon the ground set out hereunder.
2. The Appellant, together with two co-accused, were charged on count 1 with the offence of unlawfully wounding with intent to do grievous bodily harm contrary to Section 219(a) read with Section 22(a) of the Penal Code. The particulars of offence were that the Appellant, a 22 year old male self-employed of Grand Anse (with two other accused) in the late hours of 29th of July 2017, at Grand Anse, Mahe, with common intention,

unlawfully wounded one Marcel Dogley with intent to do grievous harm to the said Marcel Dogley.

3. Count 2 (in the **alternative** to Count 1) – assault occasioning actual bodily harm, contrary to and punishable under Section 236 of the Penal Code (Cap 158). The particulars of offence were that the Appellant in the late hours of 29th July 2017, at Grand Anse, Mahe, along with other persons known to the Republic, assaulted one Marcel Dogley causing actual bodily harm to the said Marcel Dogley.

4. The Appellant set out one ground of appeal as follows:

“The sentence of 3 years imprisonment and a fine of SR50,000.00 is harsh and excessive in all circumstances of the case and is inconsistent and in disparity with other sentences for similar offences and more serious offences.”

5. The Appellant is praying this Court to allow the appeal and reverse the sentence by reducing the sentence passed on the Appellant in line with similar sentences in similar and more serious cases.

6. In sentencing the Appellant the learned Judge noted that an offence under Section 236 of the Penal Code is a felony and attracts a maximum term of 7 years imprisonment whereas an offence under Section 235 of the Penal Code is a misdemeanor and attracts a maximum term of 2 years imprisonment.

7. The learned Judge considered the plea in mitigation that the Appellant was 22 years old, a first offender and had pleaded guilty.

8. The learned Judge established that the facts of the case indicate that the victim suffered facial injuries and 5 fractures to his facial bones and considered these to be serious and is further aggravated by the fact that several blows were given by the Appellant on the face of the victim by means of a baseball bat. When deciding on the appropriate sentence, the learned Judge considered but differentiated the facts in the cases cited by learned Counsel

for the Appellant to the facts in the instant case. The cases cited were *Republic v Barry Forte RV 05/2011*; *Republic v Rico Josias & or CO 35/2016*; *Republic v Beddy Telemaque CO 30/2015*; *Republic v Neddy Lagrenade & or CO 53/2015*; *Republic v Marcus MacGaw and Clifton Samedi CO 39/2006* and *Republic v George Pierre Pool CO 51/2016*. In the light of these facts the learned Judge decided to impose a term of imprisonment as appropriate sentence in the circumstances.

9. For the above reasons, we are unable to find any fault with the approach adopted by the learned Judge in sentencing the Appellant. We find no reason to interfere with the sentence passed on the Appellant, which was neither wrong in principle, nor manifestly harsh and excessive.
10. We find that the Appeal has no merit and is accordingly dismissed.

B. Renaud (J.A)

I concur:. M. Twomey (J.A)

I concur:. F. Robinson (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 14 December 2018