

**The Republic v De Commarmond & Or
(2004) SLR 92**

Helen CAROLUS for the Republic
Samy FREMINOT for the Accused

Sentence delivered on 13 September 2004 by:

PERERA J: The First Accused Anthony De Commarmond will be 19 years old on the 23rd of this month. He was charged with two counts of wounding, an offence contrary to Section 224(a) of the Penal Code, one count of sexual assault contrary to Section 130(1) of the Penal Code, and one count of stealing, contrary to Section 260 of the Penal Code. The First Accused pleaded guilty to counts 1 and 2, and not guilty to count 3. The Second Accused Harry Harrison was charged with one count of sexual assault, and jointly charged with the First Accused on count 5 for stealing. The Prosecution withdrew count 3 against the First Accused, and accordingly he was convicted of the charges under counts 1, 2 and 5. The Prosecution also withdrew the charges under counts 4 and 5 against the Second Accused, and consequently he was discharged from the proceedings.

In count 1, the First Accused is charged with wounding one Lisette Tamboo on 29 June 2004 at La Poudriere, Mahe, and on count 2 for wounding one Michel Julienne in the same transaction. Under count 5, the First Accused is charged with stealing R1,500 in cash and a mobile telephone belonging to Lisette Tamboo.

According to the facts disclosed by the Prosecution, and corroborated by the Probation Report filed in the case, the First Accused was living with his mother Mariana, her concubine, Michel Julienne, his brothers Shane, 29 years old (who is physically handicapped) Dave (25 years old) and his sister Marie Michelle (15 years old). The mother of the First Accused left for Bahrain on employment and one evening when he returned home, he found Michel Julienne having sexual intercourse with Lisette Tamboo on his mother's bed. In a state of anger he hit both of them with a piece of wood causing injuries.

Consequent to the assault, Michel Julienne sustained three lacerated wounds, one on his skull, one on his forehead, and one on the upper lip. These wounds were sutured. Lisette Tamboo sustained a laceration on the head, which had to be sutured, and bruises behind the right ear, the left temple, and scratches on her chin, left knee, and right thumb.

A person convicted of an offence under Section 224 of the Penal Code is liable to be imprisoned for a period of seven years, and so is a convict under Section 260. I have considered the submission of Learned Counsel for the Accused in mitigation, and also considered the probation report setting out the circumstances in which the assault took place. The Accused is a first offender, and he was 18 years old at the time of

committing the offences. With the vacation of the house by Michel Julienne, the Accused is the sole income earner to support his crippled brother and the school going sister.

The offences under Section 224 and 260 of the Penal Code are felonies. However, in the case of *Marcel Dick v R* (1982) SLR 67, a person was convicted by the Magistrates' Court on a charge under Section 219(a) for causing grievous harm with intent to disfigure. In that case, the Accused had attacked the Complainant with a knife on the forehead and on the back. He was sentenced to 18 months imprisonment. In appeal Seaton CJ on a consideration of the circumstances of the assault reduced the charge to the lesser offence of unlawful wounding under Section 224(a) of the Penal Code, and imposed a fine of R2,000, with a compensation order in favour of the Complainant.

In sentencing a youthful offender, some of the factors that ought to be taken into consideration are –

- (1) The age of the Accused and previous convictions/or similar offences.
- (2) Circumstances preceding the commission of the offence, the role played by the convict or the victim, and whether there was an element of provocation or emotional stress.
- (3) The magnitude of the crime and the injuries or loss suffered by the victim.
- (4) Conduct of the convict after the commission of the crime.

In the present case, admittedly, the Accused reacted angrily on seeing his mother's bed being used by the Complainant Michel to have sex with another woman. Although he ought not to have assaulted them the way he did the circumstances preceding the commission of the offence, and the role played by the victims entitle the Accused who is still a youth, and a first offender, to be given a lenient sentence. He has been on remand since 12 July 2004.

According to the probation report he is now remorseful. I have also taken into consideration the fact that the Accused pleaded guilty without wasting the time of the Court. The Accused is a young man who should be given a chance to rehabilitate himself without being exposed to more serious criminal elements in Prison. Accordingly I sentence the First Accused as follows:

Count 1 – 2 years imprisonment

Count 2 – 2 years imprisonment

Count 5 – 6 months imprisonment.

Sentences to run concurrently, but suspended for a period of 2 years.

Conditions of the suspended sentence are explained to the Accused.

Accused is also informed of the right of appeal on sentence.

Record: Criminal Side No 57 of 2004