

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

Plaintiff

VS.

1. CHRISTOPHER COLE

1st

Accused

2. MERVIN FLORENTINE

2nd

Accused

Criminal Side No. 25 of 2006

Mr. Chetty for the Republic

Mr. Elizabeth for the 2nd Accused

RULING

Gaswaga, J

When the accused persons appeared before this Court on Thursday 18th May, 2006, I made an order under section 179 that they should be remanded in custody pending the determination of their case and as such to be produced in Court after every 14 days until otherwise ordered. I hereby give my reasons for the order that I had earlier on made.

The prosecution filed a notice of motion with the prayer for remand in custody of the accused in accordance with section 179 of the Criminal Procedure Code read

with Article 18(7) of the Constitution. It was accompanied by an affidavit deponed by Sub-inspector Marie.

Mr. Elizabeth, who appeared for the 2nd accused, vehemently objected to the application and averred that under the Constitution, Article 18(7) thereof, the accused person was entitled to be released on bail since there was no fear expressed that they may not come back to Court for their trial. He also submitted that the accused were charged with one offence of mere sexual assault, which according to him was not very serious.

In the case of **Republic vs. Gerard Kate CR50/04** the Court stated as follows;

“The seriousness of an offence does not mean only offences that carry hefty fines and/or long term imprisonment; or minimum mandatory sentence or fines; but must also be considered in a broader perspective, including the prevalence of the offence; the prevailing tendency of such crime; the necessity to root out or curb the vice; the negative impact of the offence on the virtual complainant and the view taken by society of such offence; whether the offence is the act of a sole individual or a possible conspiracy involving other parties who may be directly or indirectly, openly or secretly involved; the circumstances and manner that the alleged offence took place; among other considerations.

The learned Judge went on to state with regards to pre-trial incarceration;

“Remand is not a form of punishment or admonishment of the accused for the offence he/she is alleged to have committed. It is

simply a transitory stage prior to the time when the proper trial is to take place. If the court is of the view that the alleged offence is so serious that the accused ought to be removed from society and be made to live apart because of the untoward manner the accused has conducted himself in society, that is when the court will remand the accused. When considering whether to remand an accused or not, the court must always have regards not only to the Constitutional rights of liberty of the accused, but also the fundamental rights of other members of society to live securely and peacefully.”

A quick perusal of the application filed by the prosecution and the charge sheet revealed that both accused persons are charged with three offences allegedly committed at the same transaction of events against and the same victim namely; Sexual Assault contrary to section 130(2)(d); Robbery contrary to section 280 read with section 281 and section 23 of the Penal Code and Assault Occasioning Bodily Harm contrary to section 236 read with section 23 of the Penal Code. The court takes judicial notice that all these three types of offences remain prevalent in this society.

The rights of the members of the public and those of both accused have been carefully considered, especially as put across by Mr. Elizabeth but the interest of justice in this case overwhelmingly dictate that the accused be kept on remand at Long Island Prison.

I so order.

D. GASWAGA

JUDGE

Dated this 23rd day of May, 2006.