

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.
FRANKY LESPERANCE

Criminal Side No. 52 of 2006

Mr. Govinden for the Republic
Mr. Herminie for the Accused

SENTENCE

Gaswaga, J

At this stage of the trial, the court is to determine a suitable sentence for Mr. Franky Lesperance who has been convicted on his own plea of guilty of the offence of an act intended to cause grievous harm contrary to section 219 (a) and punishable under section 219 of the Penal Code Act, Cap 158. The particulars of offence were that Mr. F. Lesperance on the 9th day of November 2006 at Mont Buxton, Mahe, with intent to do grievous harm, unlawfully wounded Terry Lenclume and thereby caused him grievous harm. The admitted facts disclosed that the said grievous harm was caused using a knife and it is in this vein and with great concern that the court finds it imperative on this occasion to say something about the use of the 'knife' in our society today.

It is high time we realized that whenever the knife (or machete) has been put to wrong use it has led to very undesirable situations including causing grave injuries to as well as permanently maiming the human body and, death. For instance court records indicate that most of the murder, manslaughter, bodily injury and wounding and or robbery with violence cases adjudicated in the recent years involved the use of a knife. In **R Vs Rita Sophola Cr. Side No. 68 of 2004, R. Vs. Accouche Cr. Side No.109 of 2004, R. Vs Dreadina Dine Cr. Side No. 64 of**

2005, R Vs. Garry Labrosse & Others Cr. Side No. 48 of 2004, R Vs. Jerris Moustache Cr.Side No. 15 of 2006, R. Vs Joseph Anna Cr. Side No. 58 of 2004 etc the knife was at the centre of these crimes and the root cause of the injuries occasioned and subsequent death, where it finally occurred.

Knives should strictly be kept under lock and key in the kitchen cabinets and only used to cut fish and onions etc but not for stabbing human beings. Why should one go to a public place or into a public service bus while armed with a knife? What would be the use of a knife to a person who has gone to dance in a crowded discotheque or at a party? Small as it is the knife continues to bring more suffering, disharmony and pain amongst the people of our community. This should stop. It is therefore the duty of this court to send out a loud and unambiguous message that the time is now for the people in this habit to desist from walking around with knives or keeping a knife in the bedroom. This in my view will curb on the escalating regrettable and dangerous use of the knife.

But each case should be judged on its merits. The above warning shall in no way prejudice the convict as the sentencing herein will follow the usual and established guidelines and principles such as the sentencing pattern in similar offences in this jurisdiction, the gravity as well as circumstances of the case and the injuries sustained by and condition of the victim.

On the charge of unlawful wounding (by stabbing through the victims lungs) the accused in **Roger Aglae Vs R. Crim. Appeal. No. 15 of 1997** received a 4 year sentence. He had pleaded guilty, showed remorse and saved courts time. Each of the convicts in **Gaetan Rene & Others Vs. R Crim. Appeal No.28 of 1998** was sentenced to 7 years imprisonment for rudimentary occasioning injury with a knife to the *“skin of the shaft of the penis of the victim, thereby causing a retraction of the distal and proximal parts, and producing an exposed wide band of mucosa circumferentially.”* Considering the injuries in the case of **R. Vs. Joseph Anna**

Crim. Side No. 58 of 2004 as being very serious, the court handed down a sentence of 10 years imprisonment to the accused. In this case there was a penetrative wound of 10 cms caused by a knife stab leading to active bleeding in the thorax and, air escaping from that wound. However, in yet another recent case of **R. Vs. Louis Christian Hoareau Crim. Side No. 100 of 2004** the court first made reference to the authority of **Frankie Simeon Vs. R** wherein the **Court of Appeal** reduced the sentence for a double manslaughter to 10 years. In the **Hoareau** case, the accused assaulted his wife and abandoned her in a pool of blood in an isolated bushy area. She among other injuries sustained multiple contusions, bruises and abrasions over both arms, both legs and back of trunk. The whole scalp was completely lacerated and hanging in pieces and contaminated with mud. Extensive area of the scalp was lost and the bone exposed. There were deep injuries over the lateral aspect of left eye and also to the left angle of the mouth. The consultant in surgery recommended further treatment of skin grafting over the skull, surgical correction of the left eye and blood transfusion. The convict was sentenced to 4 years in prison.

Now, in the present case, Dr Eric Licea stated in the medical report that:

“the victim, Lenclume Terry of Pascal Village was admitted at Victoria Hospital on the 19th November 2006 with two stab wounds of 3-4 cms; one on the left shoulder and in the middle of the back over the spine. The wounds were bleeding actively while the patient continued to suffer severe pain and was stuporous. The respiratory sounds were diminished on the right side. X-ray chest revealed pneumothorax right 10% and small amount of blood. The patient was taken to operation theatre on same day and wounds explored under anaesthesia. Haemostasis was done, there was active paravertabral bleeding so wound was packed with gel foam and gauze for review later. Post operation, patient was given oxygen mask. Later in the ward the general condition was stable, SP02-909 afebrile. Air entry decreased on right side. No active bleeding, abdomen soft.

Patient taken to theatre again on the 22nd November 2006 for review. There was fresh blood between transverse process. Haemostasis done and packed with gelfoam and closed the wound with middle two sutures. Presently patient is in the male surgical ward with chest drain right side in. Patient is on antibiotics and Analgesic. He is conscious and oriented. Wound oozing still. The Doctor then concluded the report dated 23rd November 2006 that if the bleeding does not stop, planning to explore it again in operation theatre or possible thoracotomy”.

Mr. Herminie submitted in mitigation for his client that the convict is a young father of 38 years and a first offender who has shown remorse by pleading guilty and thereby saving the precious time of the court. Vouching for the convict's good character a letter by Father George Tirant dated 28/06/2007 and a probation or social services report in respect of Mr. Lesperance's situation were filed. The court was then invited to exercise leniency while sentencing bearing in mind that the victim had fully recovered and further that the convict was ready to compensate him.

The court views the injuries in this case as being less serious than those occasioned in the above cited authorities. The prescribed maximum sentence for this offence is life imprisonment. In consideration of the mitigation in its entirety and all the prevailing circumstances of the case, I impose a prison term of 3 years. The period spent on remand shall count towards the said sentence. In addition, pursuant to section 151 of the Criminal Procedure Code Cap 54, the convict shall pay a fine of SR 15, 000.00 in default whereof he will serve another 3 months in prison. The said sum of SR 15,000.00 shall be applied to compensate the victim for the injuries and pain suffered.

Right of appeal against sentence explained.

D. GASWAGA

JUDGE

Dated this 30th day of July, 2007.