

**IN THE SUPREME COURT OF SEYCHELLES****THE REPUBLIC****VS  
ELVIS CESAR**Criminal Side No.76 of 2005Mr. Camille for the Republic  
Mr. Hoareau for the accused**SENTENCE*****Gaswaga, J***

The defendant has pleaded guilty to two counts of: Sexual assault contrary to Section 130 (1) of the Penal Code read with Section 130 (2) (a) of the said code and assault occasioning actual bodily harm contrary to Section 236 of the Penal Code.

In passing sentence I have taken into account the fact that the defendant has saved the precious time of Court, nature of offences and the circumstances under which they were committed. It is noted that the accused and the victim were boyfriend and girlfriend at one point in time. Although the defendant managed to rip off the victim's skirt he did not succeed in having sexual intercourse with her. The Court has been invited to consider imposition of a maximum sentence of two years on each count which should then run concurrently. Further invitation has been extended to consider the sentence imposed by this Court in a previous case of sexual assault against a minor where this same defendant is currently serving a jail term of four years (Rep vs. Elvis Cesar Criminal Side No. 77 of 2005). It is submitted by the defence counsel that this is a fit and proper case where an order to have the sentences herein run concurrently with those in Criminal Case No. 77 of 2005 should issue.

I have considered the provisions of Section 36 of the Penal Code, Cap 158 and the

principle of ‘totality of sentences’ as discussed by Perera, J in **Philip Cesar vs. Rep. Criminal Appeal No. 20 of 1993** and, Bwana, J, as he then was, in **Cliff Emmanuel vs. Rep. Criminal Appeal No. 3 of 1993**. I take serious note of the fact that in both files the accused/convict committed the sexual assault offences in the same month i.e. 1<sup>st</sup> September, 2005 and 15<sup>th</sup> September, 2005. Having once again considered the surrounding circumstances of the case as well as those of the defendant, I shall judiciously exercise my discretion in imposing a suitable sentence herein as follows:

- (i) The defendant shall undergo a prison term of three (3) years on count I.
- (ii) Another two (2) years on count II.

### **ORDER**

- (a) The above sentences are to run concurrently.
- (b) As discussed above for avoidance of doubt (pursuant to Section 36 of the Penal Code) it is my carefully considered opinion that the sentences here should start running after the defendant completing the sentence in Criminal Side No. 77 of 2005 which he is still serving.

However, the period spent on remand herein should count towards this sentence.

Right of appeal against sentence explained.

**D. GASWAGA**

**JUDGE**

Dated this 4<sup>th</sup> day of June, 2008.