

Republic v Meme

(2009) SLR 32

Helen CAROLLUS for the Republic
Frank ALLY for the accused

Sentence delivered on 25 March 2009 by:

GASWAGA J: Mr Paddy Meme has been convicted herein (Cr No 60 of 2008) for the offence of sexual assault of a child contrary to and punishable under section 135(1) of the Penal Code, Cap 158 as amended by Act No 15 of 1996. The particulars allege that Paddy Meme of Anse La Mouche, Mahe, on 9 February 2008 at La Retraite, Mahe, committed acts of indecency towards another person namely by sucking the vagina of A, a girl aged nine (9) years and therefore under the statutory age of fifteen (15) years.

The same accused has already been convicted by this Court on three other files of related offences but with different victims namely:

(i) Criminal Side No 18 of 2008, R v. Paddy Meme

Two counts of committing an act of indecency towards a person under the age of fifteen (15) years contrary to and punishable under section 135(1) of the Penal Code as amended by Act No. 15 of 1996 and Act No. 10 of 2005 have been proffered.

The particulars on Count I allege that Paddy Meme of St Louis, Mahe, on 24 February 2008 at Bel Air, Mahe, inserted his finger in the vagina of B, a girl aged five (5) and therefore under the statutory age of fifteen (15) years while those on Count II alleged that the accused on the same day, time and place did lick the vagina of the said girl.

(ii) Criminal Side No 19 of 2008, R v. Paddy Meme

One Count of sexual interference with a child contrary to and punishable under section 135(1) of the Penal Code as amended by Act 10 of 2005. The particulars allege that Paddy Oliver Meme of St Louis, Mahe, on 17 February 2008 at Bel Air, Mahe, committed an act of indecency towards C (aged five (5) years), who is under the statutory age of fifteen (15) years, by licking her vagina.

(iii) Criminal Side No 36 of 2008, R v. Paddy Meme

One count of sexual assault contrary to and punishable by section 130(1) of the Penal Code as amended by Act 10 of 2005. The particulars allege

that Paddy Oliver Meme of St Louis, Mahe, on 26 February 2008, at Castor Road, Mahe, sexually assaulted D (aged ten (10) years), being a girl under the statutory age of fifteen (15) years, by way of kissing D on the lips and penetrating her vagina with his finger for a sexual purpose.

For convenience all the four files will be dealt with herein for purposes of sentencing.

It is clear from the nature of offences and manner in which the events unfolded that the accused followed a particular pattern with a preference for young children as his victims. It was like a fishing expedition in the marine park which he knew very well to be illegal. With properly orchestrated plans, the accused, not once, not twice, not thrice, severally lured and tricked young, innocent and unsuspecting children by promising to give or giving them a little money to buy sweets and small snacks before unleashing the savage assaults on them. They have been robbed of the sanctity of their bodies and childhood which has since been replaced with severe scars of emotional and psychological trauma, agony and shame for life. Their personality has been marred. Given the small population of our country where everyone knows everybody, and the chances of the victim meeting with their assailant again on the street, it is believed that the stigma and public revulsion is much more intense. Relocation of the victims may be of less help.

This is unacceptable in our society. Children are a precious gift from God and represent the future generation. They must be jealously protected, properly nurtured and given all the required support and care by each and every adult person instead of taking advantage of them. Mr Paddy Meme has failed that test. This obviously calls for his removal from the public for quite some time to enable him reform and become a benevolent and useful person.

Sentencing is one of the most difficult tasks faced by a Judge in a criminal trial. A number of factors are brought into purview for consideration to guide the Court in reaching a suitable punishment. In the case of *Nigel Auguste v R*, SCA No 7 of 2007 where a father raped his own daughter (aged below fourteen (14) years) in a guest house room he had hired after luring her into collecting a Christmas gift, a sentence of twelve (12) years was maintained by the Court of Appeal. In *Naddy Appasamy v R*, SCA No 6 of 2004 the accused committed an act of sodomy on a three month old baby girl. The baby died. He then sexually assaulted the baby's mother who had caught him in the act. On appeal, the Court of Appeal ordered the sentences of fifteen (15) and six (6) years to run concurrently thereby replacing the 'consecutive' order ie he was to serve a maximum term of fifteen (15) years.

The maximum sentence prescribed in each of the five (5) counts is twenty (20) years. This leaves the accused entirely open to a total of one hundred (100) years. But will this serve the justice of the case?

The accused's counsel, Attorney-at-Law, Mr Frank Ally moved the Court to be lenient and impose minimum sentences on all counts which should them run concurrently

because the accused was a first offender (before case number 18 of 2008), he pleaded guilty and saved the Court's time; he is sorry and did not have penetrative sex with the victims like in the above two cases.

Indeed the Court will consider this mitigation *in toto* and the fact that the accused is a young man of thirty-four (34) years and a casual labourer who has asked for forgiveness and wishes to rejoin his community. He has now realized the gravity of his actions. As compared to the matters at hand, the above cited cases (*Appasamy* and *Auguste*) were more serious with loss of life and far-reaching mental and physical consequences on each victim as well as their relatives.

The Court specifically notes that by tendering a guilty plea, the accused has saved the precious judicial time. He should be credited for that. In all four cases there were about fifty (50) witnesses whose testimonies would take about a month if the Court were not to hear any other cases. The victims particularly are vulnerable and have been saved of the painful task of having to relate the incident afresh to Court.

Having considered the mitigation, the sentencing pattern of the Supreme Court as well as the Court of Appeal in similar cases, the nature of these offences and the fact that they were all committed in a period of one month, together with the effects on the victims, their relatives and societal dictates, I shall impose the following suitable sentences:

File No. 1 – Criminal Side No 18 of 2008

Count I – Seven (7) years.

Count II – Seven (7) years.

File No. 2 – Criminal Side No 19 of 2008

Count I – Fourteen (14) years.

File No. 3 – Criminal Side No 36 of 2008

Count I – Fourteen (14) years.

File No. 4 – Criminal Side No 60 of 2008

Count I – Fourteen (14) years.

The foregoing triggers the penological principle of “totality of sentences”. The traditional position is that where a man is guilty of two or more offences, there was and always had been power to order the subsequent sentence(s) to commence at the expiration of a previous sentence already imposed. Mr Paddy Meme would therefore be serving fifty-six (56) years in jail if this method is followed.

Many countries eg Australia, Canada, the United Kingdom, the United States of America, Tanzania, Uganda, Seychelles, etc have since departed from this approach. The jurisprudential signs of the times are pointing a way from “consecutive” sentences

to the 'totality of sentences' principle. In fact, Judges are implored to consider the effects of the total length of imprisonment *vis-à-vis* the kind of offences committed, particularly the longest sentence, and such Court should at the end of it all consider whether or not the aggregate punishment is "just" and "appropriate" in the circumstances.

Accordingly the following orders are made:

That bearing in mind the 'totality principle' the sentences in respect of both counts on File No. 1 (Criminal Side No 18 of 2008) are to run concurrently while all the sentences imposed on File No. 2 (Criminal Side No 19 of 2008), File No. 3 (Criminal Side No 36 of 2008) and File No. 4 (Criminal Side No 60 of 2008) are also to run concurrently.

It is further ordered that the latter sentences (fourteen (14) years) are to be served AFTER the convict has completed serving the first sentence of seven (7) years.

For purposes of clarity, the accused will be serving a total jail term of twenty-one (21) years.

The period spent on remand is to count towards this sentence.

Right to appeal against the sentence is explained.

Record: Criminal Side No 60 of 2008

Record: Criminal Side No 18 of 2008

Record: Criminal Side No 19 of 2008

Record: Criminal Side No 36 of 2008

