

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

v

BARRY FORTE

Revision Side No 5 of 2011

Mr. Anath Subramaniam, Assistant Principal State Counsel for the Republic.

Mrs. A. Amesbury Attorney at law for the Respondent

JUDGMENT

Burhan J

This is a revision application filed by the Attorney General in terms of section 328 of the Criminal Procedure Code Cap 54, in respect of the sentence passed by the learned Magistrate on the Respondent (Accused) Barry Forte.

Section 328 of the Criminal Procedure Code reads as follows;

“The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrates’ Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrates’ Court.”

Section 329 (1) (b) of the Criminal Procedure Code reads as follows;

“In the case of any proceeding in the Magistrates’ Court the record of which has been called for or which has been reported for orders, or which otherwise comes to his knowledge, the Supreme Court may –

a).....

b) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 316, 318 and 319 and may enhance the sentence.”

The background facts of this case are that the Respondent while being represented by learned counsel Mr. Sammy Freminot in the Magistrates’ Court pleaded guilty on the 10th of June 2011 to the charge of causing grievous bodily harm contrary to section 221 of the Penal Code.

Section 221 of the Penal Code reads as follows;

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for 10 years.”

The particulars of the offence are that Barry Forte a carpenter residing at La Gogue Mahe, on the 26th day of April at Beauvallon Mahe did unlawfully cause grievous bodily harm to one Charlemagne Fontaine.

The learned Magistrate proceeded to convict the Respondent on his own plea of guilty and sentenced him to pay a fine of SR 1500 of which SR 500 should be paid to the victim in default 3 months imprisonment.

Learned counsel for the Attorney General seeks to move in revision against the sentence imposed on the Respondent on the grounds that the offence is a felony and carries a sentence of imprisonment of up to 10 years. Therefore it was submitted the sentence imposed by the learned Magistrate is incorrect, disproportionate and inadequate and moves this court that the sentence imposed by the learned Magistrate should be revised.

Section 330 states that no party has any right to be heard either personally or by advocate before the Supreme Court when exercising its powers of revision. The proviso of this section permits court to, if it thinks fit, use its discretion and hear any party either personally or by advocate.

Section 328 (2) sets out that no order in revision shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate to his own defence. In this instant case learned counsel Mrs. Amesbury pleaded on behalf of the Respondent and the Respondent stated he too had been beaten.

I have considered the facts relevant to this case. The charge to which the Respondent pleaded guilty is a felony which on conviction he is liable to a term of 10 years imprisonment. The fact that the Respondent pleaded guilty to the said offence is admitted. I have considered the facts in mitigation mentioned in the trial court namely that the Respondent was trying to defend himself, that he was a first offender and a family individual.

The learned Magistrate in sentencing the Respondent has, on the grounds that the incident arose as a result of an argument between the Respondent and the victim and as the medical certificate of the victim indicates that he was drunk and the accused also sustained injuries, proceeded to fine the Respondent a sum of SR1500 of which sum SR 500 should be paid to the victim as damages.

I have considered the injuries sustained by the victim. The medical certificate filed in the Magistrates' Court, indicates the victim had suffered two fractures namely a rib fracture and a mandible fracture which required fixation with wire around the premolar. He had according to the medical certificate also suffered a head injury, though not of a serious nature namely a laceration in his scalp and another laceration on his right ear.

Considering the nature of the injuries suffered by the victim even read together with the mitigating circumstances, I am of the view that the sentence of a fine of SR 1500 of which a sum of SR 500 to be paid to the victim is inadequate and disproportionate to the seriousness of the offence.. I therefore proceed to enhance the said sentence in terms of section 329 (1)(b) of the Criminal Procedure Code and sentence the Respondent to a term of 6 months imprisonment and a fine of SR 5000 of which a

sum of SR 2500 to be paid to the victim as compensation. In default of payment of the fine a term of 6 months imprisonment to be imposed to run consecutively.

The sentence imposed by the learned Magistrate stands revised accordingly.

M. N. BURHAN

JUDGE

On this 26th day of March 2013