

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 75/2013

Appeal from Magistrates Court decision 880/2010

[2013] SCSC 90

ADEL KINET

Appellantversus

THE REPUBLIC

Heard: 10 October 2013
Counsel: Mr. Nichol Gabriel for appellant
Mr. Khalyaan, State Counsel for the Republic
Delivered: 22 November 2013

JUDGMENT

McKee J

- [1] The Appellant was charged with the following offence, namely,
- [2] Reckless and Negligent Act contrary to section 229[d] of the Penal Code.
- [3] The Particulars read as follows: Adele Kinet residing at La Gogue, Mahe, on the 28th day of March 2009 at the bus stop on the public road at La Gogue Mahe in a manner so negligent as to likely to cause harm to any person omitted to take precaution against any probable danger from a dog in her possession from biting Vania Commetant.

- [4] The Appellant was represented by Mr Nichol Gabriel.
- [5] The Appellant pleaded Not Guilty but was convicted after trial.
- [6] The Magistrate imposed by way of sentence a fine of SR8000.
- [7] The Appellant appeals against conviction and sentence.
- [8] I have read the Notes of Proceedings, the cautioned statement of the Appellant, the Ruling on the voire dire and the terms of the medical certificate relating to the person injured. I have considered the written Judgment leading to conviction and the Reasons for Sentence.
- [9] I have considered the Memorandum of Appeal lodged by Mr. Gabriel, who continued to represent the Appellant at the appeal stage.
- [10] SUBMISSIONS
- [11] I have considered the submissions both written and oral made by counsel for the Appellant and Respondent.
- [12] APPEAL AGAINST CONVICTION
- [13] The Magistrate considered all the evidence in her judgment and her summary was balanced and comprehensive. No matter has been suggested to me to indicate that the conviction was other than safe and satisfactory. I have no reason to interfere and the appeal against conviction is **dismissed**.
- [14] APPEAL AGAINST SENTENCE
- [15] Section 229 of the penal code provides that offences committed in contravention of the section are misdemeanors. There is no specific provision in respect of sentence. The

magistrate considered the full circumstances of this case and that a monetary penalty was appropriate. I agree. Counsel for the Appellant submitted in his memorandum of appeal that the fine of SR8000 was manifestly harsh and excessive and wrong in law. In my opinion the imposition of the monetary penalty was not wrong in principle.

[16] In his oral submission Mr. Gabriel drew a comparison with the fine of SR8000 imposed in this case with the normal fine imposed in cases of wounding and assault occasioning actual bodily harm which he set on a scale of SR3000 to SR6000, which figures are not disputed by counsel for the Respondent. Mr. Gabriel submitted that the fine of SR8000 should be reduced when the nature of the injuries sustained and other mitigating factors are considered. No evidence is before me to suggest that the Appellant was other than a person of clear record before this conviction.

[17] It is also to be noted that after the injury was sustained the Appellant drove the victim to the medical centre for treatment. The Respondent accepts that the injuries were not life threatening and I find that they did not come into the upper scale of grievous harm.

[18] I allow the appeal against sentence to the extent that the fine of SR8000 will be quashed and in its place I impose a fine of SR6000. In view of the time of year the appellant will be given until 8th January 2014 to pay the fine, failing which the appellant will serve a term of 6 weeks imprisonment.

Signed, dated and delivered at Ile du Port on 22 November 2013

C McKee
Judge of the Supreme Court