

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 69/2014**

**Appeal from Magistrates Court decision 739/2011**

**[2015] SCSC 195**

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**RUPERT SUZETTE**

Appellant

versus

**THE REPUBLIC**

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Heard: 17 June 2015  
Counsel: Mrs Amesbury for appellant  
Ms Confait, Attorney General for the Republic  
Delivered: 17 June 2015

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**JUDGMENT**

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Akiiki-Kiiza J

**[1]** This is an appeal against both conviction and sentence made by His Worship Labonte on the 9<sup>th</sup> of October 2014, whereby the appellant was convicted for the offence of Sexual Assault contrary to section 130 (1) (b) of the Penal Code and was sentenced to 9 years imprisonment. He has raised 5 grounds in his Memorandum of Appeal; which I have para-phrased as follows:

1. That the appellant did not receive a fair trial as he was wrongly charged. That he should have instead been charged under section 135 (1) of the Penal Code.
2. That on the facts of the case against the appellant, the trial Magistrate should have caused amendment of the charge, which he did not do.
3. The failure to amend the charge denied the appellant a statutory defence under section 135 (2) (a) of the penal Code, as the girl looked older than the 14 years as her body was well developed.

[2] At the hearing Mrs Amesbury appeared for the appellant and Ms Confait appeared for the respondent/Attorney General. Both learned counsel gave rather lengthy oral submissions. They had also filed lengthy written submissions earlier on.

[3] After perusal of the same and after carefully listening to them, I can summarise the main issues as follows:

The appellant was tried in the lower Court for offence of Sexual Assault contrary to section 130 (1) of the Penal Code as read together with 130 (2) (d) of the Penal Code. The particulars were that, the accused on 29/6/2010 at Carana Beach North East Point, sexually assaulted Gabriella Nourrice, a person of 14 years of age. The maximum sentence under law for this offence is 20 years imprisonment. The appellant was convicted after a full hearing.

[4] For his part, the appellant elected to say nothing during the trial and he remained silent. Consequently, the learned trial Magistrate believed the prosecution witnesses and found the appellant guilty and convicted him as charged. He was eventually sentenced to 9 years imprisonment. Hence this appeal.

[5] The mandate to prosecute in Seychelles is bestowed on the Attorney General. This is by virtue of Article 76 (4) of the Constitution as well as by section 60 of the Criminal Procedure Code. This right and power to prosecute is absolute (section 60 (2) of the Criminal Procedure Code). He also has absolute control and management of such

prosecutions. That is to say, the Attorney General decides whom to prosecute and whom not to prosecute. He also has a monopoly of what charges to prefer or not to prefer on an accused person. It appears no one can direct him how to do his work. This is borne out by Article 76 (10) of the Constitution:-

*“76 (10): In exercise of the powers vested in the Attorney General by clause (4), the Attorney General shall not be subject to the direction or control of any other person or authority”.*

[6] To me, this excludes the Court as well. The only avenue open to the Court is to dismiss the charge and acquit the accused if it finds that the evidence adduced in court, does not prove the charge brought against him.

[7] In the case of **D.P.P VS Humphrys (1977) A.C 1** the Court held that:

[8] *“ A judge has not and should not appear to have any responsibility for the institutional of prosecution nor has he any power to refuse to allow a prosecution to proceed merely because he considers that, as a matter of policy, it ought not to have been brought. It is only if the prosecution amounts to an abuse of process of the Court and is oppressive and vexatious that the judge has power to intervene”.* (See also **REPUBLIC VS ROY BEEHARY S.CSC NO 44/08** )There is no proof apparent on the record that the prosecution was oppressive or amounted to an abuse of Court process or was vexatious.

[9] In the premises therefore, I cannot falter the learned Magistrate as he had no legal obligation to interfere with charges brought by the Attorney General against the appellant as he deemed them not to be oppressive or amounting to an abuse of Court process.

[10] The Memorandum of Appeal never mentioned the ground of appeal against the sentence. Even nothing was raised in respect of the sentence during oral submissions of the learned counsel for the appellant. I will take this as the appellant had been satisfied with the 9 years imposed on him. I will in the circumstances not interfere with it.

[11] All in all the appeal fails and is accordingly dismissed.

Signed, dated and delivered at Ile du Port on 17 June 2015

D Akiiki-Kiiza  
**Judge of the Supreme Court**