

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO40/2017

[2018] SCSC 134

THE REPUBLIC

versus

KURT LOIZEAU

First Accused

SHANE TOLFREE

Second Accused

NEIL AMELIE

Third Accused

Heard: 12 January 2018

Counsel: Mr. George Thachett, Assistant Principal State Counsel for the Republic
Mr. Anthony Juliette Attorney at Law for the First and Second Accused
Mr. Oliver Chang Leng along with Ms. Edith Wong Attorneys at Law for
the Third Accused

Delivered: 12 January 2018

SENTENCE

Burhan J

[1] The 1st convict Kurt Loizeau pleaded guilty and was convicted of the following alternative Count 2 which reads as follows:

Assault occasioning actual bodily harm, contrary to and punishable under Section 236 of the Penal Code (CP 158)

Particulars of offence are that, Kurt Loizeau, 22 year old male self-employed of Grand Anse, Mahe, in the late hours of 29th July 2017, at Grand Anse, Mahe, along with other person known to the Republic assaulted one Marcel Dogley causing actual bodily harm to the said Marcel Dogley.

[2] An offence under section 236 of the Penal Code is a felony and attracts a maximum term of 7 years imprisonment.

[3] The 2nd convict Shane Tolfree and the 3rd convict Neil Amelie pleaded guilty to the alternative Count 3 which reads as follows:

Unlawful assault, contrary and punishable under Section 235 read with Section 22 (a) of the Penal Code (Cap 158)

Particulars of offence are that, Shane Michel Alister Tolfree, 21 year old self-employed of Au Cap Mahe and Neil Mike Amelie, 23 years old make self employed of La Gogue, Mahe, in the late hours of 29th July 2017, at Grand Anse Mahe with common intention along with another person known to the Republic, unlawfully assaulted one Marcel Dogley.


[4] An offence under section 235 of the Penal Code is a misdemeanour and attracts a maximum term of 2 years imprisonment.

[5] I have considered the plea in mitigation made by both Learned Counsel. Learned Counsel stated that the 1st accused Kurt Loizeau was 22 years of age, a first offender and had pleaded guilty the moment the amended charge was filed thereby saving the time of Court. He submitted that the injuries were not life threatening and were abrasions and lacerations. He also referred to the cases of, *The Republic v Barry Forte RV 05/2011*, *The Republic v Rico Josias and Anor CO 35/2016*, *The Republic Beddy Thelemaque CO 30/2015*, *The Republic v Neddy Lagrenade and Anor CO 53/2015*, *The Republic v*

- [6] Having taken into consideration the plea in mitigation made by Learned Counsel on behalf of the 1st accused, I am inclined to disagree with Learned Counsel that the injuries were only lacerations and abrasions.
- [7] The evidence of Dr Ashwin Sakharia indicates that the victim Marcel Dogley suffered facial injuries and 5 fractures to his facial bones. This in my view is serious and is further aggravated by the fact that several blows were given by the 1st accused on the face of the victim by means of a baseball bat. This was borne out in the evidence of the prosecution witnesses which was accepted by the 1st accused in his plea. Considering the seriousness of the assault and the aggravated nature of it, I am of the view a term of imprisonment must be imposed for such a serious offence considering the aggravating circumstances which are peculiar to the facts of this case.
- [8] I proceed to sentence the 1st accused Kurt Loizeau on Count 2 to a term of 3 (three) years imprisonment and a fine of Seychelles rupees 50,000.00 (fifty thousand). A sum of SR 40,000.00 (forty thousand) to be paid to the victim Marcel Dogley from the fine as compensation in terms of section 151(b) of the Criminal Procedure Code. In default of the payment of the fine I impose a term of 6 months imprisonment to run consecutively to the 3 year term of imprisonment. Time spent in remand to count towards sentence.
- [9] I have considered the plea in mitigation in respect of the 2nd and 3rd accused. The 2nd accused Shane Tolfree is 22 years and he has pleaded guilty the moment the amended charge was put to him. The charge against him has been reduced to a misdemeanour. I note he has spent 6 months in remand. I will take this into consideration and proceed to sentence him on Count 3 only to a fine of SR 10,000.00 (ten thousand), from which a sum of SR 5,000.00 (five thousand) be paid to the victim Marcel Dogley as compensation, in terms of section 151 (b) of the Criminal Procedure Code. In default of the payment of the fine, I impose a term of 6 months imprisonment.

[10] The 3rd accused Neil Amelie is 23 years and he too has pleaded guilty the moment the amended charge was put to him. The charge against him has been reduced to a misdemeanour. I will take this into consideration and as there are no aggravating factors proceed to sentence him on Count 3 to a fine of SR 25,000.00 (twenty five thousand), from which a sum of SR 15,000.00 (fifteen thousand) be paid to the victim Marcel Dogley as compensation, in terms of section 151 (b) of the Criminal Procedure Code. In default of the payment of the fine, I impose a term of 6 months imprisonment.

Signed, dated and delivered at Ile du Port on 12 January 2018


12.01.2018

M Burhan
Judge of the Supreme Court

