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IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 50/2014

[2018] SCSC 185

THE REPUBLIC

versus

D R

Accused

Heard:

Counsel: Mr Thachett, Assistant Principal State Counsel for the Republic
Mr Gabriel for the accused

Delivered: 22 February 2018

SENTENCE

Dodin J

[1] The Convict D R stands convicted of two counts of sexual assault contrary Section 130 (1) of the Penal Code read with Section 130(2)(d) of the same code and punishable there under.

Particulars of offence

Count 1

[2] On a date unknown to the prosecution in January 2014, the Convict sexually assaulted his own daughter V B, a girl aged 13 years, while at their residence at Anse Aux Pins by

inserting his finger two times into the vagina. And on a date unknown to the prosecution in August 2014, sexually assaulted the same daughter while at their residence at Anse Aux Pins, by inserting his finger into her anus.

[3] I have heard learned counsel in mitigation. The Convict is 50 years old and have no previous conviction. He is the father of 6 children the last of whom is 3 years old. The offences occurred in the family setting where the Convict through constant manipulation sought to engage in sexual contact with her daughter and on two occasions committed the acts he has been convicted of.

[4] Section 130 of the Penal Code states:

130. (1) A person who sexually assaults another person is guilty of an offence and liable to imprisonment for 20 years:

Provided that where the victim of assault is under the age of 15 years and the accuser is of or above the age of 18 year and such assault falls under subsection (2)(c) or (d), the person shall be liable to imprisonment for a term not less than 14 years and not more than 20 years:

(2) For the purposes of this section “sexual assault” includes -

(a) an indecent assault;

(b) the non-accidental touching of the sexual organ of another;

(c) the non-accidental touching of another with one’s sexual organ, or

(d) the penetration of a body orifice of another for a sexual purpose.

(4) In determining the sentence of a person convicted of an offence under this section the Court shall take into account, among other things –

(a) whether the person used or threatened to use violence in the course of or for the purpose or committing the offence; which was not the case in this case.

(b) whether there has been any penetration in terms of subsection (2)(d); or

(c) any other aggravating circumstances.

[5] I have considered all the mitigating factors and also the main aggravating factor being that the Convict is a person of authority over the victim and abused that authority.

[6] However I note that the minimum sentence provided in Section 130(2)(c) would not apply in this case but Section 130(2)(d) does apply.

[7] Nevertheless having considered the current trend of sentencing *Eddie Servina v Rep. Cr App 3/17* the Convict was given 7 years and the age of the Convict 50 years and the fact that he is a first offender, I shall not impose a mandatory minimum sentence in this case.

[8] I sentence the Convict as follows:

Count 1: 7 years imprisonment.

Count 2: 7 years imprisonment.

[9] The sentences shall run concurrently. The time spent on remand shall form part of the sentence. He shall be entitled to remission.

[10] He can appeal against both conviction and sentence within 30 working days.

Signed, dated and delivered at Ile du Port on 22 February 2018

G Dodin
Judge of the Supreme Court