

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO39/2017

[2018] SCSC

THE REPUBLIC

versus

L.J.
Accused

Heard: 15 March 2018
Counsel: Miss Wendy Pierre, Assistant State Counsel for the Republic
Mr Guy Ferley for the accused
Delivered: 22 June 2018

SENTENCE

R. Govinden, J

- [1]** Mr L.J. has pleaded guilty to the charge of sexual assault contrary to and punishable under Section 130(1) as read with Section 130(2) (d) of the Penal Code and the Court has convicted the Accused on his own guilty plea.
- [2]** The Prosecution has averred in the particulars of offence that L.J. is a teacher residing at [a district], Mahe, and that he on the 20th day of October 2016 at Mont Buxton, Mahe, sexually assaulted another person below the age of 15 years, namely J.M. a child of age

13, by penetrating her vagina with his penis. I will call J.M. as “the virtual Complainant” thereafter in this sentence.

- [3] The facts of the case as revealed by the Prosecution shows that on the date of the commission of the offence the virtual Complainant took a bus together with a friend from [a district] to Mont Fleuri, after school.
- [4] At 5.00 p.m they went to town from Mont Fleuri where they met some other friends. After that they proceeded towards the bus terminal where they met the convict Mr L.J.. They knew L.J. because he was formerly a trainee teacher at [a district’s] school where they were attending. But the time of the incident he was no longer working at the school. There in the company of L.J. they drank some beers.
- [5] In town both girls together with some other friends and some school boys the accused and the children drunk beers at several locations.
- [6] During the course of the drinking bouts the accused once asked the virtual Complainant of her age and she told him that she was 13 years old whereby the convict kissed her on her lips.
- [7] Later at around 6 p.m. when it was getting dark the convict asked the virtual Complainant to accompany him to his house at [a district] and there he had sexual intercourse with her on two occasions.
- [8] On the next day at around 1 p.m. the virtual Complainant and the convict left his house to go to town. And at the bus terminal the virtual Complainant took a bus to her place at [a district]. At her place she met her mum and seeing her distress conditions she was brought to the Victoria hospital and was examined by a doctor who certified that she had had recent sexual intercourse. Thereafter, she made a complaint against the convict.
- [9] The convict have accepted the facts of the case except that he says that when they were going to [a distirct] to his house he asked the virtual Complainant whether he will call her mother and that the latter refused,

- [10] Counsel for the Defence, Mr Guy Ferley, has asked for Probation Report he demanded that Probation Report before he will mitigate further.
- [11] The Probation Report has been made available to the Court and to the parties. It is dated the 16th day of May 2018. I have considered all the facts and circumstances and recommendation made to this Court in the said Report. I note that at the time that the commission of the offence took place the convict was working as a teacher at [a school] and after the occurrence of the offence his employment was terminated.
- [12] In mitigation Counsel for the Defendant, Mr Guy Ferley, submitted a mitigation document in writing to the Court and he applied for clemency and mitigation in favour of the convict.
- [13] In his conclusion Mr Ferley asked the Court to be guided by the following precedents that has been rendered by the Courts in these kinds of cases. It is submitted to the Court that the Court should take into account the Court of Appeal case of Rubert Suzette versus Republic SCA 21 of 2015, where Suzette was convicted and sentenced to 9 years under Section 131 read with Section 132(d) of the Penal Code for having sexual intercourse with a girl of 13 years and 10 months. The Court of Appeal reduced the sentence to 4 years and 6 months. Suzette was 26 years old and a teacher at the time of the commission of the offence. He was also married with a children of his own.
- [14] The convict in this case was 20 years old and not as experienced as Suzette a fact which should be mitigated in his favour. Further it is submitted that the convict is a first offender, “he no longer consumed alcohol as, borned” out in the Probation Report and having admitted the offence and recognising his wrong, it is unlikely that he will repeat again. Thirdly, he submitted that the victim forgive Suzette same as the victim’s mother in this present case forgive the convict. The Court of Appeal recognised and uphold the principle of reconciliation between offenders and victims, which the Court is invited to consider in this case. Fourthly, he submitted that there is no evidence that the victim was coerced, mislead or in any way forced into having sexual intercourse with the convict. Fifthly, he submitted that the victim in the Suzette case had gone to the Rendez Vous on her own free will similarly to the victim in this present case. It is thus submitted that the Court in this case should look at the convict in a more favourable light than Suzette. The

Court is therefore invited to consider a non custodial sentence and in the event that the Court cannot find that it can impose a non custodial sentence, to impose a less severe sentence than 4 years 6 months imposed by the Court of Appeal.

- [15]** Furthermore, the Learned Counsel invited the Court to consider the case of Ponoo versus the Attorney General 2011 SLR 424, where the Court held that notwithstanding that there was a minimum mandatory sentence imposed by the Legislature this Court is within its discretion to sentence a convict for a lesser sentence than the minimum mandatory sentence, otherwise the right to a fair trial by independent and partial Court established by law will be violated.
- [16]** The convict made a statement from the dock and informed the Court that he was under influence when he committed the offence. Furthermore he said he has studied and all the time of his studies will be in vain if he is inflicted with a prison sentence. He said he will not have sacrifice all those time in vain, he says that he regrets and he needs to have a second chance.
- [17]** I have thoroughly consider the facts of this case, the written submission of Counsel for the Defendant, the charge to which the convict has pleaded guilty to and the content of the Probation Report in the lights of the facts of the case.
- [18]** I am of the view that there are aggravating circumstances in this case, the convict was a teacher and the virtual Complainant was a student and he knew of this fact. The convict was an adult and he knew that the virtual Complainant was 13 years of age. The convict gave alcohol to the virtual Complainant and he drunk the alcohol together with the virtual Complainant. The convict took the virtual Complainant to his residence whilst the latter was in a drunken state.
- [19]** I note on the other hand that the convict has pleaded guilty and has saved the precious time of this Court and that he has pleaded guilty at the very first opportunity. I also note that he has shown remorse for the commission of the offence and that he asked for second chance.

[20] I am of the view, however, that the mitigating circumstances in favour of the convict in this case does not reduce the level of his culpability in the commission of the offence and the serious nature of the case are shown by the facts laid before this Court.

[21] Bearing in mind all the circumstances of the case I will impose a custodial sentence of 10 years imprisonment on the convict.

[22] Anytime spent on remand shall be deducted from this period of imprisonment.

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

R Govinden , J
Judge of the Supreme Court