

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 55
CR 50/2018

In the matter between

THE REPUBLIC
(rep. by Evelyn Almeida)

and

D. S.
(rep. by Joel Camille)

Neutral Citation: *R v D.S.* CR 50/2018) [2019] SCSC 4 February 2019).
Before: Twomey CJ
Summary: Sexual assault of C. B., a seven year old child – conviction on guilty plea – sentence of ten years
Heard: [17 December 2018, 21 January 2019]
Delivered: [4 February 2019]

ORDER

The accused is sentenced to ten years imprisonment. Time spent on remand shall count towards the sentence.

SENTENCE

TWOMEY CJ

[1] The accused was charged with sexual assault contrary to section 130 (1) as read with sections 130 (2) (d) and 130 (3) (b) of the Penal Code and punishable under section 130(1) of the Penal Code. The particulars of the offence are that the accused on 5 September 2018 at Grand Anse Praslin sexually assaulted CB, aged seven years old, by inserting his penis into her vagina.

- [2] O 17 December 2018, the trial started with the complainant's evidence. She stated that on the day in question her parents went to work at 6 am and left her in the flat where they lived. She woke up, had her breakfast and went back to sleep. The accused came into her room, undressed her and asked her to suck his private part. She refused and he told her that if she didn't do so he would throw them all out of the house that night.
- [3] The accused then placed her on the bed and inserted his penis into her vagina. She screamed with the pain and the accused pressed his hand against her mouth. He then gave her eleven rupees and made off on his scooter. She called her neighbour who came to her and called her mother who brought her to the police where a complaint was made.
- [4] After the complainant had testified, the accused opted to change his plea from not guilty to guilty. Learned Counsel for the accused accepted the evidence of the complainant and also the particulars of the offence as provided by the prosecution in the pre-trial proceedings. He does not deny penetrating the complainant's vagina with his penis.
- [5] A Probation Report was requested to assist the court in its sentencing duty and the same was provided by the Probation Office. In that report, the accused states in contradiction to his guilty plea and his acceptance of the particulars and evidence of the complainant in court, that he did not penetrate the complainant's vagina with his penis but that on one occasion when he was under the influence of drink he touched the complainant's vagina.
- [6] The Report states that the accused had worked in PUC, then Malaysia, then as a farmer. He has also worked as a police constable for three years and then as a security officer and lately as a general helper. He claims to be an alcoholic for the past fifteen years, has had treatment twice but has relapsed. It is also reported that he has been depressed since his Malaysian wife left him to return home.
- [7] Learned Counsel for the accused has also submitted in mitigation that leniency ought to be exercised by the court with regard to the accused as he had at the very first instance after hearing the evidence of the complainant admitted the offence. Counsel has also stated that the court ought to take into account the fact that the accused is going through

some personal difficulties, namely that he suffers from heavy alcoholism as a result of a failed relationship and that this was a one-off incident.

[8] The Court has also learnt of the sad fate of complainant. She has been removed from her mother's care, a substance abuser, and she is now in foster care. The report indicates that she has also normalised the sexual assault but that she is doing better since she has been removed from Praslin.

[9] The offence with which the accused is charged carries a maximum sentence of twenty years. Learned Counsel for the prosecution, Ms. Almeida, has emphasised that this offence is one of penetration of a body orifice and pursuant to the proviso of section 130(1) and sections 130(c) and (d) of the Penal Code and carries a sentence of not less than 14 years and not more than 20 years.

[10] The Court notes that there has been no uniformity in sentencing in these cases. There is in my view an inordinate amount of similar cases where minimal sentences have been meted out. Yet Seychelles seems to be labouring under an increase of sexual crimes especially in relation to young children committed in their homes where they would feel the least danger under the protection of family members. .

[11] The revulsion, fear and disgust of the community in this regard cannot be underestimated. Paedophiles are a curse onto our society and our children need to be protected from their acts. The specific provisions of the Penal Code relating to paedophiles need to be applied by the courts in the way it was intended.

[12] In *Rene v R* SCCA 37 (14 December 2018) a sentence of 12 years for a similar offence on a fifteen year old was upheld. In *G. K v R* Criminal Appeal [2017] SCCA 3 (21 April 2017) Domah JA stated:

“We wish to make the following comment though. The irreparable harm done to vulnerable children and persons by paedophiles is today well documented. Public sensitization on the matter is well spread. Yet with three cases having come to the Court of Appeal in course of this session, we wonder whether the campaign against such reprehensible and degenerate behaviour should be more robust. The legislature has provided for a sentence of 20 years in cases of sexual assault. We

may not stay insensitive to the call of the day in this area of criminal law. Accused persons convicted of such offences shall not expect leniency from the Court of Appeal or any other Court for that matter.

- [13] I note the recent trends of 7 or 8 years sentences for such offences (see for example *R v Crispin* CR 58/2008, *EC v R* ([2016] SCSC 788 (29 September 2016), *R v DR* (CR50/2014) [2018] SCSC 185 (22 February 2018), *Eddie Servina v Rep*, CR App 3/17). They are simply not strict enough sentences to reflect the gravity of such offences and the specific indicative sentences of the Penal Code. In my view such light sentences do nothing more than to accentuate such degenerate behaviour, perpetuate the suffering of victims and perniciously normalise such deviant behaviour in an already very dysfunctional society.
- [14] I do bear in mind the mitigating circumstances, namely the accused's alcoholism, and the fact that he changed his not guilty plea to one of guilty early into the trial thus reducing the trauma of the complainant. She will no doubt have to suffer lifelong consequences from his depraved and selfish act. In the circumstances, given the gravity of this offence and the seriousness of the assault on a very young child, I feel a severe sentence ought to be imposed. I therefore sentence the convict to ten years imprisonment.
- [15] The time spent on remand shall form part of his sentence. He is entitled to remission and has the right of appeal against both conviction and sentence within 30 working days of this order.

Signed, dated and delivered at Ile du Port on 4 February 2019.

Twomey CJ