

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 627
CR 85/2019

REPUBLIC
(*rep. by Esha Benoiton*)

and

FJ
(*rep. by Nichol Gabrielle*)

Neutral Citation: *R v FJ* (CR 85/2019) [2020] SCSC 627 (7 September 2020).

Before: Twomey CJ
Summary: sexual assault – sentence
Heard: 17 August 2020
Delivered: 7 September 2020

ORDER

The Accused is sentenced to eight years imprisonment.

JUDGMENT

TWOMEY CJ

- [1] The Accused after trial was convicted of the offence of sexual assault contrary to section 130(1) read with section 130(2)(d) of the Penal Code and punishable under section 130(1) as read with section 130(4) (a) and (b) of the same (Act 5 of 2012).
- [2] The particulars of offence are that the Accused, FJ on 30 April 2017 at the complainant’s grandmother’s residence at Perseverance, sexually assaulted one (sic) namely MA, aged 12 years old at the time of incident, by penetrating the body orifice namely the vagina of the said MA with his penis for a sexual purpose.
- [3] Counsel for the Accused called for a Probation Report, which was duly provided to the court. The report informs the Court that the Accused is 31 years old and has two children

aged four and one and half; and his girlfriend is currently pregnant. He has been employed in various capacities inter alia: as a mechanic, driver and in the take away industry.

[4] He has throughout the interview with Probation Services maintained his innocence. His mother blames the Accused's ex-girlfriend for the incident and believes the Accused did not get a fair trial. No mitigating factors have been outlined in the report.

[5] Counsel for the Accused submitted that what is of note is that the Accused is a kind person, a devoted family and would not otherwise hurt other persons. He further submits that although the Accused has committed two traffic offences, these ought not to be considered by the Court as they are not related offenses and the Accused should be treated a first offender. Lastly, Counsel has submitted that the court ought to bear in mind the fact that the accused's girlfriend is pregnant and that he has other children who also are dependent on their father.

[6] For the purposes of the sentence, I consider the Accused as a first offender and take into account the mitigating factors as outlined by counsel. However, it is clear to the court that the Accused had partaken in a picnic, then a party and had consumed much alcohol with others on the day of the incident. He had shared a bed with his ex-girlfriend, his son and the 12-year-old complainant. That itself speaks of the dysfunctionality of the situation and mores that should not be encouraged.

[7] In *GK v The Republic SCA46/2014 (judgment delivered on 21 April, 2017)* in which the Accused was sentenced to 8 years' imprisonment for having anal sex with a 15-year-old boy while intoxicated in a cell, *the Court of Appeal* stated:

"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".

- [8] In *Trevor Zialor v R* (Criminal Appeal SCA 10/2016) [2017] SCCA 42 (07 December 2017) where the Accused had sexually assaulted a 12 year old girl, a sentence of 11 years was maintained. In *JB v The R* SCA 4/2015, a 71-year old man at the time of trial was convicted on his own plea of guilt to the offence of sexual assault of his 4-year-old granddaughter. He was sentenced to a term of 10 years imprisonment. He appealed the decision and, when warned by this Court that should the appeal fail he ran the high risk of enhancement of the sentence in view of the seriousness of the offence he had committed, he promptly withdrew his appeal.
- [9] In *Marengo v R* (Criminal Appeal SCA 29/2018) [2019] SCCA 28 (23 August 2019) the Court of Appeal maintained the sentence of eight years imposed on the Accused for the sexual assault of an eight year old girl.
- [10] In view of the seriousness of the offence and in keeping with previous precedents, I sentence the Accused to eight years imprisonment. Time spent on remand will count towards sentence.

Signed, dated and delivered at Ile du Port on 7 September 2020.

Twomey CJ