

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 874
CO 86/2020

In the matter between:

THE REPUBLIC

(rep. by Hemanth Kumar)

Republic

and

SHYAM BAHADUR CHAND

(rep. by Brian Julie)

Accused

Neutral Citation: *Republic v Chand* (CO 86/2020) [2021] SCSC 874 (10 December 2021).

Before: Burhan J

Summary: Obtaining money by false pretence. Threatening with violence.

Heard: 2nd December 2021

Delivered: 10th December 2021

ORDER

The convict Shyam Bahadur Chand is sentenced as follows:

Count 6

To a term of six month imprisonment and a fine of SCR 2,500 (Two thousand five hundred). In default of payment of fine three months imprisonment.

Count 8

To a term of two years imprisonment and a fine of SCR 60,000.00 (sixty thousand). In terms of Section 151 (1) (b) of the Criminal Procedure Code a sum of SCR55,000.00 (fifty five thousand to be paid as compensation from this amount to the victim mentioned in the particulars of offence in respect of Count 8 (Mr.RT). In default of payment of the fine six months imprisonment.

Both terms of imprisonment to run concurrently. The three month term of imprisonment for default of payment fine in Count 1 and the six month term of imprisonment for

default of payment of fine in Count 2, should run consecutive to each other and consecutive to the other terms of imprisonment imposed. Therefore if the accused fails to or defaults in payment of both the fines imposed, he would serve in total a term of two years nine months imprisonment.

SENTENCE

BURHAN J

[1] The accused Shyam Bahadur Chand was convicted of the following offences;

Count 6

Threatening Violence Contrary to and Punishable under Section 89 (a) of the Penal Code.

Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel, Mahe during the month of December 2019, with intent to cause alarm, threatened a person namely Mr. Thakur Kumar Khatri of Nepali National working in Seychelles, saying that he will throw him into sea if he keep on insist him to return the money to his friends in Nepal, which was taken from them by the said Shyam Bahadur Chand through his agents in Nepal, to obtain jobs for them in Seychelles.

Count 8

Obtaining money by false pretence contrary to and punishable under Section 297 of the Penal Code.

Shyam Bahadur Chand, a Nepali National, being an expatriate, residing at Pointe Au Sel of Mahe during the month of December 2019 and up to the month of May 2020 at Mahe, Seychelles, by false pretence with intent to defraud, obtained a total sum of USD 3,500/- (Three Thousand and Five Hundred American Dollars) directly from a person namely Mr. RT of Nepali National working in Seychelles, by way of deception and taking an

advantage of their vulnerability, falsely pretended that he could obtain good employment for those friends and relatives of Mr. RT in Seychelles, who are in Nepal.

- [2] The accused a Nepali national was convicted of the aforementioned offences after trial on the 3rd of November 2021. At the request of learned Counsel Mr. Julie, a probation report was called on behalf of the accused. The probation report states that the accused is 38 years old and the father of two children aged nine and twelve years. He was employed in Nepal as an army officer for eight years and then as a prison officer in the Seychelles. Thereafter he worked as a security officer. The probation report too has come to the assessment that the accused has taken advantage of vulnerable persons and therefore an appropriate sentence be imposed.
- [3] It appears both victims are requesting that a fine be imposed and the money they gave be returned. This may be done in respect of Count 8. But however in respect of Count 6 as the offence is threatening violence only a nominal fine could be imposed.
- [4] In mitigation learned Counsel Mr. Julie moved for leniency on behalf of the accused due to his family circumstances. He stated that the accused is already almost a year in remand and has been away from his family during this period of time. He further submitted that the accused has been acquitted of the serious counts of Human Trafficking and has now been convicted of two offences which are misdemeanours. He further submitted that the accused be given a lenient sentence in order that he could go back to his country and be with the family at the earliest.
- [5] I have considered the facts set out in mitigation and that contained in the probation report. I take into consideration the fact that the accused has been convicted of offences under section 89 (a) and 297 of the Penal Code. The maximum sentence for such an offence is five years and three years respectively. I also observe that the amount of money obtained by false pretence is on the high side (USD 3500).
- [6] Having considered all the aforementioned facts and the plea in mitigation and the fact that he is a first offender together with the seriousness of the offence, I proceed to sentence him as follows:

Count 6

To a term of six months imprisonment and a fine of SCR 2,500 (Two thousand five hundred). In default of payment of fine three months imprisonment.

Count 8

To a term of two years imprisonment and a fine of SCR 60,000.00 (sixty thousand). In terms of Section 151 (1) (b) of the Criminal Procedure Code, a sum of SCR55,000.00 (fifty five thousand to be paid as compensation from this amount to the victim mentioned in the particulars of offence in respect of Count 8 (Mr.RT). In default of payment of the fine six months imprisonment.

[7] Both terms of imprisonment to run concurrently. The three month term of imprisonment for default of payment fine in Count 1 and the six month term of imprisonment for default of payment of fine in Count 2, should run consecutive to each other and consecutive to the other terms of imprisonment imposed. Therefore if the accused fails to or defaults in payment of both the fines imposed, he would serve in total a term of two years nine months imprisonment.

[8] Time spent in remand to count towards sentence.

[9] Right of appeal explained to the convict.

Signed, dated and delivered at Ile du Port on 10 December 2021

M Burhan J