

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 626
CO36/2021

In the matter between:

THE REPUBLIC

(rep. by Neesha Monthy)

Republic

and

AL

*(rep. by S. Rajasundaram/
Michelle Marguerite)*

Accused

Neutral Citation: *Rep v L* [REDACTED] (CO36/2021) [2021] SCSC 626 (01st October 2021)

Before: Burhan J

Heard: 06th September 2021

Delivered: 01st October 2021

ORDER

I proceed to sentence the accused to a term of eighteen months imprisonment on Count 1. Considering the circumstances peculiar to this case, I also impose a fine of SCR 25,000/ (twenty five thousand) in default of payment a term of six months imprisonment to be imposed to run consecutive to the eighteen month term of imprisonment. A sum of SCR 22,500 (twenty two thousand five hundred) to be paid from the said fine to the victim as compensation.

The accused is to be produced in Court after serving his term of eighteen months imprisonment for time to be given to pay the fine in instalments.

SENTENCE

BURHAN J

- [1] The accused AL was convicted on his own plea of guilt for the following offence:

Count 1

Sexual Assault contrary to section 130 (1) as read with section 130 (2) (d) and punishable under section 130 (1) of the Penal Code.

Particulars of offence are that, AL, on dates unknown by the Republic between the year 2019 to 2020 at Roche Caiman, Mahe, sexually assaulted AL, a girl of 12 years at the time, by way of penetration, namely by inserting his penis into the body orifice namely the vagina of the said AL for a sexual purpose.

- [2] At the request of his learned Counsel Mr. Rajasundaram a probation report was called.. According to the said report the accused was born on the 8th of October 2001. The offence is said to have been committed between the year 2019 and 2020. At the commencement of January 2019, the accused would have been 17 years old. The particulars of the offence state that the victim was 12 years old at the time the offence was committed.
- [3] It is clear from the probation report that the victim admits she had a relationship with the accused and the victim's mother became aware of the relationship when her daughter was four months pregnant. When confronting the accused he had run away but when the child was born the accused had declared himself the father. It appears that he also financially supports the child and both even the victim's mother and the victim do not wish the accused to be incarcerated but prefer him to have a stable job and support the child. It is also borne out in the probation report that the mother of the accused has through-out being supportive of the victim and the child.
- [4] The probation Office also informs Court that the accused is in another relationship and has two children to support and is presently in stable employment. It is recommended by the probation that "some sort of punishment to serve as a future deterrent be imposed".

- [5] I have also considered the plea in mitigation made on behalf of the accused. Learned Counsel for the accused moved that as the accused has pleaded guilty he has not wasted the time of Court but accepted his guilt and considering the circumstances of this case a non- custodial term of imprisonment be imposed. Learned Counsel further submitted that when the accused heard that the victim was pregnant, he had panicked but later had taken his responsibility as father of the child seriously and by pleading guilty and accepting the responsibility, expressed remorse at what he had done. The accused is keen on being a good father and presently employed in a security firm. Learned Counsel referred to the case of **Republic v De Commarmond & Or Criminal Side 57 of 2004** which set out the facts to be considered in sentencing a young offender.
- [6] Although in the De Commarmond case (supra) , the charge with which the accused was convicted was unlawful wounding and stealing different to the charges in this case, it was held, in sentencing a young offender the following factors should be taken into consideration-
- (a) The age of the accused and the previous convictions.
 - (b) Circumstances preceding the commission of the offence, the role played by the convict or the victim and whether there was an element of provocation or emotional stress.
 - (c) The magnitude of the crime and the injuries or loss suffered by the victim and
 - (d) Conduct of the convict after the commission of the crime.

- [7] I have considered the facts and circumstances before Court in respect of this case. The accused is a young first offender. It appears when one considers the facts before Court as placed by the prosecution that the accused could have even been a juvenile at the time he first committed the offence. It is clear to this Court the accused expresses remorse at the incident but even though there was no force or deceit used in the commission of the offence it is to be borne in mind that the consent of the victim does not amount to a defence considering her age and nature of the offence committed in this case.
- [8] According to the probation report both parents including the mother of the victim do not wish the accused to be incarcerated. He is gainfully employed and they wish that he be in a position to maintain the children. Even though he had run away initially on being confronted he has admitted and realised his responsibilities as the father of the child. I also observe that there is no big age difference between the offender and victim which would have been an aggravating factor.
- [9] I am of the view that strong mediating circumstances exist in this case. The usual sentences imposed for such offences range from 6 to 11 years imprisonment. **R v J [2021] SCSC 586, R v WV [2017] SCSC 222 and R v YL [2017] SCSC1219.**
- [10] Considering the seriousness of the offence however and the recommendation of the probation, I am of the view that a term of imprisonment should be imposed to indicate to the accused the seriousness of the offence and to serve as a future deterrent to the accused. I also take into consideration the fact that the accused is now not living with the victim who he had a relationship with but with another partner.
- [11] Giving due consideration to all these facts, I proceed to sentence the accused to a term of eighteen months imprisonment on Count 1. Considering the circumstances peculiar to this case, I also impose a fine of SCR 25,000/ (twenty five thousand) in default of payment a term of six months imprisonment to be imposed to run consecutive to the eighteen month term of imprisonment. A sum of SCR 22,500 (twenty two thousand five hundred) to be paid from the said fine to the victim as compensation.

[12] The accused is to be produced in Court after serving his term eighteen of months imprisonment for time to be given to pay the fine in instalments.

[13] Copy of this sentence to be attached to the committal. Right of Appeal explained.

Signed, dated and delivered at Ile du Port on 01st day of October 2021.

A handwritten signature in black ink, appearing to be 'M Burhan J', written over a horizontal line.

M Burhan J