

**IN THE SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2021] SCSC 43

CR52/2019

**REPUBLIC**

*(rep. by Langsinglu Romei )*

**Prosecution**

and

**EH**

*(rep. by Anthony Juliette)*

**Accused**

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**Neutral Citation:** *Republic v EH* CR52/2019 [2021] SCSC 43 delivered on the 04<sup>th</sup> March 2021

**Before:** Vidot J

**Summary** Possession of prohibited visual recording contrary to and punishable under section 157C of the Penal Code

Prohibited recording of private parts contrary to section 157B read with section 157E of the Penal Code and punishable under section 157B

Causing a person to receive a writing with intent to extort or gain anything from that person or cause any threats of any injury or detriment of any kind to be caused to that person by the offender if the demand is not complied with contrary to and punishable under section 284 of the Penal Code

**Heard:** 9 November 2019, 23 November 2019 and 01 March 2021

**Delivered:** 04 March 2021

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**SENTENCE**

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**VIDOT J**

[1] The Accused was charged with and pleaded guilty of the following offences and convicted accordingly;

Count 1

### **Statement of Offence**

Possession of prohibited visual recording contrary to and punishable under section 157C of the Penal Code

### **Particulars of Offence**

EH, 20 years old, working as a system and Support Officer of the Department of Information and Communication Technology, of Caravelle House, Victoria and residing at [. . .], on the 28<sup>th</sup> August 2019, was in possession of a prohibited visual recording of a 19 year old female, namely AL, having reason to believe it to be prohibited visual recording, without the other person's consent

Count 2

### **Statement of Offence**

Prohibited recording of private part contrary to section 157B read with section 157E of the Penal Code and punishable under section 157B.

### **Particulars of Offence**

EH, 20 years old, working as a system and Support Officer of the Department of Information and Communication Technology, of Caravelle House, Victoria and residing at [. . .], on the 28<sup>th</sup> August 2019, was in possession of a prohibited visual recording of 19 year old female, namely AL for the purpose of observing or visually recording the other person's private part.

Count 3

### **Statement of Offence**

Causing any person to receive any writing with intent to extort or gain anything from the person knowing the contents of the writing, demanding anything from the person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to the person, by the offender or another person, if the demand is not complied with, contrary to and punishable under section 284 of the Penal Code

## Particulars of Offence

EH, 20 years old, working as a system and Support Officer of the Department of Information and Communication Technology, of Caravelle House, Victoria and residing at [ . . . ], on the 28<sup>th</sup> August 2019 to the 27<sup>th</sup> August 2019, with the intent to extort full nude photographs from one AL, a 19 year old without reasonable cause and knowing the contents of the writing, sent text messages using cell phone [ . . . ] and also via WhatsApp no. [ . . . ] to the said AL, containing threats of detriment to be caused to the making the private photographs of the said AL to go viral, if the demand of the full nude photographs is not complied with.

[2] I have referred to the virtual complainant as AL in an effort to protect her identity. That will help preserve her integrity and not cause her further harm and embarrassment.

[3] After the Accused had pleaded guilty, Counsel for the Prosecution presented the facts to Court which were admitted by the Accused. Succinctly put, AL who was having problems with her phone had given it to the Accused with whom she was on friendly terms to have it fixed. When the Accused was fixing AL's phone he managed to download pictures that were in a file on the phone to his laptop. Some of these pictures were semi-nude and some nude. Thereafter, the Accused started to blackmail the AL to send him more nude pictures, otherwise he would have her pictures published. The Accused was very insistent and kept sending texts and WhatsApp messages to AL. Throughout the Accused was exercising threats on AL and she was severely affected by such threats. She therefore decided to report the matter to the Police who conducted necessary examination of the phone and laptop and after that compiled a case file and charges were levelled against the Accused.

[4] Initially, the Accused pleaded not guilty and trial started where several witnesses testified. However, at some point the Accused decided to change Counsel and upon advice by the new Counsel pleaded guilty. I can only assume that the Accused decided to change Counsel because he had intended to plead and had every intention at the beginning of the trial to plead guilty.

[5] Since the Accused is a first-time offender, he decided to request for a probation report. The report is quite comprehensive that Counsel for the Accused decided not to address

Court in mitigation as he explained that otherwise he would merely repeating matter raised in the report. So, he relied on the report.

- [6] The Report noted that the Accused was working at DICT as a system support officer. He had kept stable employment with DICT. After the incident of this case, he resigned therefrom on 31<sup>st</sup> December 2019. Thereafter, he worked at his father's stained glass business and then as a driver with the Seychelles Heritage Foundation. Recently on 1<sup>st</sup> December 2020 he secured employment with Techmart Compnay Limited as an IT technician and salesperson.
- [7] The Accused's mother stated that as a mother the offences committed by the Accused affect her as she would not want the same thing to happen to her daughter. She said that she does not tolerate nor approve such behaviour. However, she described the Accused as a good person. She noted that the Accused has been greatly affected by the incident and particularly not knowing the predicament that awaits him.
- [8] The Accused acknowledges that what he did was wrong and unacceptable. Furthermore, he did the acts against one of his friends. However, he says that he had no ill intention towards the victim's photographs. He recognises that AL was greatly affected by the incident and that placed her family in a difficult position. He expressed that he would like to apologise to AL and her family. As a result of the incident he had to forego his employment with DICT. He also apologises to Court for any inconvenience he had caused during the trial.
- [9] Such offences carry serious penalties of between 18 years for the third count to 20 years for the first and second counts. The sentences are an indication of the gravity of these offences. It shows the necessity to respect the modesty and reputation of others and particular women. Blackmail is not a gallant way to get another person to be interested in oneself. It is totally unacceptable. This Court treats such offences with the contempt that they deserve. In fact, I find such act to be callous and vile.
- [10] Nonetheless, I shall take into consideration the Probation Report when passing sentence. I note that the Accused is a first time offender and he has pleaded guilty albeit after trial had

started and therefore has shown remorse for his actions. In fact the Accused has expressed remorse to the Social Worker who compiled the report.

[11] A guilty plea saves the court's precious time and the Accused should earn credit for that and obtain discount from the sentence that would have otherwise been imposed if the case had proceeded though full trial. In **R v Buffery 14 Cr. App. R. (S) 511CA**, Lord Taylor CJ stated that there was no absolute rule as to what the discount should be, but as general guidance, the Court believed that something of the order of one third would be an appropriate discount. **Blackstone's Criminal Practice (2012), paragraph E.12 p2148** provides that a guilty plea would in effect earn an accused a reduction in sentence as it saves time of the court and reduces considerable cost and in case of an early plea, saves inconvenience of witnesses to give evidence before Court, and therefore that "*reduction should be a proportion to the total sentence imposed calculated by references in which the guilty plea was indicated, especially at what stage in the proceedings.*"

[12] I have also considered that in meting out sentence, the Court has to bear in mind that classic principle of sentencing is deterrence, prevention, rehabilitation, reformation and retribution; see **Lawrence v Republic [1990]SLR 47**.

[13] I have also taken into account the principles of totality proportionality of sentence,

[14] I take into account the Accused age. Without making excuses and acknowledging that the action of the Accused was despicable, that unfortunately young men are susceptible to engage in such behaviour. As a society we need to educate young boys and men that such behaviour is unacceptable. They should learn to value women. However, I also note that during difficult times as we are living at the moment caused by the Covid 19 pandemic, the Accused had managed to secure a job. I also consider the fact that the pictures were never published.

[15] I therefore sentence the Accused as follows;

- (i) On count 1 to 2 years imprisonment and to a fine of SR13,000.00;
- (ii) On count 2 to 2 years imprisonment and to a fine of SR13,000.00 ; and

(iii) On count 3 to 1 years and 6 months imprisonment and to a fine of SR10,000.00

All these sentences are to run concurrently.

However, all these prison terms shall be suspended for a period of 3 years. Half of the fines amounting to SR18,000.00 shall be paid to the virtual complainant as compensation for the psychological injury she endured as a result of this incident.

[16] The fines are to be deducted from the sum of SR50,000.00 which the Accused paid as cash bail. Thereafter the balance of SR14,000.00 shall be refunded to him.

[17] If unsatisfied with the sentence, the Accused may appeal against the same within 30 working days from today.

[18] I hope that the time the Accused spent on remand shocked him and really gave him time to reflect on the offences he committed.

Signed, dated and delivered at Ile du Port/ Victoria on 04 March 2021

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M Vidot J