

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 140
CO 74/2019

In the matter between:

THE REPUBLIC
(rep. by Ms. Almeida)

Republic

and

BETTY MAY MICHEL
(rep. by Mr. France Bonte)

1st Accused

JEAN MICHEL
(rep. by Mrs. Alexia Amesbury)

2nd Accused

NELTA MICHEL
(rep. by Mrs. Alexia Amesbury)

3rd Accused

Neutral Citation: *R v Michel & Ors* (CO 74/2019) [2021] SCSC 140 (15 April 2021)
Before: Burhan J
Summary: Act causing grievous harm – Common assault
Heard: 1 April 2021
Delivered: 15 April 2021

ORDER

1st Convict

A term of 2 years imprisonment which I suspend for a period of two years and a fine of SCR 25,000/- (Twenty five thousand). In default of payment of fine a term of 6 months imprisonment. A sum of SCR 20,000/- (twenty thousand) to be paid to the victim as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

2nd Convict

A term of 2 years imprisonment which I suspend for a period of two years and a fine of SCR 25,000/- (Twenty five thousand). In default of payment of fine a term of 6 months imprisonment. A sum of SCR 20,000/- (twenty thousand) to be paid to the victim as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

3rd Convict

A fine of SCR 7500/-. In default of payment of fine a term of 3 months imprisonment. A sum of SR 5000/- to be paid to the victim as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

SENTENCE

BURHAN J

[1] The first convict Betty May Michel and the second convict Jean Michel were charged as follows;

Count 1

Grievous Harm Contrary to Section 221 as read with Section 22 (a) of the Penal Code Cap 158 and Punishable under Section 221 of the Penal Code Cap 158.

The particulars of the offence are that Betty May Michel of Anse Aux Pins, Mahe and Jean Michel of Ma Joie, Mahe, on the 28th October, 2017, at Ma Joie, Mahe, unlawfully and grievously harmed Ms. Stanna Esparon of Ma Joie, Mahe by means of fist blows and pushing causing the complainant to lose one of her upper teeth.

[2] The third convict Nelta Michel was charged as follows;

Count 2

Common Assault Contrary to Section 235 and Punishable under Section 235 of the Penal Code Cap 158.

Nelta Michel of Anse Aux Pins, Mahe, on the 28th October, 2017, at Ma Joie, Mahe, unlawfully assaulted, Janna Michel of Ma Joie, Mahe by means of slapping the complainant.

[3] The first and second convicts Betty May Michel and Jean Michel were convicted after trial on the 11 December 2020 in respect of Count 1 while the third convict Nelta Michel was convicted on Count 2 on the same date.

[4] I will first proceed to sentence the 1st and 2nd convicts Betty May Mitchel and Jean Michel. Learned Counsel who appeared for the convicts Mr. Bonte and Mrs. Amesbury moved court that prior to sentencing a probation report be called. Accordingly a report was called and there after mitigation pleas were made by both learned Counsel on behalf of their respective convicts.

[5] It is clear from the probation report and evidence led at the inquiry that all three convicts are siblings and the victim was the concubine of the 2nd convict. The incident occurred at the house of the 2nd convict at Majoie. The 2nd convict had invited the 1st and 3rd convicts to his house and when they arrived, he had invited them in for drinks. Around 2.am, the victim who was the partner of the 2nd convict had arrived with their daughter and an altercation had occurred between the 1st and 2nd convicts and the victim, resulting in grievous injuries to the victim in the case. It is a finding of the court that there was provocation on the part of the victim that resulted in the ensuing altercation.

[6] The probation report in respect of the 1st convict Betty May Michel indicates she is 45 years of age. She has three children aged 25, 14 and 9 years old . She is employed as a Cleaner and had educated herself up to Primary nine and then attended the first year in the National Youth Service (NYS). It is apparent from the evidence and report that there

has been a long standing conflict between the parties. It is apparent that there was a domestic conflict between the 2nd convict and the victim his partner but she was living in the same house with him. There had been issues regarding the 1st and 3rd convicts visiting their brother the 2nd convict at his house in Majoie earlier and the Family Tribunal had intervened.

[7] The probation report in respect of the 2nd convict Jean Michel indicates that he is 52 years of age and employed as an electrician in the Seychelles Public Transport Corporation (SPTC) for the past thirty years. It appears that there are problems in his relationship with the victim and after this incident, the victim had moved out of the house with their daughter and they do not speak to each other. The probation report recommends a suspended sentence and a fine for both the 1st and 2nd convicts.

[8] Learned Counsel on behalf of the 1st and 2nd convicts moved that court be lenient on the convicts and that the convicts not be incarcerated. Both convicts had co-operated with the police and the 1st convict had three children and was paying a loan of SR 1500 on a monthly basis and any term of imprisonment incarcerating the convict, would mean that the family would undergo great hardships. It was also brought to the attention of court that there was provocation on the part of the victim that resulted in this incident.

[9] I have considered the facts contained in the probation report and the facts contained in the plea of mitigation. This court has already held that there was provocation on the part of the victim that resulted in this incident. Although it is not a defence, this court is of the view that it is a strong factor in mitigation and therefore this court decides not to impose an immediate custodial term of imprisonment. Having considered the facts before this court, I proceed to sentence the 1st and 2nd convicts on Count 1 as follows:

1st Convict

A term of 2 years imprisonment which I suspend for a period of two years and a fine of SCR 25,000/- (Twenty five thousand). In default of payment of fine a term of 6 months imprisonment. A sum of SCR 20,000/- (twenty thousand) to be paid to the victim as

compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

2nd Convict

A term of 2 years imprisonment which I suspend for a period of two years and a fine of SCR 25,000/- (Twenty five thousand). In default of payment of fine a term of 6 months imprisonment. A sum of SCR 20,000/- (twenty thousand) to be paid to the victim as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

[10] I will next proceed to sentence the 3rd convict Nelta Michel.

[11] In respect of this convict too, learned Counsel for the convict moved court that prior to sentencing, a probation report be called. Accordingly a report was called and thereafter a plea in mitigation was made on behalf of the convict.

[12] I have considered the probation report of the 3rd convict. Her age is 43 years and she too after her education till Primary 9 has been at the NYS for a period of one year. She has been in the police force for a period of eight years but at present unemployed and currently working as a carer for her mother. It is apparent that the victim in this case was the daughter of the victim in Count 1 and the father of the victim in this Count is the 2nd convict. The 3rd convict had held the mouth of the victim to prevent her from screaming and the victim had bitten her and then she had slapped the victim. It is apparent the convict is a first offender and moves for the court to act leniently.

[13] Having considered the facts before this court, I proceed to sentence the 3rd convict Nelta Michel on Count 2 as follows:

3rd Convict

A fine of SCR 7500/-. In default of payment of fine a term of 3 months imprisonment. A sum of SR 5000/- to be paid to the victim as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

[14] Nature of suspended term of imprisonment explained to the first and second convicts.
Right of appeal against sentence explained.

Signed, dated and delivered at Ile du Port on 15 April 2021.

Burhan J