IN THE SUPREME COURT OF SEYCHELLES

**Reportable**
[2021] SCSC 220
CA 3/2018

In the matter between

**J[redacted] H[redacted]** — **APPELLANT**
*(Unrepresented)*

and

**THE REPUBLIC** — **RESPONDENT**
*(rep. by Ms. E. Benoiton)*

| | |
|---|---|
| **Neutral Citation:** | J[redacted] H[redacted] *v* Republic *(CS 3/2018) [2021] SCSC* 220 |
| **Before:** | R. Govinden |
| **Summary:** | Appeal from conviction by Magistrate Court; Right to Fair Hearing; accused unrepresented; right to cross examination insufficiently explained; conviction quashed and set aside. |
| **Heard:** | 8 March 2021 |
| **Delivered:** | 14 May 2021 |

**ORDER**

The appeal is allowed and the Appellants conviction is quashed and the sentence is set aside.

---

**JUDGMENT**

**Govinden CJ**

**INTRODUCTORY STATEMENT**

[1] This is an appeal against the sentence and conviction by the Appellant, J[redacted] H[redacted] of Grand Anse Praslin who was charged and convicted on three counts of offences under the Penal Code Cap 158 as follows:

[2] One count of Sexual assault contrary to section 130 (1) read with section 130 (2) (d) and punishable under section 130(1) of the Penal Code for the sexual assault of his step daughter in 2012 when she was 10 years old by having sexual relations with her, inserting his penis into her vagina as well as in her anus, and also by inserting his index finger in her vagina;

[3] One count of indecent assault contrary to section 130 (1) read with section 130(2) (a) and punishable under section 130(1) of the Penal Code, by way of sucking her tongue and touching her buttocks; and

[4] One count of displaying indecent material contrary to section 152(ff) of the Penal Code cap 158, by wilfully and negligently exhibiting to a 10 year old girl indecent material that is pornographic films.

**STATEMENT OF ISSUES**

[5] The Appellant lodged an appeal against both conviction and sentence to the Supreme Court on 13 March 2018 on the following grounds:

a. That the learned Senior Magistrate erred in proceeding with the trial against the Appellant who was unrepresented at the crucial time of the trial in Praslin, rather than giving him further time to secure the presence of his lawyer who was retained in Mahé.

b. That the total sentence of fourteen years imposed on the Appellant was manifestly harsh and excessive and wrong in principle.

c. In all circumstances of the case the conviction of the Appellant was unsafe and unsatisfactory.

**FACTUAL BACKGROUND**

[6] The Appellant resided with the victim, her mother, and other children in their residence at Bel Air, Baie Ste Anne, Praslin when the incidents took place. He was 49 years old at the time of the arrest in 2012.

[7] The Appellant pleaded not guilty and the trial proceeded over several dates between 27 March 2015 until 16 December 2016[1], and the prosecution called six witnesses to testify, including the complainant who testified in detail on the various sexual incidents that she encountered in the hands of her step-father. The complainant testified that each time the Appellant had done these things to her he had given her money. The complainant's evidence was confirmed and collaborated by her sister in law, to whom the complainant had disclosed the incidents.

[8] The other prosecution witnesses included the complainant's sister, then 17 years old, who corroborated aspects of the complainant victim's testimony, the detective police officer, Andy Bibi who that took the Appellants statement; the assistant civil status officer from the Civil Status Office who confirmed the complainants age and birth certificate, and Dr Myriam Salas Leon who testified as to the authenticity of a medical certificate signed by her colleague confirming that the complainant's hymen was outside of the vaginal mouth.

[9] At the close of the prosecution's case, and in defence of the charges against him, the accused made a statement to the effect that he was not guilty of all that he was accused of. The defence did not call any witnesses to testify on behalf of the Appellant.

[10] Senior Magistrate Brassel J Adeline found that the prosecution had proven its case beyond reasonable doubt in all three counts in a judgment handed down on 5 October 2017, and the Appellant was convicted and sentenced on 9 March 2018 on all counts to 14 years imprisonment for count 1, three years imprisonment for count 2 and 2 years imprisonment for count 3. The three prison sentences would run concurrently and the accused would serve a total of 14 years in prison.

**THE APPELLANTS SUBMISSIONS**

[11] The Appellant, who is representing himself in this appeal, starts off his submissions by stating that his fundamental right to a fair and public hearing in terms of section 19 of the Constitution had been infringed upon as he should have been afforded the right to be

---

[1] The trial was held on the following dates: 27 March 2015; 29 May 2015; 26 June 2015; 25 March 2015; 25 November 2015; 21 October 2015; 21 October 2016 and 16 December 2016

defended by counsel. He continues to state that he had sought the assistance of Counsel for his defence, but his Counsel was indisposed. He does not explain for how long his counsel was indisposed or whether this was a persistent illness, and since the trial ran for so many days, why he did not make arrangements for other counsel if his defence counsel was indisposed off for so long.

[12] The Appellant also states that he made it clear to the Court that he had a lawyer to defend him and that the presiding magistrate could have moved for an adjournment *propio motu*, but he failed to do so, thus breaching the appellants right to representation and fair hearing. On this basis, the appellant contends that he is entitled to an outright acquittal in view of the contravention of his fundamental rights and the serious miscarriage of justice.

[13] The appellant concludes that sentence was harsh, excessive and wrong in principle in view of the circumstances of the case and should be quashed and the conviction set aside.

[14] He cites the cases of *France Amedee Victor* v *The Republic* SCA 2013, *Jean Paul Barra v the Republic* CN 53/13 and *Mervin Benoit v the Republic* CA No 2 of 2004, in which cases sentences and convictions were set aside in instances where the accused were denied of the presence of counsel for their defence.

**SUBMISSIONS BY THE REPUBLIC**

[15] The Respondent is represented by Esha Benoiton for the Republic. In submissions on the first ground, the Respondent states that the Appellants argument that he was unrepresented at the crucial time of the trial is unfounded as he had been given enough time on various dates to ascertain his lawyers presence during the trial. The Appellant's lawyer was present during the setting of the trial dates and the onus to appear on the trial date lies with the lawyer representing the client.

[16] The Respondent refers to the record of proceedings where the Magistrate set trial dates on two different occasions in the presence of the Appellants counsel. The Respondent further refers to the second occasion when the trial date was set and the Appellant's counsel failed to appear and another date was set for new trial dates.

[17] The Respondent submits that no injustice has been caused as a result of the Appellant not being represented, as he represented himself in the matter and he had cross examined witnesses during the proceedings after being informed by the Magistrate to do so. Further, the Respondent raises the fact that Appellants' counsel did not raise the issue of being unrepresented at any point on the continuation of the trial where he was present and refers the Court to the case of *Pillay v R* (2013) SLR 249.

[18] On the sentence, the Respondent is of the view that the Senior Magistrate did not make an error in imposing a sentence of 14 years on the appellant, since he took into account the aggravating and mitigating factors to the three charges against the appellant when imposing the sentence. Further that the sentence is justified when considering all the facts of the case and including the severity of the offence.

[19] The Respondent further submits that the sentence imposed is also in accordance with the prerequisites of the Penal Code which states that where the victim of such assault is under the age of 15 years, and the accused is of or above the age of 18 years, the person shall be liable to imprisonment for a term not less than 14 years and not more than 20 years.

[20] Counsel for the Respondent concludes that in light of the factors that had to be taken into consideration when sentencing, the learned Magistrate did not error in his sentencing, and therefore the Court should dismiss the appeal and uphold the conviction and sentence as passed by the Senior Magistrate.

**ANALYSIS/ LEGAL DISCUSSION**

[21] I now deal with the Appellants first ground of appeal, that the Magistrate erred in proceeding with the trial while the Appellant was unrepresented.

[22] In doing so I outline below the sequence of how Mr. Nicol Gabriel he came to be appointed as the Counsel for the Appellant and the history of his Court attendance in this matter. This will be crucial to determining whether the Appellant was indeed unrepresented during the trial.

[23] The Magistrate Court record of proceedings indicates that the Appellant (then the Accused) was charged on 17 July 2013 and his first appearance was on 23 July 2013, where he was released on bail. From the very first appearance the Court advised the Accused of his rights to legal representation and postponed the case on several occasions, at least 6 times, to give him an opportunity to obtain legal counsel.

[24] On 28 January 2014, the Accused informed the Court that he had received a reply to his legal aid application and he was assigned to Mr. Joel Camille, who had already indicated that he would not be able to assist him in Praslin.

[25] The Court then recommended the appointment of Mr. Nicol Gabriel ("Mr. Gabriel") as Legal Aid defence Counsel to appear at the next mention on 31 January 2014. Mr. Gabriel appeared in Court on 31 January 2014 and confirmed that he would be representing the Accused at the trial, and a trial date was fixed for 25 July 2014. On 25 July 2014, the trial did not proceed and on 01 August 2014, when the Court convened again, Ms. Yepa for the Republic confirmed that the trial did not proceed because Mr. Gabriel was at the Supreme Court. Mr. Gabriel was present on this date when the Court fixed the next trial date for 27 March 2015.[2]

[26] On 27 March 2015, and after confirming that Mr. Gabriel was absent, the Republic represented by Ms. Madeleine for the Republic remarked on the delay of the case from 2013 and the presence of all witnesses at the Court. Ms. Madeleine also mentioned that she had spoken to Mr. Gabriel in the week and he had told her repeatedly in the week, that he would be present at Court for the trial. The record clearly indicates that Mr. Gabriel was aware of the 27 March 2015 trial date as he was present at the last court date on 01 August 2014 when this trial date was set, but failed to attend Court for the trial nevertheless.[3]

[27] The trial continued on 29 May 2015 and on this date Mr. Gabriel was present and cross-examined one witness, the detective police constable at Grand Anse Police Station. Two more witnesses testified on 26 June 2015 and 25 November 2011, Mr. Gabriel was absent

---

[2] Page 5 of Magistrate Court Record of proceedings
[3] Page 5-6 of Magistrate Court Record of proceedings

on both occasions. In fact he was only present for one day of the trial when testimony was given for a serious offence that carries a mandatory sentence.

[28] The question therefore, is whether the accused had a fair trial, and the extent of prejudice that he suffered due to the failure by his lawyer to represent him at the trial. Was justice served despite him being unrepresented?

[29] In *Pillay v R* (2013) SLR 249, the Supreme Court dismissed an appeal lodged by an appellant against the conviction and sentence on the grounds that he was not informed in detail of the nature of the offences and the full aspects of the punishments he was faced with, if he pleaded guilty to the offence. The accused in this matter was not legally represented at the time. Dodin J. stated in paragraph 14 of the judgment that:

> *"The records show that in this case the appellant had been represented by an attorney who was present at the previous sitting when the trial date was set in his presence. There is no evidence or indication that the said counsel was unable to be physically present at the trial for a valid reason that the Court should have considered. It is bad practice by counsel to fail to appear when they know that they have a duty to the Court and to their clients to be present in Court and discharge their duties in accordance with the law. Should the Court condone such practice it would open the door to undue delay and it would be virtually impossible for cases to be dealt with and completed expeditiously or at all. In this case I find that it was proper for the Senior Magistrate to proceed with the trial in the unwarranted absence of the appellant's counsel."*

[30] In paragraph 16 of the judgment , the Judge proceeds to find that:

> *"with regards to the absence of the appellant's counsel, I find that the Senior Magistrate was correct to proceed with the trial since the record shows that the appellants counsel was present when the trial date was set with his agreement and no reasonable explanation was given at the time nor has since been forthcoming to explain his non-appearance"*

[31] In *Balasundaram v. Public Prosecutor of Singapore* (1998), 2 CHRLD 37, the Singapore Court inter alia held that-

> *"A litigant is entitled to be represented by the Counsel of his choice if that Counsel is willing and able to represent him. If Counsel fails to turn up, or is not willingly or able to act for the Accused, he or she cannot, by virtue of this fact alone, claim that his or her Constitutional Right has*

*been violated and that any proceedings against him or her are rendered null and void."*

[32] In the Privy Council, the court stated in the case of *Robinson v. R* (1986) L.R.C. (Const) 405 at 414 that:

*"the right to legal representation is not absolute in the sense that adjournments must always be repeatedly granted to secure legal representation. There are other relevant considerations to be taken into account .... One other relevant consideration is the present and future availability of witnesses".*

[33] While I do not agree with the reasoning in the above judgments, one would need to look into the facts of each case and the applicable law in order to draw an appropriate conclusion.

[34] Article 19 in Chapter III of our Constitution clearly recognises that every person has the right to a fair and public hearing. In order for this right to be adequately fulfilled there has to be adherence to several constitutive rights i.e. [E]very person charged with an offence should be given adequate time and facilities to prepare a defence to the charge; and such a person also has the right to be defended before the court in person, or at the person's own expense by a legal practitioner of the person's own choice, or where a law so provides, by a legal practitioner provided at public expense.

[35] For that reason, it is important to consider all jurisprudence applicable to accused that are unrepresented (*inops consilii),* that has been deliberated upon by our Courts or other jurisdictions, in order to come to a proper conclusion on the circumstances of this particular case.

[36] In the Court of Appeal case of *Victor v R* (SCA 18/2013) [2014] SCCA 40 the appellant was convicted and sentenced to 5 years imprisonment for offences under the Misuse of Drugs Act and he appealed to the Supreme Court on the grounds that: the trial had taken place without his counsel being present; that the learned Magistrate when sentencing him had not informed him of the fact that he faced a mandatory minimum sentence; and

further that he had also not asked him if there were any exceptional circumstances as to why the sentence should not be imposed.

[37] The learned Judge Dodin at the Supreme Court, acknowledged that the appellant had not been represented through no fault of his own and referred to legal authorities recognizing that there is a duty in such circumstances for the presiding judge to assist the accused. He noted that no hard and fast rules can be laid down to the extent that a court should intervene on behalf of accused persons. He however concluded that it was proper for the learned Magistrate to proceed with the trial in the unwarranted absence of the appellant's counsel. Insofar as the ground relating to the mandatory sentence was concerned, he decided that the appellant had been properly advised on the minimum sentence set by the law.

[38] The appellant then appealed to the Court of Appeal on the ground that:

> *"Having correctly set out the law applicable to defendants inops consilii, the learned Judge erred in his failure to consider whether the trial magistrate had given the appellant sufficient direction with regard to properly presenting his defence and in particular, after conviction, as to the right to put forward exceptional circumstances which may have had a veering on the sentence."*

[39] The Court of Appeal held in paragraph 12 of the judgment that:

> *"With respect to the learned Magistrate, although we commend him for dealing with counsel, we fail to see why the appellant was then penalized for dereliction of Counsel's duties. He had a constitutional right to legal representation and through no fault of his own, she failed to turn up. Common sense would dictate he should have at least been given the opportunity either to prepare his defence or to seek alternative Counsel.*|

[40] The Court of Appeal also considered the aptitude of the accused to conduct his own defence and held in paragraph 13 that:

> *"The fact that the appellant only put two questions to the first prosecution witness, one to the second witness and none to the third shows how ill prepared he was to conduct his own defence. There was also no direction or help from the bench in assisting him in the conduct of his case."*

[41] Turning to the facts of the case at hand, according to the record of the Magistrate Court proceedings, the Court had, at the end of the complainants testimony, proceeded to call the Accused, who had been sent out for interrupting the court, and at that point the Magistrate explained that he would proceed to read the proceedings i.e. questions posed and answers given in the examination in chief back to him, and he would then proceed to cross-examine the witness (Complainant) by asking her questions.

[42] The record of the Magistrate Court proceedings reads as follows:

> *"Accused take the box*
>
> ***Court**: I will read the proceedings to you, i.e. the questions and answers, and you will cross examine that witness by asking her questions.*
>
> ***Court**: Reads questions and answers in examination in chief*
>
> ***Question**: Have I ever put my penis into your anus?*
>
> ***Answer**: Yes*
>
> ***Question**: You said I gave you 1000 rupees, why did I give you the 1000 rupees*
>
> ***Answer**: You gave me 1000 rupees to go to Mahé, and another 1000 rupees for me not to tell anybody what you did to me.*
>
> ***Question**: When you and your sister went to school, did I not gave you and your sister money, 50 rupees, or 25 rupees?*
>
> ***Answer**: Yes, you gave me my money to go to school, and extra money for me not to tell anybody what you had done to me.*
>
> ***Question**: Have I ever told you not to go to school, or you, yourself absconded from school?*
>
> ***Answer**: Many times*
>
> ***Question**: Have I ever watched "blue films" with you?*
>
> ***Answer**: Yes*

***Question**: When did I bring "Tonzan" at home to watch "blue films?"*

***Answer**: Yes, you did bring him.*

***Question**: Have I ever put my private part into your anus?*

***Answer**: Yes*

***Question**: Did I ever hold your buttocks?*

***Answer**: Yes*

***Question**: Have I ever had sex with you?*

***Answer**: Yes*

[43] It is clear from the record above that the Accused had had no knowledge of evidentiary rules on cross-examination, and that he had asked several self-incriminating questions in cross-examining the Complainant. In cross-examining the second witness, the Accused had only asked one question and for at least two other witnesses, he had declined to cross-examine stating that he had not done anything wrong and therefore he could not ask questions.

[44] It is clear that the Accused could have benefitted from professional guidance, given that the he was *inops consilii* and he did not seem to understand procedural and evidentiary rules or have the aptitude to conduct his own defence. It is also evident from the record of proceedings that he did not get any assistance or direction from the trial Magistrate Court on how to properly present his defence.

[45] I disagree with the Respondent's submission that no injustice has been caused as a result of the accused being unrepresented, since he exercised his constitutional right to represent himself during the trial. A Legal Aid attorney had been appointed for the Accused, and he was expected to be present at the trial, his absence at the trial did not mean that the Accused would automatically default to representing himself, when in fact he has no skill and know-how on how to represent himself.

[46] The right of an accused to legal representation was also considered by the Court of Appeal in the case of *Garry Florentine v R* (CR. A 01/1998) [1998] SCCA 50. In this case which facts are that the unrepresented Appellant, upon his own plea of guilty, was convicted before a Senior Magistrate in Victoria on a charge of breaking into a building and committing a felony contrary to Section 291(a) as read with Section 260 of the Penal Code. The Appellant was sentenced to the 5 years mandatory minimum sentence.

[47] On appeal at the Supreme Court, Counsel for the Appellant raised the ground that the Appellant should have been advised by the Senior Magistrate on his constitutional right to retain legal representation and should have been asked whether he wished to exercise this right before the plea could be taken. The record of proceedings at the Magistrate Court indicate that the Magistrate had merely stated that: "Accused advised if he wishes he may take legal advice". Appellants Counsel contended that this was insufficient as he had a Constitutional right under Article 18(3) of the Constitution to retain legal representation and that he was entitled to exercise this right before the plea could be taken. The Appeal was dismissed at the Supreme Court of Appeal and the Appellant appealed on the same grounds at the Court of Appeal. In the appeal, counsel argued that constitutional provisions should always be given a liberal interpretation and that, as such, Article 18(3) is not only be limited to the time of a person's arrest but also continues to the time that he appears before a Court if he is not legally represented. [4]

[48] In considering the submissions advanced the Court held that:

> *"the right of a detainee to be informed of the right to legal representation seeks to achieve two objectives: First, the detainee may need legal representation to enforce his rights, for instance, to challenge the lawfulness of his detention. Secondly, a detainee who is arrested for a criminal offence (or simply) an arrested person) may need legal representation in order to enforce his rights, the most important of which is the right to remain silent and not to be compelled to make any confessions or admissions that could be used in evidence against him. The arrested person's rights to legal representation indirectly ensure the fairness of the subsequent trial."*[5]

[4] Garry Florentine v R (CR. A 01/1998) [1998] SCCA 50 (09 April 1998) p 2
[5] Garry Florentine v R (CR. A 01/1998) [1998] SCCA 50 (09 April 1998) p 3

[49] The Court quoted the South African case of *S v Melani & Others* 1995 (4) SA 412 (E), 1996 (2) BCLR 174 (E), 1996 (1) SACR 335 (E), where Froneman J held that:

> *"the purpose of the right to legal representation and its corollary to be informed of that right, is to protect the right to remain silent, the right to incriminate oneself, and the right to be presumed innocent until proven guilty. The Constitution itself makes it abundantly clear that this protection exists from the inception of the criminal process, that is, on arrest, until it's culmination up to, and including, the trial itself. The protection has everything to do with the need to ensure that the accused is treated fairly during the entire criminal process."* [6]

[50] In the case of *Dietrich v The Queen* (1992) 177 CLR 292, the High Court of Australia held that:

> *"Skill is required in both the examination-in-chief and the cross-examination of witnesses if the evidence is to emerge in the best light for the defence. The evidence to be called on behalf of the accused, if any, must be marshalled so as to avoid raising issues which will be damaging to the case for the defence. A decision must be made whether the accused is to give evidence on oath, is to make an unsworn statement or is to remain mute. Competence in dealing with these matters depends to a large extent upon training and experience."*[7]

[51] In the Botswana case of *Rabonko v The State* [2006] 2 BLR 166 Lesetedi J stated at p 168 C-D that:

> *"An accused person has in terms of s 10(1) of the Constitution an entitlement to a fair trial. In my view, a fair trial cannot be realised where an accused person does not understand the import of the criminal proceedings which he is facing nor have a rudimentary idea as to how not only to present his case but to conduct his defence by way of putting the essential elements of his defence to the prosecution witnesses. That there is a duty upon a presiding judicial officer to assist an accused person who is unrepresented and seems not to understand the court procedures, in the conduct of his defence has been expressed in a number of cases."*

---

[6] S v Melani & Others SACR 335 (E) at p 347

[7] Dietrich v The Queen (1992) 177 CLR 292 at paragraph 16

[52] In the case of *Sunassee v State* [1998] MLR 84. The Mauritian Court stated that:

> *"The accused in a criminal case certainly has a number of rights and is entitled to take several courses of action as the trial proceeds. When an accused person is inops consilii, it is the court's duty to offer him a certain amount of guidance in order to help him not to miss important opportunities which are open to him, under the existing procedure, to challenge the evidence of the prosecution or to present his own defence."*

[53] The Court further held that:

> *"It stands to reason, however, that whilst the essential stages of the procedure are to be brought home to an accused who is unrepresented by counsel, the Court cannot act as an advisor to the accused as to various tactical possibilities open to him as the trial unfolds, nor can the Court indicate to him all possible moves open to him at every stage and which could have been adopted by counsel if there was one assisting the accused."*

[54] Dodin J stated in *Pillay v R* (Supra) that a Magistrate should as much as practicable follow the following simple rules to ensure that an accused person who is unrepresented receives as fair a trial as possible:

> "a) *advise an unrepresented accused person at the onset of the constitutional and legal rights to legal representation at the accused person's own expense or available from state funds;*
> b) *advise an unrepresented accused person of the right, purpose and meaning of cross-examination;*
> c) *advise an unrepresented accused person of any special statutory defence available to him or her;*
> d) *advise an unrepresented accused person of the right to address the Court at the close of the trial or in mitigation if necessary;*
> e) *advise an unrepresented accused person about exceptional circumstances in the case of compulsory sentences; and*
> f) *advise an unrepresented accused who wishes to plead guilty to a charge, the consequences of such plea, the range of sentences that the law provide and if the facts known to the Court already allows, an idea of the sentence likely to be imposed in the particular accused person's circumstances.*

[55] In the Canadian case of *R. v. McGibbon* (1988), 45 C.C.C. (3d) 334 at 347 (Ont. C.A.). the court held that:

> *"Consistent with the duty to ensure that the accused has a fair trial, the trial judge is required within reason to provide assistance to the unrepresented accused, to aid him in the proper conduct of his defence, and to guide him throughout the trial in such a way that his defence is brought out with its full force and effect. How far the trial judge should go in assisting the accused in such matters as the examination and cross-examination of witnesses must of necessity be a matter of discretion."*

[56] In this case, the Appellant was advised at the onset of his constitutional and legal right to legal representation, on which basis he applied for a Legal Aid Counsel. He was given an opportunity to cross-examine the witnesses, but according to the record of proceedings, it does not appear that the purpose and meaning of cross-examination was explained to him and it is clear from the extract in paragraph 42 above that he did not understand the import of the criminal proceedings and could not adequately conduct a cross-examination to challenge the prosecution's case in his own defence. Further, even though he was given an opportunity to address the Court at the end of the trial, all he did was deny that he did anything wrong.

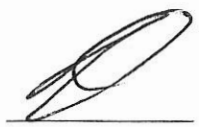
[57] Considering the irreparable harm done to vulnerable children by pedophiles in this country, the seriousness of the Appellants case cannot be ignored. However, it is an obvious fact that having counsel present at the trial would at least have removed any doubt as to the fairness of the trial.

[58] It is this Courts view that the accused was not ready to conduct his own defence and that he could have benefitted from professional assistance by having counsel conduct the defence on his behalf and there was a serious failure of justice by the Magistrate in failing to adjourn the trial to give the Accused time to prepare for his defence or to appoint another counsel to represent him. The right to counsel is a fundamental component to the right of a fair trial in terms of Article 19 of the Constitution, and an accused should not be prejudiced by his defence counsel's failure to honour his legal duties.

[59] Accordingly, taking into account the above relevant considerations, the appeal is allowed and the Appellants conviction is quashed and the sentence is set aside.

[60] The other important issue that cannot go unmentioned is the persistent absenteeism and disregard by Legal Aid Attorneys of their client's legal matters, it is the reason that this matter is before this Court. This kind of behaviour is abhorrent and will no longer be tolerated in our Courts. A Legal Practitioner has a personal responsibility and duty in terms of the Legal Practitioners (Professional Conduct) Rules, 2013 to appear in court personally or to brief a partner or another legal practitioner employed by his or her chambers to appear on behalf of his or her client, especially in contentious matters. Failure to do so results in professional misconduct and is subject to suspension from practice or removal from the roll as an attorney-at-law. Accordingly, any attorney-at-law found to be disregarding their responsibilities to their Legal Aid clients is likely to have their licences suspended or removed from the roll, and this could cost them a legal career that they have worked exceptionally hard for.

Signed, dated and delivered at Ile du Port on 14th May 2021.



R. Govinden

Chief Justice