

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 351

CO 56/2020

In the matter between

THE REPUBLIC

(rep. by David Esparon and Lansinglu Rongmei)

PROSECUTION

and

JEAN-LUC MOUMOU

(rep. by Guy Ferley)

5th ACCUSED

RICO PAYET

(rep by Elvis Chetty)

8th ACCUSED

CHRISTIAN LAPORTE

(rep by Olivier Chang-Leng)

9th ACCUSED

Neutral Citation: *Rep v Shawn Jean-Luc Moumou & Ors (CR 56/20) [2021] SCSC 351*

Before: G. Dodin

Heard: 15th June 2021

Delivered: 17th June 2021

SENTENCE

DODIN J.

[1] The convicts Jean-Luc Moumou, Rico Payet and Christian Laporte have been convicted on their own guilty pleas of the following offences:

Jean-Luc Moumou

COUNT 19

Statement of Offence

Carrying on or taking part in a business concerned with the making, producing of indecent material by hiring a person for that purpose contrary to section 152(1) (c) read with section 22(a) of the Penal Code and punishable under Section 152(1) of the Penal Code.

Particulars of Offence

Jean-Luc Moumou of North East Point, Mahe, AM of Belonie, Mahe and Shawn Julie of Petite Paris during the year 2019 at Providence, Mahe was carrying on or taking part in a business concerned with the making, producing of indecent material by hiring a person for such purpose namely SED.

COUNT 40

Statement of Offence

Carries on or takes part in any business concerned with making, producing and hiring a person for that purpose contrary to section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

Particulars of Offence

Jean-Luc Moumou on a date in September 2019 at Providence, Mahe was carrying on or taking part in a business concerned with making, producing indecent materials and hiring a person for that purpose namely KD.

COUNT 42

Statement of Offence

Carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose contrary to Section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

Particulars of Offence

Jean-Luc Moumou on a date in the year 2019 at Sans Soucis, Mahe was carrying on or taking part in a business concerned with the making, producing of indecent materials and hiring a person for that purpose namely JL.

COUNT 43

Statement of Offence

Carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose contrary to section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

Particulars of Offence

Jean-Luc Moumou on a date in the year 2019 at Providence, Mahe was carrying on or taking part in a business concerned with making, producing materials and hiring a person for that purpose namely JL.

COUNT 47

Statement of Offence

Carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose contrary to section 152(1) of the Penal Code and punishable under section 152(190) of the Penal Code.

Particulars of Offence

Jean-Luc Moumou on or around the 23rd January 2020 at Intendance, Mahe was carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose namely JL.

Rico Payet

COUNT 46

Statement of Offence

Carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose contrary to section 152 (1) (c) and punishable under section 152(1) of the Penal Code.

Particulars of Offence

Rico Payet on a date in the month of September 2019 at Belombre, Mahe, was carrying on or taking part in a business concerned with the making, producing materials and hiring a person for that purpose namely JL.

COUNT 55

Statement of Offence

Carrying on or taking part in a business concerned with the making, producing any indecent materials contrary to section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

Particulars of Offence

Rico Payet on a date in the year 2019 at Anse Kerlan, Praslin at the stadium being the photographer was carrying on or taking part in a business concerned with the making, producing indecent materials namely topless photographs of VS.

COUNT 62

Statement of Offence

Carrying or taking part in business concerned with the making, producing, hiring, distribution to the public of indecent materials contrary to section 152(1) (c) of the Penal Code and punishable under Section 152(1) of the said Act.

Particulars of Offence

Rico Payet on a date unknown to the Republic in the year 2017 on Praslin, being a photographer was carrying on or taking part in a business concerned with the making, producing, hiring and distribution to the public or circulation of indecent materials whereby topless photographs of SE on were taken by the said Rico Payet.

COUNT 64

Statement of Offence

Carrying or taking part in business concerned with the making, producing, hiring, distribution to the public of indecent materials contrary to Section 152 (1) (c) of the Penal Code and punishable under Section 152(1) of the said Act.

Particulars of Offence

Rico Payet on a date in the year 2019 on Praslin, being a photographer carried on or took part in a business concerned with the making, producing, hiring or distribution to the public or circulation of indecent materials whereby topless photographs of SE was taken by the said Rico Payet.

Christian Laporte

COUNT 53

Statement of Offence

Taking indecent photographs or pictures of a child without a reasonable excuse contrary to section 152(1) (aa) and punishable under section 152(1) of the Penal Code.

Particulars of Offence

Christian Laporte on a date during the year 2018 at Amitie, Praslin took indecent photographs or pictures of a child namely MB a child of 16 years of age without a reasonable excuse.

COUNT 58

Statement of Offence

Carrying on or taking part in a business concerned with making, producing, distribution to the public of indecent materials contrary to section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

Particulars of Offence

Christian Laporte on a date in the year 2018 at an apartment in Praslin, being the photographer was carrying on or taking part in a business concerned with the making, producing indecent materials whereby topless photographs of the said KD was taken by the said Christian Laporte.

[2] Learned counsel for convict Jean-Luc Moumou submitted in mitigation that the convict was 24 years old at the time of the commission of the offences. The girls whose photographs were taken all consented to the taking of the photographs. The mastermind of the business was Shawn Julie. The convict believed he was involved in legitimate business as his business is graphic designing including taking of photographs. He has pleaded guilty and has not wasted the Court's time. He has shown remorse and spared the girls the embarrassment of having to come to Court to testify. He prays for leniency and a non-custodial sentence so that he has a chance to rehabilitate and continue his legitimate business.

[3] Learned counsel for convict Rico Laporte submitted in mitigation that the convict was still at school and aged around 19 years when he was persuaded by Shawn Julie to undertake the project of taking the photographs for which he signed a contract but he never got paid. He apologised to all those affected by his action. He is a first offender. He was born on the 16th October 1998. He has pleaded guilty and has not wasted the Court's time. He has shown remorse to the Court, the victims and society. In a statement made by the convict was scammed into engaging in these activities which he believed was legitimate and the participants were willing and consenting adults. As for the age of the individuals, JL's date of birth is 11 June 2000 and was 19 years of age; VJS's date of

birth is 28 December 1994, aged 25 years and SE's date of birth is 04th February 2002; aged 16 years then. Learned counsel prayed for leniency and for the Court to consider a non-custodial sentence.

[4] Learned counsel for convict Christian Laporte submitted in mitigation that the convict is 23 years of age. At the time of committing the offences he was 20 years old. He was employed at the time as a photographer at Fond Ferdinand Praslin Reserve. He is a father of a 2 years old daughter who is dependent on him. He is a first offender and is remorseful. He was approached by one Shawn Julie to take the photographs and he believed it was a legitimate project. He was not aware of coercion of the girls both of whom were above 16. MB was 16 and KD was over 20 years at the time. He has pleaded guilty. He has saved the embarrassment of girls who do not have to testify. He deserves a 2nd chance. He prays for leniency and a non-custodial sentence.

[5] I have considered the mitigating factors as related by the convicts and their respective counsel. I have also taken note of the facts as related by the prosecution and admitted by the convicts. It is clear that the convicts were relatively marginal participants in the unlawful activities orchestrated by others. However their participation albeit in ignorance of the actual illegal scheme is still subject to legal sanction under section 152 of the Penal Code.

[6] Section 152 of the Penal Code provides as follows:

152. (1) A person who-

(a) for the purposes or by way of trade or for the purpose of public exhibition or distribution to the public, makes, purchases, hires or has in the person's possession any indecent material;

(aa) makes, takes or has in the person's possession without a reasonable excuse an indecent photograph, sketch, drawing or picture of a child;

(b) for the purposes or by way of trade or for the purpose of public exhibition or distribution to the public conveys, exports or imports, causes to be conveyed, exported or imported or puts in circulation any indecent material;

(c) deals in indecent material or carries on or takes part in any business concerned with the making, producing, hiring, distribution to the public, export, import, public exhibition or circulation of any indecent material;

(d) advertises or makes known by any means whatsoever with a view to assist in the distribution or circulation of or traffic in any indecent material;

(e) publicly sells or exposes for sale any indecent material;

(f) exposes to view in a public place any indecent material;

(ff) wilfully or negligently exhibits to a child any indecent material;

(g) publicly exhibits, appears, performs or takes part in or assist in any capacity with the public exhibition of any indecent show, entertainment or representation or any show, entertainment or representation tending to corrupt morals,

(h) publishes an indecent material,

is guilty of an offence and liable to imprisonment for five years.

[7] Having considered all the above mitigating factors advanced in favour of the convicts and the circumstances relating to their participation in the activities with which they have been charged and convicted, and considering that the maximum sentence provided by law is 5 years imprisonment, I impose the following sentences for each count:

Jean-Luc Moumou

COUNT 19

Carrying on or taking part in a business concerned with the making, producing of indecent material by hiring a person for that purpose contrary to section 152(1) (c) read with section 22(a) of the Penal Code and punishable under Section 152(1) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

COUNT 40

Carries on or takes part in any business concerned with making, producing and hiring a person for that purpose contrary to section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

COUNT 42

Carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose contrary to Section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

COUNT 43

Carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose contrary to section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

COUNT 47

Carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose contrary to section 152(1) of the Penal Code and punishable under section 152(190) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

[8] Total fine SCR 15,000. All the suspended sentences of imprisonment shall run concurrently.

Rico Payet

COUNT 46

Carrying on or taking part in a business concerned with the making, producing indecent materials and hiring a person for that purpose contrary to section 152 (1) (c) and punishable under section 152(1) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

COUNT 55

Carrying on or taking part in a business concerned with the making, producing any indecent materials contrary to section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

COUNT 62

Carrying or taking part in business concerned with the making, producing, hiring, distribution to the public of indecent materials contrary to section 152(1) (c) of the Penal Code and punishable under Section 152(1) of the said Act.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

COUNT 64

Carrying or taking part in business concerned with the making, producing, hiring, distribution to the public of indecent materials contrary to Section 152 (1) (c) of the Penal Code and punishable under Section 152(1) of the said Act.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

- [9] Total fine SCR 12,000/-. All the suspended sentences of imprisonment shall run concurrently.

Christian Laporte

COUNT 53

Taking indecent photographs or pictures of a child without a reasonable excuse contrary to section 152(1) (aa) and punishable under section 152(1) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

COUNT 58

Carrying on or taking part in a business concerned with making, producing, distribution to the public of indecent materials contrary to section 152(1) (c) of the Penal Code and punishable under section 152(1) of the Penal Code.

1 year imprisonment suspended for 2 years plus a fine of SCR 3,000/-

- [10] Total fine SCR 6,000/-. All the suspended sentences of imprisonment shall run concurrently.
- [11] The convicts shall not commit similar offences during the period of the suspended sentences (2 years).
- [12] The convicts has a period of six months to pay the fine and can do so by way of instalment. Default in payment of the fines shall result in the convict serving 6 months imprisonment for each count for which the fine remains outstanding.
- [13] They can appeal against the sentences within 30 working days.

Signed, dated and delivered at Ile du Port on 17 June 2021.

G. Dodin

Judge