

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 950
CR54 /2021

In the matter between

REPUBLIC
(rep. by Luthina Monthy)

Prosecution

and

ARNOLD BATTIN
(rep. by unrepresented)

Accused

Neutral Citation: R v Battin (CR 54/2021) [2021] SCSC 950 (08 October 2021).

Before: Vidot J

Summary: Grievous harm contrary to and punishable under section 221 (a) of the Penal Code

Heard: 17-07-2021 and 04-10-2021

Delivered: 08 October 2021

ORDER

- (i) a term of imprisonment of 2 years; and
 - (ii) a fine of SR12,000.00 of which SR6,000.00 shall be paid to Mr. Jim Nibourette, the victim, and in default to a term of 4 months imprisonment. The sum shall be paid not later than 6 months after having served the prison term.
 - (iii) Any time spent on remand shall be discounted against the sentence.
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SENTENCE

VIDOT J

1. The Accused was charged with two counts. The second count was in alternative to the first. The first count was Acts intended to cause grievous harm contrary to section 219 of the Penal Code. The Accused pleaded not guilty to that count. The second count was the commission of grievous harm contrary to and punishable under section 221 of the Penal Code. The particulars of that count are that the Accused, who at the time of commission of the offence was 28 years old, a resident of St. Joseph, Amitie, Praslin on the 11th November 2020, caused grievous to Jim Nibourette at the latter's residence of Amitie, Praslin, by means of hitting him with a mattock on his head and face, thereby causing him grievous harm. The Accused pleaded guilty to that count. The facts were rehearsed to Court and the Accused admitted them. Therefor he was accordingly convicted.
2. The First count was therefore withdrawn.
3. Since the Accused is a first time offender, he was advised by Court to request for a probation report ("the report"). It is to be noted that the Accused was unrepresented and that despite being advised by Court to seek services of a Counsel, he was adamant that he did not need one. The Court is in receipt of the report and a copy was served on the Accused. The Accused was also invited to make submissions, which submissions largely repeated matters referred to in the report. Both the report and submission in mitigation will be given due consideration before sentence is meted out.
4. The Accused is a first time offender and has pleaded guilty at an early stage of proceedings, thereby showing remorse for the offence committed. He has not wasted court time and for that he should earn credit.
5. The Accused is 28 years old. He is in a steady relationship for the past 9 years and the father of 5 year old daughter. He has also been in steady employment for more than 10 years albeit that he has moved around to different jobs. He claims to be a practicing catholic.
6. In the report the accused recounted events that lead to the incident of 11th September 2020. He stated that the victim had made false allegations that he and victim's wife were having an affair. He had gone to the victim's house together with his partner to have the matter resolved. However, there was a disagreement with the victim and he lost his cool and ended up hitting the victim with a mattock. According to the victim, he was hit on the head and face. He needed to have medical treatment and his wounds had to be sutured and suffered from a skull fracture. He still suffers from bouts of drowsiness and he is not as productive as he used to be.

7. The Accused's partner stated that the Accused has never shown signs of such aggressiveness before and generally he is a passive person. However, actions have consequences. I do appreciate that the Accused has a young child and has been of good character until that incident but on the other hand when meting out sentence, I have to bear in mind that another person suffered injuries at the hands of the Accused.
8. In **Morin v R SCA Cr.11/2002 [2003] (11 April 2003)CA** it was held that in the absence of some aggravating factors, the court should be slow to sentence a 1st time offender to a term of imprisonment if the offender can be appropriately dealt with in some other way and that such will depend on the facts and gravity of each case; see **R v Tony Palmyre [2019] SCSC 1005**. Despite that I find the use of the mattock and inflicting injuries on the victim as aggravating. Such assault could have been fatal. Therefore, this Court finds that there is no alternative, but to impose a custodial sentence on the Accused.
9. Therefore, I sentence the Accused as follows;
 - (i) a term of imprisonment of 2 years; and
 - (ii) a fine of SR12,000.00 of which SR6,000.00 shall be paid to Mr. Jim Nibourette, the victim, and in default to a term of 4 months imprisonment. The sum shall be paid not later than 6 months after having served the prison term.
 - (iii) Any time spent on remand shall be discounted against the sentence.

If the Accused is unsatisfied with this sentence, he may appeal against this sentence, he may appeal against the same with 30 working days from the date of this sentence.

Signed, dated and delivered at Ile du Port on 08 October 2021

Vidot J