

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 107
CR 08/2021

REPUBLIC
(rep. by Mr Thachet)

and

CL
(rep. by O Chang Leng)

Neutral Citation: *R v CL* (CR 08/2022) [2022] SCSC 107 (10 February 2022)
Before: Govinden CJ
Summary: sexual assault– sentence
Heard: 27 January 2022
Delivered: 10 February 2022

ORDER

The convict is sentenced to 15 years imprisonment under the 1st count and 15 years imprisonment under the 2nd count. The sentences shall be served consecutively, with convict serving a term of 30 years of imprisonment. Time spent on remand will count towards sentence.

SENTENCE

GOVINDEN CJ

[1] The Convict, after trial, was convicted of two counts of the offences of sexual assault contrary to section 130(1) read with section 130(2)(d) and punishable under section 130(1) of the Penal Code.

[2] The particulars of offence are as follows;
In count 1, that;

CL of [Redacted] Praslin, on date unknown in November 2020 at his residence, sexually assaulted A R, a 9-year-old girl at the time, by way of penetration, namely inserting his finger in the body orifice, namely the vagina, of the said A R for a sexual purpose.

[3] In count 2, that;

CL of [Redacted] Praslin, on date unknown in November 2020 at his residence, sexually assaulted A R, a 9-year-old girl at the time, by way of licking the vagina of the said A R, touching A R's vagina with his finger and making A R lick his penis.

[4] Counsel for the Accused requested for a Probation Report. This has been duly provided in a Probation of Offenders Report dated the 17th of January 2022 of which a copy has been provided to the defence. The court note that he has throughout the Report maintained his innocence. The Probation Services, however, recommends that a custodial sentence be imposed on the convict

[5] Counsel for the Convict in mitigation submitted that the Convict is thirty years of age and that prior to this matter he was employed as a diver for several years and in that regards he was a contributory member of society. Further, that he has two children, one being nine years old and the other eleven years old, both of them being financially dependent upon him. He further submitted that his client is a first time offender. As such Learned counsel pleads for the court to show leniency so as to give his client a chance to rehabilitate. He submitted that this court can be guided by the sentences imposed by the courts in the case of *R vs FJ (CR85/19)* and *Rupert Suzette vs R (SCA 21/15)*, when considering the appropriate sentence in this case.

[6] For the purposes of the sentence, I consider the Convict as a first offender and I have taken into account the mitigating factors as outlined by counsel. The court also takes into its consideration the content and the recommendation of the Probation Report aforementioned and the facts and circumstances of this case.

[7] The court however views these offences as serious ones. The Virtual Complainant was a nine year old girl, full of innocence who went to sleep over at her neighbour's house. The accused a thirty year old man callously took this opportunity and preyed upon her. The

facts shows that he lured her away from the company of other children and into his bedroom and there he caused her to watch a pornographic film before sexually assaulting her in the manner related to in the charges. His debauchery and act of depravity was calculating and deliberate and his action will mark his victim for life. The court note that already her school performance and personality has changed as a result of his despicable acts. The Court note that he is moreover the father of children of the same age as the Virtual Complainant.

- [8] In passing sentence in this case the court take into consideration the following sentences in *GK v The Republic SCA46/2014 (judgment delivered on 21 April, 2017)* in which the Convict was sentenced to 8 years' imprisonment for having anal sex with a 15-year-old boy while intoxicated in a cell. In *Trevor Zialor v R (Criminal Appeal SCA 10/2016) [2017] SCCA 42 (07 December 2017)* where the Convict had sexually assaulted a 12 year old girl, a sentence of 11 years was maintained. In *JB v The R SCA 4/2015*, a 71-year old man at the time of trial was convicted on his own plea of guilty to the offence of sexual assault of his 4-year-old grand- daughter. In *Marengo v R (Criminal Appeal SCA 29/2018) [2019] SCCA 28 (23 August 2019)* the Court of Appeal maintained the sentence of eight years imposed on the Accused for the sexual assault of an eight year old girl. The court also bear in mind the two sentences submitted to court by the Learned Defence counsel.
- [9] Bearing all these in mind and the need to pass a sentence which would deter future conduct of its kind and keeping with previous precedents, I sentence the Convict to 15 years imprisonment on the 1st count and 15 years imprisonment on the 2nd count. The sentences shall be spent consecutively, which means the convict serving a term of 30 years of imprisonment. Time spent on remand will count towards sentence.
- [10] The convict has a right to appeal against to the Seychelles Court of Appeal against both his conviction and sentence.

Signed, dated and delivered at Ile du Port on 10th February 2022.

Govinden CJ