

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC ...

RV 03/2021

In the matter between:

THE REPUBLIC

(rep. by Mrs. Luthina Monthy)

and

LEWIS LEON

(rep. by Mr. France Bonte)

Accused

Neutral Citation: *The Republic v Leon* (RV 03/2021) [2022] SCSC 108 (11 February 2022)

11 February 2022

Before: Dodin J

Heard: 11 February 2022

Delivered: 11 February 2022

JUDGMENT

DODIN J

[1] The Applicant filed the following charges and a complaint against Mr. Lewis Leon, the Respondent, in Cr 130 of 2019 on 17th May 2019, before the Court of learned Acting Senior Magistrate at Anse Royale.

Count 1

Statement of offence

Criminal trespass contrary to and punishable under section 294 (1) of the Penal Code

Particulars of offence

Lewis Leon residing at Cap. St. Marie, Anse Boileau, Mahe, on the 11th March 2019, at Cap. St. Marie, Anse Boileau, Mahe entered into the property in possession of another, namely, the property of Mr. Patrick Angelo contrary to the will of the said Patrick Angelo, being the person lawfully in the possession of such property.

Count 2

Statement of offence

Threatening violence contrary to and punishable under section 89 (a) of the Penal Code

Particulars of offence

Lewis Leon residing at Cap. St. Marie, Anse Boileau, Mahe, on the 11th March 2019, at Cap. St. Marie, Anse Boileau, Mahe with intent to cause alarm to Patrick Angelo threatened the said Patrick Angelo with a piece of wood.

Count 3

Statement of offence

Common assault contrary to and punishable under section 235 of the Penal Code.

Particulars of offence

Lewis Leon residing at Cap. St. Marie, Anse Boileau, Mahe, on the 11th March 2019, at Cap. St. Marie, Anse Boileau, unlawfully assaulted Patrick Angelo by means of pushing the said Patrick Angelo where he fell down and hit his head on the ground. (A copy of the charge and complaint are filed herein as Annexure – 1)

- [2] On 23 October 2020 when the case came up for trial, the Respondent, then accused pleaded guilty to counts 1 & count 3 having count 2 withdrawn by the prosecution. The Learned Acting Senior Magistrate Her Worship M. N'ghwani, having heard the guilty

plea by the accused and the facts of the case, recorded them and convicted the accused. Mitigation on behalf of the accused was also made by the learned counsel for accused. The case was adjourned to 29th October 2020 specifically for sentencing.

- [3] On the 29th October, 2020, the prosecutor Mr. Gervais Dubignon was sick and had produced a medical certificate dated 28 October 2020 to the effect that he would be fit to work only on 31st October 2020 which fact was conveyed to the Registry by email and the Assistant Registrar Ms. Juanita Rouillon confirmed that she had received the medical certificate and the same was placed in the court file.
- [4] When the case Cr 130/2019 came up for sentencing on 29 October 2020 the Learned Acting Senior Magistrate recorded the absence of the prosecution and observed that there was no prosecutor in the court. The case was then dismissed and the accused was discharged.
- [5] The Applicant avers that the order dated 29th October 2020 passed by the Learned Acting Senior Magistrate was illegal in view of the fact that the absence of the Republic is neither wilful or intentional but due to the medical unfitness of the concerned Public Prosecutor which is beyond his control.
- [6] It is averred that the Learned Acting Senior Magistrate erred and failed to consider that the absence of the Public Prosecutor or the Republic on 29th October was communicated by the Prosecutor in time to the Registry of the Anse Royal Court.
- [7] It is further averred by the Applicant that the Learned Acting Senior Magistrate erred in not considering that on 29th October 2020 the hearing was specifically for sentencing. The prosecution had no role either during mitigation or sentencing. Sentencing is the exclusive discretion and competence of the court. The prosecution is not required to assist the court in the sentencing process. The prosecution's role was substantially over when the accused had pleaded guilty and the accused already convicted and facts related to the court. It is averred that the absence of prosecution would not have affected in any manner the judicial duty and independence of the court to pass a sentence.

- [8] It is further averred that the order dated 29th October 2020 dismissing the prosecution case and consequently discharging the accused was illegal and irregular.
- [9] The Applicant therefore most moved the Court to call for and examine the records in Cr 130/2019 under section 328 of the Criminal Procedure Code and exercise the powers under section 329 of the Supreme Court to revise the order dated 29th October 2020 and render justice.
- [10] Learned counsel for the Respondent submitted that in the circumstances he would not be objecting to the Court to exercise its powers of revision as prayed.
- [11] I have studied the records of the Magistrate's Court which I find to reflect the position stated by the Republic in the application.
- [12] Articles 328 and 329 of the Criminal Procedure Code provide as follows:

328. The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrates' Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrates' Court.

329.(1) In the case of any proceeding in the Magistrates' Court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the Supreme Court may-

(a) in the case of an order of acquittal, reverse such order and direct that further inquiry be made or direct that the accused be retried;

(b) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 316, 318 and 319 and may enhance the sentence;

(c) in the case of any other order, alter or reserve such order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.

(3) Where the sentence dealt with under this section has been passed by the Magistrates' Court, the Supreme Court shall not inflict a greater punishment for the

offence, which in the opinion of the Supreme Court the accused has committed, than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction.

(5) Where an appeal lies from any finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

[13] The records show that the case had reached sentencing stage after conviction. Facts and mitigation had already been placed before the court. Hence it was obvious that in any event the prosecution needed not even have been present. Furthermore, after conviction, a Court cannot dismiss a case and discharge a convict unless the conviction is quashed or the unconditional discharge is actually the sentence imposed.

[14] Consequently I find the order of the Learned Senior Acting Magistrate to be irregular and unlawful. In the exercise of this Court's powers of revision under article 329(1)(c) by reversing the order of dismissal and discharge of the Respondent.

[15] Such order having been reversed, the Respondent stands convicted of counts 1 and 3 as charged above.

[16] Having read all the proceedings on record, I do not find it necessary to refer the matter back to the Magistrate's Court for sentencing as this Court is also competent to impose appropriate sentences for the offences the convict has pleaded guilty to and been convicted of.

[17] In respect of count 1, section 294(1) of the Penal Code provides that:

294. Any person who-

(1) enters into or upon property in the possession of another contrary to the will of any person lawfully in possession of such property or who having entered into or upon property in the possession of another remains in or upon the same contrary to the will of any person lawfully in possession of such property, or

is guilty of a misdemeanour and is liable to imprisonment for three years.

[18] In respect of count 3 section 235 of the Penal Code provides that:

235. Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for two years.

[19] The convict has pleaded guilty and saved the Court's time and expenses of a trial. He has expresses remorse. He is also a first time offender. No serious injury was caused to the victim of the assault.

[20] I therefore impose the following sentences on the convict:

Count 1: 3 months' imprisonment suspended for 1 year.

Count 3: A fine of Six Thousand Rupees (SCR 6,000/-) out of which Five Thousand Rupees (SCR 5,000/-) shall be disbursed to the victim Patrick Angelo as compensation.

[21] The Respondent/convict is given 3 months to complete the payment of the fine.

[22] The Respondent/convict may appeal this judgment within 30 working days.

Signed, dated and delivered at Ile du Port on 11 February 2022

Dodin J

Judge of the Supreme Court