

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2022] SCSC 306 .  
CR 48/2022

**REPUBLIC**

*(rep. by Miss Monthy)*

and

**S E**

*(rep. by C Andre)*

**Neutral Citation:** *R v S [REDACTED] E [REDACTED] CR48/2020* [2022] SCSC (1<sup>st</sup> April 2022) .

**Before:** Govinden CJ

**Summary:** sexual assault– sentence

**Heard:** 18<sup>th</sup> February 2022

**Delivered:** 1<sup>st</sup> April 2022

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**ORDER**

The convict is sentenced to 15 years imprisonment. Time spent on remand shall be deducted from the term of imprisonment.

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**SENTENCE**

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**GOVINDEN CJ**

[1] The Convict, after trial, was convicted of the offences of sexual assault contrary to section 130(1) read with section 130(2)(d) and section 130 (3) (b) of the Penal Code and punishable under section 130(1) of the Penal Code.

[2] The particulars of offence is that;

*Mr S D E of Anse Aux Pins, Mahe, during the month of February 2019 at Anse Aux Pins , Mahe, sexually assaulted Ms A N, aged 13 years old at the time , by inserting his penis into the vagina of Ms A N.*

- [3] Counsel for the Convict had requested for a Probation Report in order to assist the court in sentencing. This has been duly provided in a Probation of Offenders Report dated the 4<sup>th</sup> of February 2022 of which a copy has been provided to the defence. The court note that he has throughout the Report maintained his innocence. However, the Probation Services, after considering the whole circumstances of the case has recommended that a custodial sentence be imposed on the convict.
- [4] Counsel for the Convict in mitigation of sentence, submitted that given his age and his long term relationship with his current partner that the convict be placed on a community service order so that he be given an opportunity to become a citizen that contributes towards the social and economic development of the country. Counsel further submitted that his client has not reoffended since he has been found guilty. It is also his submission that his client is denying the paternity of a child who the Virtual Complainant is claiming has been conceived during the course of the commission of the offence.
- [5] For the purposes of the sentence, I have taken into consideration the entire facts of the case and the content of the Probation Report and the submission in mitigation of Learned counsel. Having done so I consider that the convict is a 1<sup>st</sup> time offender. He is not a drug dependent person and he has and has been doing a “taxi pirat” operation at the time he committed the offence in this case, hence he was a productive member of society. These are facts that according to his counsel weighs heavily in favour of a none custodial sentence. The court having considered these facts indeed considered them favourably towards the Convict. However, bearing into consideration the facts of this case, I find that they do not outweigh the aggravating factors.
- [6] The aggravation in the case are that the Virtual Complainant was a thirteen year old girl, at the time of the commission of the offence. He on the other hand was a trusted family friend. Instead of conveying her to her place at Anse Aux Pins in his unlicensed taxi, he breached her trust and instead brought her to a secluded spot and there forcefully had vaginal sex with her. Following that her behaviour changed for the worst and she fell pregnant and dropped out of school. The court note that the Convict disputes paternity as

no confirmatory test of paternity had been carried out. These series of events have changed the life of the Virtual Complainant for the worst.

- [7] 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 *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 and the recent case of *R v Christopher Laurencine CR08/2022*), in which the convict was inflicted with two sentences of 15 years under two counts of sexual assault on a 9 year old minor.
- [8] Bearing all these in mind and the need to pass a sentence which would deter future conducts of its kind and keeping with previous precedents, I sentence the Convict to 15 years imprisonment for committing the offence as charged. Time spent on remand will count towards sentence.
- [9] 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 4<sup>th</sup> April 2022.

