

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CO 51/2021

In the matter between:

THE REPUBLIC
(rep. by Joshua Revera)

Republic

and

ANDY CESAR
(rep. by Clifford Andre)

Accused

Neutral Citation: *R v Cesar* (CO 51/2021) [2022] SCSC 348 (08 April 2022)

Before: Burhan J

Summary: Unlawfully wounding with intent to inflict grievous harm

Heard: 28 February 2022

Delivered: 08 April 2022

ORDER

I proceed to sentence the accused Andy Cesar to a term of six months imprisonment and a fine of SCR 5000 (five thousand). A sum of SCR 3,500 (three thousand five hundred) to be paid to the victim in compensation from the said fine. In default of payment of fine a term of 6 months imprisonment to run consecutively.

SENTENCE

BURHAN J

[1] The accused in this case Andy Cesar was charged as follows for the following offence;

Count 1

Unlawfully wounding with Intent to Inflict Grievous Harm Contrary to Section 219 (a) and Punishable under Section 219 of the Penal Code Cap 158.

Particulars of Offence.

In that, Andy Virol Cesar of Les Mamelles, Mahe, on the 2nd February 2020, at Les Mamelles, Mahe, unlawfully wounded one Dorian Hoareau by means of cutting the said Dorian Hoareau in the left hand with the use of a sword with intent to do some grievous harm to the said Dorian Hoareau.

- [2] The accused pleaded guilty to the aforementioned charge on the 22nd of October 2021. At the request of his learned Counsel Mr. Clifford Andre a probation report was called.
- [3] When one considers the facts set out in the probation report, it is clear that that the accused Andy Cesar is 53 years of age and attended Primary and Secondary school and spent two years at the NYS (National Youth Services). He had worked as a Printing designer, model and as a casual labourer with Hunt Deltel. He is a recovering heroin user on Methadone treatment at present.
- [4] It appears the incident had arisen as the victim who lives in an upstairs apartment had been banging on the door and when his partner got home the accused had told her of the incident and she had gone and confronted the victim and he could hear arguing. He had got angry with the way the victim was addressing his partner and taken a sword that was mounted on the wall and gone to confront the victim. He had seen the victim about to assault his partner with a broomstick made from coconut leaves. The accused had reacted quickly by hitting the victim on his wrist with the sword. He had thereafter been arrested. The victim version is that the partner of the accused had thrown a flower pot on him and he had retaliated by using a broom with coconut leaves.
- [5] It is apparent that the victim had suffered a serious injury in his left hand and had to spend sometime in the operating theatre. Thereafter he had had a scar on his left hand and diminished function of it. He moves that he be compensated for the said injury. Learned

Counsel Mr. Andre in mitigation stated that the accused had pleaded guilty without wasting the time of Court. The accused is presently employed at Mohaz Cleaning Agency since December 2020 and as the incident had occurred on the spur of the moment learned Counsel moved that a lenient sentence be imposed.

[6] The accused has been found guilty and convicted for the offence of causing grievous harm under section 219 (a) of the Penal Code. In cases of this nature concerning violence and assault, this Court is of the view the following factors should be taken into consideration at the time of sentencing:

- a) The nature of the injuries caused to the victim.
- b) If there was provocation on part of the victim at the time of the incident.
- c) The aggravated nature of the assault.
- d) The previous conduct of the accused and their disposition to violent conduct.

[7] When one considers the facts of this case the injury is quite serious. The victim has suffered a fracture of his metacarpal bone. It appears he has a diminished function of the use of it.. There was a degree of provocation as the victim had attempted to hit the partner of the accused with a broom with coconut leaves as his partner had thrown a flower pot at the victim. The offence is of an aggravated nature as the accused had used an offensive weapon a sword. The accused has no previous convictions that indicate he is of violent disposition. At present it appears though he is employed, he is homeless according to the probation report.

[8] Giving due consideration to all these factors, I proceed to sentence the accused to a term of six months imprisonment and a fine of SCR 5000 (five thousand). A sum of SCR 3,500 (three thousand five hundred) to be paid to the victim in compensation from the said fine. In default of payment of fine a term of 6 months imprisonment to run consecutively.

[9] The accused is to be produced in Court prior to his release to give him time to pay the fine.

[10] Time spent in remand to count towards sentence.

[11] Right of Appeal explained.

Signed, dated and delivered at Ile du Port on 08 April 2022

Burhan J.