

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC ..821
CR 25/2021

REPUBLIC
(rep. by L. Monthy)

Applicant

and

SOHEL MIAH
(rep. by Olivier Chang-Leng)

Accused

Neutral Citation *Republic v Sohel Miah* CR 25/2021 [2021] SCSC ..821... (22nd September 2022)

Before: Vidot J

Summary Assaults causing actual harm contrary to and punishable under section 236 of the Penal Code and Acts intended to cause grievous harm contrary to and punishable under section 219(a) of the Penal Code

Heard: 15 September 2021

Delivered: 22 September 2022

SENTENCE

VIDOT J

[1] The Accused was charged with the following offences;

Count 1

Statement of Offence

Assaults causing actual harm contrary to and punishable under section 236 of the Penal Code

Particulars of Offence

Shohel Miah, 30 years old Bangladeshi national, a farm worker at Sylvestre Naiken Agricultural Farm of Grand Anse, Mahe, on 20th March 2021, at Sylvestre Naiken Agricultural Farm, assaulted a co-worker namely Mohammad Faruk of Bangladeshi national, occasioning actual bodily harm to him.

Count 2

Statement of Offence

Acts intended to cause grievous harm contrary to and punishable under section 219(a) of the Penal Code

Particulars of Offence

Shohel Miah, 30 years old Bangladeshi national, a farm worker at Sylvestre Naiken Agricultural Farm of Grand Anse, Mahe, on 20th March 2021, at Sylvestre Naiken Agricultural Farm, unlawfully did grievous harm to a co-worker, namely Mohammad Sharif Uddin, a Bangladeshi national, by use of a piece of brick.

Count 3

Statement of Offence

Acts intended to cause grievous harm contrary to and punishable under section 219(a) of the Penal Code

Particulars of Offence

Shohel Miah, 30 years old, Bangladeshi national, a farm worker at Sylvestre Naiken Agricultural Farm of Grand Anse, Mahe, on 20th March 2021, at Sylvestre Naiken

Agricultural Farm, unlawfully did grievous harm to a co-worker, namely Mr. Shahin, a Bangladeshi national, by use of a knife.

- [2] He was found guilty and convicted of counts 1 and 3 only and acquitted of count 2.
- [3] Before meting out sentence, Counsel for the Accused, asked for a Probation (Pre-Sentence) Report (hereafter “the Report”). Since the Accused is a first time offender, the request was acceded to. A copy of the Report was served on Counsel before he made his submission in mitigation.
- [4] The Court has studied the Report which investigated the personal circumstances of the Accused and circumstances surrounding the incident and shall give it due consideration before passing sentence. The Accused is a very young man and a foreigner in Seychelles, who had secured a job here in hope of helping his family as he is the sole breadwinner. His father is advanced in age, his mother is unemployed and he has five siblings.
- [5] I further note that as per the report the Accused acknowledged that he regrets the incident but felt he was being attacked by the other co-workers. I note that he personally reported and gave himself up to the Police.
- [6] I give particular consideration that the victims of the offences were equally involved in the fracas where they were assaulted and harmed. I believe that at some point they ganged up with other co-workers to try and assault the Accused, thus the reason why he sustained some minor injuries. As regards the third count, I find that the victim went to the kitchen to argue with the Accused and in some way instigated the fight, though the Accused is the one who used physical force first. However, I bear in mind that the offence of Acts intended to cause grievous harm contrary to and punishable under section 219(a) of the Penal Code is serious considering that a cleaver was used.
- [7] I also take into consideration Counsel’s submission that the Accused is remorseful but states that he was acting in self –defence. However, if that was the case, by using weapons, the force applied was therefore out of proportion with the circumstances of case.

[8] Counsel also referred to various decided cases which the Court has considered in meting out sentence. These cases include **R v Neddy Labiche CO15 2016 [2021] SCSC 642**, **Jefferson v Republic CN2/2020 [2021]SCSC 592** and **Mario Nassim & Anor v Republic SCA 19/2019 (delivered on 21 August 2020)**

[9] Having considered all matters raised in mitigation by Counsel and the Report, I proceed to sentence the Accused as follows;

Count 1; I sentence the Accused to a term of one and a half years imprisonment;

Count 3; I sentence the Accused to two years imprisonment.

Both sentences are to run concurrently and time spent on remand shall be discounted against the sentence.

[10] If unsatisfied with the sentence, the Accused may appeal against the same within 30 working days from today.

Signed, dated and delivered at Ile du Port on 22nd September 2022



M Vidot J