

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
CO 17/2020

In the matter between:

THE REPUBLIC
(rep. by Luthina Monthy)

Republic

and

JUSTIN LEON
(rep. by Basil Hoareau)

Accused

Neutral Citation: *Republic v Leon* (CO 17/2020) [2023] SCSC (10 March 2023)
Before: Burhan J
Summary: Count 1 Grievous Harm contrary to section 219 (a) of the Penal Code alternatives
Count 2 Unlawful Wounding contrary to section 224 of Penal Code
Heard: 23rd January 2023
Delivered: 10th March 2023

ORDER

Count 2

A fine of SCR30,000/ (Thirty thousand) from which sum a sum of SCR 25,000/ (thirty thousand) to be paid to the victim as compensation.

SENTENCE

BURHAN J

[1] The accused Justin Leon was convicted on his own plea of guilt on Count 2 having been charged with the following offences:

Count 1

Wounding with intent to cause grievous harm contrary to Section 219 (a) of the Penal Code and punishable under the same.

Justin Leon of Baie St. Anne, Praslin, on the 16th October 2018 at around 1830 hours at Baie St. Anne Praslin, wounded one Mickey Brioche of Baie St. Anne, Praslin, by using a small knife with intent to cause grievous harm and inflicted injury on the left side of the chest of the said Mickey Brioche.

Count 2 in the alternative to Count 1

Unlawful wounding contrary to and punishable under Section 224 of the Penal Code

Justin Leon of Baie St. Anne, Praslin, on the 16th October 2018 at around 1830 hours at Baie St. Anne, Praslin wounded one Mickey Brioche of Baie St. Anne, Praslin by using a small knife and inflicted on the left side of the chest and left arm of the said Mickey Brioche.

- [2] The accused pleaded guilty to the alternative Count of Unlawful Wounding on the 19th of September 2022. At the request of his Learned Counsel Mr. Hoareau a probation report was called prior to sentencing the accused.
- [3] On perusal of the facts set out in the probation report, it is observed that the accused is 31 years of age and has two children aged six and seven years. After leaving school, the accused had followed a one year course at the Seychelles Institute of Technology and was awarded a certificate in the field of Electronics. He furthered his studies at the Institute and was awarded a Diploma in Telecommunications as well.
- [4] In his plea in mitigation Mr. Basil Hoareau relied on the facts set out in the probation report in respect of the personal circumstances of the accused and his record of employment and the fact that the accused was striving to pay a loan of SCR63,000/ taken to improve his business. It is clear from the probation report that the accused is running a

guest house in Praslin and the victim's indecent behaviour had affected the running of the business, thereby affecting the legitimate income of the accused and his ability to pay his monthly loan instalments. Learned Counsel also referred to the working record of the accused. It is clear from the work record confirmed by the probation that the accused has been gainfully employed and is an IT expert working at DICT and other reputable institutions.

[5] I also take into consideration that the victim has constantly been making himself a nuisance to the accused by his indecent behaviour, which eventually led to this incident. Learned Counsel Mr. Hoareau referred to the victim as a voyeur and a pervert who would sexually harass guests staying at the hotel of the accused. From the probation report, it could be gathered that the victim is not a person with an unblemished character and the probation confirms the fact that he was serving a term of imprisonment at the time he was interviewed by them.

[6] I also take into consideration the fact that the accused is a first offender and has pleaded guilty to the charge, the moment it was amended considering the facts that emanated from the hearing, thereby saving the precious time of court.

[7] It is clear from the submissions of learned Counsel and it could be gathered that there was an element of provocation at the time of the incident and there was continuous provocation by the victim harassing the guests staying at the guesthouse of the accused over a period of time. It is learned Counsel's for the accused submission that provocation, though not a defence, could be taken into consideration at the time of sentencing. I am inclined to agree with learned Counsel Mr. Hoareau on this, as this Court has held in the case of *R v Betty May Michel & Ors* [2021] SCSC 140 at paragraph 9, that, though provocation is not a defence in a charge of this nature, it could be considered as a ground in mitigation at the time sentence is imposed. In this case there is immediate provocation and sustained provocation.

[8] Giving due consideration to all the facts set out above including the injuries sustained by the victim, I proceed to sentence the accused on Count 2 as follows:

A fine of SCR30,000/ (Thirty thousand thousand) from which sum a sum of SCR25,000/ (twenty five thousand) to be paid to the victim as compensation for the injuries sustained by him. In default of payment of fine, 6 months imprisonment.

[9] Considering the fact that the accused is at present paying a loan, he is granted instalments at SCR5,000/ per month to pay the fine.

Signed, dated and delivered at Ile du Port on 10th March 2023.

M Burhan J