

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
CO 109/2021

In the matter between:

THE REPUBLIC
(rep. by Shireen Denys)

Republic

and

YB
(rep. by Karine Dick)

Accused

Neutral Citation: *Republic v YB* (CO 109/2021) [2023] SCSC (31 May 2023)
Before: Burhan J
Summary: Sexual assault
Heard: 08 May 2023
Delivered: 31 May 2023

ORDER

Accused sentenced as follows:

Count 1 to a term of 12 months imprisonment.

Count 2 to a term of 18 months imprisonment.

Both terms to run concurrently.

Time spent in remand to count towards sentence

SENTENCE

BURHAN J

[1] The accused YB was found guilty after trial and convicted of the following offences:

Count 1

Sexual assault contrary to Section 130 (1) as read with Section 130 (2) (a) and (b) and Section 130 (3)(b) of the Penal Code and punishable under Section 130 (1) of the Penal Code.

YB of, Mahe, on a date unknown to the prosecution during the month of May 2018, at Anse Dejeuner, Pointe Larue, Mahe, sexually assaulted another namely Ms N aged 14 years old at the time, by touching N all over her body.

Count 2

Sexual Assault contrary to Section 130 (1) as 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.

YB of, Mahe, on a date unknown to the prosecution during the month of May 2018, At Anse Dejeuner, Pointe Larue, Mahe, sexually assaulted another namely Ms N aged 14 years old at the time, by inserting his penis into the vagina of N.

[2] At the request of his learned Counsel Ms Karine Dick a probation report was called prior to mitigation.

[3] The probation report states that the accused is 28 years of age and is the youngest child amongst six siblings. He had dropped out of school at the end of Secondary Four and did not pursue further education thereafter. He had started his work career at a mechanical workshop at Cascade before he was employed at [REDACTED]. Thereafter he had worked as a steward at [REDACTED] and [REDACTED] and at [REDACTED]. Prior to his remand he had been working at the [REDACTED].

[4] The accused has moved for leniency. The sister of the accused has informed the probation that the accused is very close to her and has been a good person when growing up. The accused according to his sister had been neglected in his young age together with the other siblings by their mother. His father had a leg amputated and the accused would

take care of his father before coming to her place. The sister had further informed the probation that the accused was academically low and others would take advantage of this fact and he was susceptible to the influence of others and had psychological issues. A neighbour interviewed by the probation has also stated that the accused was a good person and his mother leaving him has had a negative impact on him and it was the neighbour himself who had helped the accused get through this situation.

- [5] The father of the victim has moved for a custodial term. The assessment of the probation is that the accused should be given a minimum custodial term of imprisonment.
- [6] I will next deal with the plea in mitigation made by learned Counsel Ms Karine Dick on behalf of the accused who submits that the accused is a first time offender and has highlighted the fact that the report states that the accused was a very good and law abiding citizen, prior to this case being filed against him. His age at the time of the incident was 23 years old. There was no violence or coercion or any pressure put on the victim by the accused. Learned Counsel further submitted that the victim admits in her evidence that there was a relationship between the two of them. This is apparent when one reads the evidence given in Court.
- [7] The Social Worker has indicated that the victim was able to cope with the incident and she did not need any further specialized intervention in the matter. At present the victim is 19 years old and has moved on and is leading a normal life.
- [8] Learned Counsel for the accused referred to the case of *The Republic v/s T.D.A*, citation whereby a young man was sentenced to 18 months imprisonment in an offence of a similar nature. She moved that the Court apply leniency when considering the circumstances of the accused and be mindful of the recommendation of the probation office to impose a minimum custodial sentence on the accused.

[9] I am of the view that strong mitigating circumstances exist in this case. The usual sentences imposed for such offences range from 6 to 11 years imprisonment. **R v J [2021] SCSC 586, R v WV [2017] SCSC 222 and R v YL [2017] SCSC1219.**

[10] Considering the seriousness of the offence however and the recommendation of the probation, I am of the view that a custodial term of imprisonment should be imposed to indicate to the accused the seriousness of the offence and to serve as a future deterrent to him. However, on consideration of the plea in mitigation and giving due consideration to the recommendation of the probation that a minimum custodial term be given, I proceed to sentence the accused as follows;

Count 1 to a term of 12 months imprisonment.

Count 2 to a term of 18 months imprisonment.

Both terms to run concurrently.

[11] Time spent in remand to count towards sentence

[12] Right of Appeal explained.

Signed, dated and delivered at Ile du Port on 31 May 2023.

M Burhan J