

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC

CO 42/2021

759

In the matter between:

THE REPUBLIC

(rep. by Ria Alcindor)

Republic

and

DENIS VIDOT

(rep. by Joel Camille)

Accused

Neutral Citation: *Republic v Vidot* (CO 42/2021) [2023] SCSC 759 (06 October 2023)

Before: Burhan J

Summary Sentence - Unlawful wounding with intent to cause grievous harm contrary to section 219 (a) of the Penal Code and punishable under section 219 (a) of the Penal Code.

Heard: 11 September 2023

Delivered: 06 October 2023

ORDER

I proceed to sentence the convict Denis Vidot as follows:

Count 1

A term of two years imprisonment and a fine of SCR 50,000.00 (fifty thousand). In default of payment of fine a term of six months imprisonment. A sum of SCR 40,000.00 (forty thousand) to be paid to the victim Frederic Louise Bristol as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

Count 2

A term of twelve months imprisonment and a fine of SCR 25,000.00 (twenty-five thousand). In default of payment of fine a term of four months imprisonment. A sum of SCR 20,000.00 (twenty thousand) to be paid to the victim Aubrey Bristol as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

Count 3

A term of six months imprisonment and a fine of SCR 15,000 (fifteen thousand). In default of payment of fine a term of three months imprisonment. A sum of SCR 10,000.00 (ten thousand) to be paid to the victim Carlos Bristol as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

All terms of imprisonment to run concurrently. The default terms of imprisonment imposed in lieu of non- payment of fines in each count that is six, four and three months to run consecutively to each other and to the two year term of imprisonment in Count 1.

SENTENCE

BURHAN J

- [1] The convict in this case, Denis Vidot, was convicted after trial for the following offences set out in the charge dated 05th May 2021.

Count 1

Unlawfully wounding with intent to do grievous harm contrary to section 219 (a) and punishable under section 219 (a) of the Penal Code Cap 158.

Denis Elvis Vidot of La Louise, Mahe on 13th September 2020 at La Louise, Mahe unlawfully wounded one Frederic Louis Bristol by stabbing the said Frederic Louis Bristol with a knife in the abdomen with intent to do some grievous harm to the said Frederic Louis Bristol.

Count 2

Unlawfully wounding with intent to do grievous harm contrary to section 219 (a) and punishable under section 219 (a) of the Penal Code Cap 158.

Denis Elvis Vidot of La Louise, Mahe on 13th September 2020 at La Louise, Mahe unlawfully wounded one Aubrey Bristol by stabbing the said Aubrey Bristol with a knife in the abdomen with intent to do some grievous harm to the said Aubrey Bristol.

Count 3

Unlawfully wounding with intent to do grievous harm contrary to section 219 (a) and punishable under section 219 (a) of the Penal Code Cap 158.

Denis Elvis Vidot of La Louise, Mahe on 13th September 2020 at La Louise, Mahe unlawfully wounded one Carlos Bristol by stabbing the said Carlos Bristol with a knife in the abdomen with intent to do some grievous harm to the said Carlos Bristol.

- [2] At the request of learned Counsel Mr Joel Camille, a probation report was called prior to sentencing the convict. According to the report, the convict is 38 years of age and the father of a child aged two years and stepfather to a child aged thirteen years whom he has been taking care for since the age of one. After his school education, where he completed both Primary and Secondary studies, he joined the Seychelles Institute of Technology, where he studied welding and fabrication for one year at certificate level. He had started working in net fixing and continued to do so for a period of ten years. Thereafter, he opened a business with his father and has been working as a commercial pick-up driver in the said business for the past ten years.
- [3] It is apparent from the report that the convict states that the incident occurred in his house and admits on the said day he had an argument with his partner. He had not expected the family members of his partner, the victims, to come and interfere in his relationship issues. He states

that two of them were armed: the second victim (Aubrey Bristol - Count 2) with a dagger; and the third victim (Carlos Bristol - Count 3) with a piece of wood. He states that he had no intention of causing any harm to them.

[4] The father of the convict states that the incident has had a negative effect on the family and asks for forgiveness on behalf of his son and moves that Court considers giving the convict a chance to remain in society instead of serving time in prison. The partner of the convict has informed the probation that she has high blood pressure and thyroid issues. She states she is unemployed at present and as the convict is the sole breadwinner in the family and has two minor children to take care, she will not be able to cope if the convict is given a custodial term of imprisonment. She moves for a non-custodial term in order that the convict could remain in society and assist his family.

[5] The victim Louise Bristol in Count 1, aged 60 years, was admitted to the intensive care unit for several days and spent almost a month in hospital due to the stab injury in his stomach. He states he had taken time to resume his duties and his wife had to struggle to support him and his two children during his recovery. He continues to live with a scar and the traumatic experience has affected him psychologically. The convict has up to date not sought to apologise and therefore he is not ready to forgive him. The other victim Aubrey Bristol in Count 2, aged 30 years, also sustained a stab injury in his stomach. Fortunately, he did not have to be operated on or admitted to the intensive care unit but had to be hospitalised for a period of six days and states after discharge from hospital, he had to be on one month's leave. He still feels a numbness on the left side of his stomach. He too states the convict has still not acknowledged the wrong he has done and moved for severe punishment coupled with compensation. The 3rd victim Carlos Bristol in Count 3, aged 24 years, also states he suffered cut injuries to the abdomen but was not admitted to hospital and received five stitches and was given sick leave for two weeks. He states he was unable to discharge his duties as a boat boy for a period of two weeks. He too does not wish to forgive the victim but moves that Court take appropriate action as he too suffered injuries which could have been more serious in nature.

[6] I will next proceed to consider the plea in mitigation of learned Counsel Mr Camille on behalf of the convict. Learned Counsel stated that Court should consider Section 26 (1) of the Penal Code, which empowers Court to impose a fine in lieu of imprisonment on the convict. He

also moved Court to consider imposing a suspended sentence on the convict as the offence was not an exempted offence. He submitted that the convict is a young man aged 38 years and further submitted that the facts of his case as borne out in the evidence indicate that there was immediate provocation from the victims. He referred to the cases of *Republic v Betty-May Michel & Ors* [2021] SCSC 140 and the case of *Republic v Justin Leon* [2023] SCSC 177 where this Court had considered the fact that provocation was not a defence but could be considered as a ground of mitigation at the time of sentencing the convict. He stated that the facts of the *Betty-May* case were similar to this case. I am inclined to disagree with learned Counsel as the victim in the *Betty-May* case was not stabbed and the accused were found guilty of causing grievous harm under section 221 of the Penal Code, a lesser offence to the charge in this case under section 219 (a) of the Penal Code, which attracts life imprisonment on conviction.

- [7] Learned Counsel also relied on the personal circumstances of the convict as set out in the probation report, i.e. the fact that the convict has two dependents aged three and thirteen and that the convict is the sole breadwinner in the family. He also submitted that there was no planning or premeditation by the convict, but an incident that occurred at the spur of the moment, and that he had no intention of harming the victims. He moved that even if Court were to consider a minor custodial term as recommended by the probation, it be suspended.
- [8] I have considered the facts contained in the probation report and the facts contained in the plea of mitigation. This Court has held in the cases of *Republic v Betty-May Michel & Ors* [2021] SCSC 140 and the case of *Republic v Justin Leon* [2023] SCSC 177 that though provocation was not a defence, it could be considered as a ground in mitigation at the time of sentencing the convict. In this case too, the element of provocation is there, as the victims had gone to the house of the convict where the stabbing incidents occurred; and it appears, when one takes into consideration the facts of the case, they behaved in a somewhat hostile manner towards the convict. However, this does not condone or warrant the action of the convict in using a knife and stabbing two of the victims in their abdomen and cutting the other across the abdominal area and claiming he acted in self-defence. Even though he refers to self-defence, in evidence he states he does not know what happened. The evidence

given by the victims, which was accepted by the Court, was that Mr Louis Bristol was stabbed when he was trying to separate Aubrey and the convict.

[9] The accused has been found guilty and convicted for the offence of unlawful wounding with intent to cause grievous harm under section 219 (a) of the Penal Code, which attracts a term of life imprisonment. In *R v Andy Cesar* [2022] SCSC 348 it was held by this Court that in cases of this nature concerning violence and assault, the following factors should be taken into consideration at the time of sentencing:

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

[10] When one considers the facts of this case, I do not agree with learned Counsel's submission that the convict states "*he had no intention of causing any harm to them*". The injuries sustained by the victims indicate they were deliberately stabbed and cut; and two injured victims suffered serious penetrating injuries that required surgery and continued treatment in hospital. The Prosecution refers to the acts of the convict as a '*stabbing spree*'. In my view the injuries sustained by the 1st and 2nd victims were deliberate and of a very serious nature. The doctor's evidence in respect of the description of the width and depth of the injuries and the evidence of the police indicate that the convict had used a knife repeatedly on different individuals, which is, in my view, a further aggravating circumstance. The convict has not expressed any remorse or regret for his actions, nor has he apologised to the victims, who are closely related to his concubine. I also take into consideration that not only have the victims suffered physical injuries but, due to these injuries, have been unable to pursue their normal occupations for a period of time. It also appears the seriousness of the injuries to each individual differs.

- [11] Giving due consideration to all the aforementioned factors including the mitigating circumstances pleaded by learned Counsel and the facts set out in the probation report, I proceed to sentence the convict Denis Vidot as follows:

Count 1

A term of two years imprisonment and a fine of SCR 50,000.00 (fifty thousand). In default of payment of fine a term of six months imprisonment. A sum of SCR 40,000.00 (forty thousand) to be paid to the victim Frederic Louise Bristol as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

Count 2

A term of 12 months imprisonment and a fine of SCR 25,000.00 (twenty-five thousand). In default of payment of fine a term of four months imprisonment. A sum of SCR 20,000.00 (twenty thousand) to be paid to the victim Aubrey Bristol as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

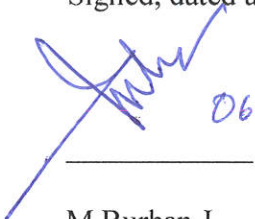
Count 3

A term of six months imprisonment and a fine of SCR 15,000 (fifteen thousand). In default of payment of fine a term of three months imprisonment. A sum of SCR 10,000.00 (ten thousand) to be paid to the victim Carlos Bristol as compensation from the said fine, in terms of section 151(1) (b) of the Criminal Procedure Code.

- [12] All terms of imprisonment to run concurrently. The default terms of imprisonment imposed in lieu of non-payment of fines in each count that is six, four and three months to run consecutively to each other and to the two year term of imprisonment in Count 1.

[13] Right of appeal against sentence explained. Time spent in remand to count towards sentence.

Signed, dated and delivered at Ile du Port on 06 October 2023


06-October 2023

M Burhan J