

SUPREME COURT OF SEYCHELLES

Reportable/Redact

[2023] SCSC ..540
CR 17/2021

REPUBLIC

(rep. by A Govinden)

and

S J

(rep. by L Monthy)

Neutral Citation: *R v S J* (CR 17/2021) [2023] SCSC (2023)

Before: Govinden CJ

Summary: Sentence ; Sexual Assault.

Heard: 23 May 2023

Delivered: 17 July 2023

ORDER

SENTENCE

GOVINDEN CJ

The Convict was convicted under Count 1 and Count 3 of the Information, following trial. They are as follows:

Count (1)

[1] Statement of Offence:

Sexual Assault contrary to section 130 (1) as read with section 130 (2) (b) of the Penal Code and punishable under section 130 (1) of the Penal Code.

[2] Particulars of Offence are that Mr. S J of [REDACTED] Mahe on dates unknown to the Prosecution between December 2020 and 22nd of February 2021, at [REDACTED] Mahe, sexually assaulted another namely Ms. C M, aged 13 years old at the time, by inserting his penis into the vagina of the victim.

Count (3)

[3] Statement of Offence

Sexual Assault contrary to section 130 (1) as read with section 130 (2) (b) and section 130 (3) (b) of the Penal Code and punishable under section 150 (1) of the Penal Code.

[4] Particulars of Offence are that Mr. S J of [REDACTED] Mahe, on dates unknown to the prosecution between December 2020 and 22nd February 2021, sexually assaulted another namely Ms. C M, aged 13 years old at the time, by non-accidentally touching the sexual organ of the victim.

[5] Counsel for the Accused requested for a Probation Report in order to assist the court in sentencing. This has been duly provided in a Probation of Offenders Report dated the 4th of February 2022, of which a copy has been provided to the defence. The court notes that the Accused throughout the Report has maintained his innocence. The Probation Services, after considering the whole circumstances of the case has recommended that the court imposes an appropriate sentence.

[6] Counsel for the Convict in mitigation of sentence, stated the following:

- i) The Convict is a first time offender
- ii) He is of a young age and is further his education
- iii) The Convict and the Complainant were in a friendly relationship
- iv) No physical violence was used in the commission of the offence

[7] In sentencing the Convict, the Court is guided by the established sentencing principles as was enunciated in the case of *ML & Ors, SC Cr 38/19* and applies them to the facts of this

case. The Court is further aware of the need to individualize sentences and to render it proportionate so as to fit the circumstances of the case and those of the Convict of this particular case. The three test enunciated in the case of *Ponnoo vs R (2011) SLR 424*, with regards to totality of sentencing principle has also been followed. The sentences imposed should be proportionate to the crimes committed bearing in mind the individual circumstances of the Convict.

[8] Having done so the Court consider that there are circumstances that can mitigate an otherwise aggravated sentence in this case, these facts are as follows:

- i) Convict is a first time offender and has otherwise an unblemished record
- ii) though an adult, he is of a young age;
- iii) he was settled in his further education, until the commission of the offences in this case
- iv) the Convict and the Virtual Complainant were in a friendly relationship, albeit that it was in secret and no physical violence was used in the commission of the offences.

These are the same facts that according to his counsel weighs heavily in favor of a non - custodial sentence.

[9] The Court having considered these facts indeed and considered them favorably towards the Convict. However, on the other hand the Court needs to be sensitive to the public revulsion to offences of sexual assault on minors, which are on the rise in this society. The community and society at large, calls on this court to impose sentences that act as a deterrence for the commission of these type of offences

[10] Having considered the pleas in mitigation made by learned Counsel for the Convict; the mitigatory circumstances; the contents and recommendations of the Pre-Sentencing Report; the facts and circumstances of this case upon which the Convictions were based; the sentencing pattern in cases of similar nature rendered by this court and the Seychelles Court of Appeal and the applicable sentencing principles, the Court has come to the following determination:

- i) On count 1, I impose 5 years' imprisonment on the convict.
- ii) On count 3, I impose 5 years' imprisonment on the convict.

The sentence under count 3 shall run concurrently with that imposed under count 1.

[11] The Convict has a right to appeal against to the Seychelles Court of Appeal against both his Conviction and sentence.

[12] Time spent on remand will count towards sentence.

Signed, dated and delivered at Ile du Port on *17th* July 2023



Govinden CJ