

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC ...
CR69 /2019

In the matter between

THE REPUBLIC
(rep. by *Luthina Monthy*)

Prosecution

and

A.H
(rep. by *S. Rajasundaram*)

Accused

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|-------------------------|--|
| Neutral Citation | <i>The Republic v A. H</i> (CR69/2019) [2023] SCSC..... delivered on 20 October 2023 |
| Before: | Vidot J |
| Summary | Sexual Assault contrary to section 130(1) read with section 130(2)(d) and section 130 (3)(b) of the Penal Code and punishable under section 130(1) the Penal Code. |
| Heard: | 25 September 2023 |
| Delivered: | 20 October 2023 |

SENTENCE

VIDOT J

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

Count 1

Statement of Offence

Sexual assault contrary to section 130(1) 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.

Particulars of Offence

A.H of [REDACTED] Mahe, on a date unknown to the Prosecution in March 2019, sexually assaulted his daughter, A.H, aged 5 years old at the time, by licking her lips, inserting his penis in her mouth and inserting his finger into her vagina.

Count 2

Statement of Offence

Wilfully or negligently exhibits to a child an indecent material contrary to section 152(1)(f) as read with section 152(2)(b) of the Penal Code and punishable under section 152 (1) of the Penal Code

Particulars of Offence

A.H of [REDACTED] Mahe, on a date unknown to the Prosecution in March 2019, wilfully and negligently exhibited to his daughter, namely, aged 5 years old at the time, indecent material being the video of two naked woman having a bath.

- [2] The Accused was found guilty and convicted of Count 1 and acquitted of Count 2.
- [3] Since the Accused is a first time offender the Court called for a Probation Pre-Sentence Report ("the Report"). The Report together with submission in mitigation by Counsel shall be fully considered when considering the appropriate sentence to be imposed.
- [4] The Accused is 33 years old and father of two children, one of whom is the virtual complainant. The children have been fostered by the [REDACTED] as it was found that it was not conducive to allow them to live with their mother. One of the children was at the [REDACTED] even before the conviction of the Accused. At the trial, the Accused daughter, A.H stated that she did not want to see her father.
- [5] The Accused had been in steady employment throughout, first as a fisherman, then a skipper. Counsel for the Accused submitted that the parents of the Accused are "old", the father being 65 years old and the mother 60 years old. Personally I do not consider people

of such age as old, especially after having seen them in Court. Counsel states that the Accused was the only breadwinner in the family. I disagree with that statement. When [REDACTED] the mother of the Accused testified during the trial she mentioned that she has apartments that she rents out and the father being 65 years old should be on Social Security benefits and probably a pension. Therefore, they have sources of income.

- [6] The crime committed by the Accused is despicable. What makes it more abhorrent is the fact that the sexual assault was committed against his daughter who is and was of tender age. A father should protect his daughter and not destroy her. We should built a society where children can trust adults. Adults should act of role models, otherwise, our society will continue to slip into the decadence that it has been for some time now.
- [7] As I have mentioned, in meting out sentence, I have considered the Report and submission in mitigation. I find that the offence committed is a serious one that warrants a prison term.
- [8] Therefore, I sentenced the Accused to a term of 5 years imprisonment on Count 1.
- [9] Time spent on remand shall be discounted against sentence.
- [10] If unsatisfied with this sentence and the judgment, the Accused has 30 working days from today to file an appeal to the Court of Appeal.

Signed, dated and delivered at Ile du Port on 20 October 2023



M Vidot J