

SUPREME COURT OF SEYCHELLES

Reportable
CO 13/2021

In the matter between:

THE REPUBLIC
(rep. by Luthina Monthy)

Republic

and

RANDY ESTRALE
(rep. by Clifford Andre)

Convict

Neutral Citation: *Republic v Estrale* (CO13/2021) (2024)

Before: Burhan J

Heard: 01 July 2024

Delivered: 25 July 2024

ORDER

Convict Randy Estrale is sentenced as follows:

Count 1

A fine of SCR 5000.00 (five thousand) In default of payment of fine 6 months imprisonment.

Count 2

A fine of SCR 5000.00 (five thousand) In default of payment of fine 6 months imprisonment.

SENTENCE

BURHAN J

- [1] The convict Randy Estrale was convicted on his own plea of guilt in respect of the offences set out in Counts 1 and 2 in the amended charge sheet dated 08 November 2023 which reads as follows:

Count 1

Unlawful assault contrary to and punishable under Section 235 of the Penal Code

Particulars of offence are that, Randy Joseph Estrale, 33 years old male, unemployed of Mont Buxton, Mahe, on 01st day of April 2020 at around 11:30hrs at Orion Mall, Mahe unlawfully assaulted one Gilly Khanny by giving him fist blow in his left side face and caused injury to his face and also threatened the said Gilly Khanny with a penknife and in doing so broke his steel necklace with value with value of SR11,000/-.

Count 2

Unlawful assault contrary to and punishable under Section 235 of Penal Code.

Particulars of offence are that Randy Joseph Estrale, 33 years old male, unemployed of Mont Buxton, Mahe, on 06th day of April 2020 at around 07.30 hours at Orion Mall, Mahe unlawfully assaulted one Gilly Khanny by giving him a fist blow to his face and in doing so breaking his two (2) silver necklaces having a total value of SR5000/-.

- [2] At the request of learned Counsel Mr Clifford Andre, a probation report was called prior to sentencing the convict. According to the report, the convict is 36 years of age and has a nine year old daughter from a previous relationship. The convict has completed his Primary and Secondary education but did not pursue Post-Secondary education in any Institution. He commenced working in a carpentry business owned by his father and thereafter as a sea cucumber fisherman, before working as a Stevedore with Seaward Company where he is currently working.

- [3] The convict has informed the probation services that the virtual complainant was involved in a relationship with his then partner from whom the convict has had a daughter. Every time he would phone his daughter, the virtual complainant would take the phone and insult him, thus preventing him from communicating with his daughter. On the day of the first incident, the convict had approached the virtual complainant at Orion Mall and queried from him about why he (virtual complainant) insulted him and prevented him from communicating with his daughter. The complainant had insulted him and the convict had lost control and grabbed the virtual complainant by the neck and punched him in the face. The second incident occurred again at Orion Mall where again he was provoked by the virtual complainant and in retaliation, he punched the virtual complainant in the face. The complainant had run away but his necklace had broken and the convict had given the broken necklace to the police when he was arrested. The convict has informed the probation services that he would like to ask for forgiveness for his actions, thereby expressing remorse.
- [4] The convict's mother stated the convict has been in trouble in the past, but ever since he moved back to North East Point in the past few years, she had noticed lot of improvement in his behaviour. She confirmed the fact that the convict has a nine-year-old daughter from a previous relationship to whom he has a very strong attachment. She further stated she had a very good relationship with her son but he does not talk to her about his difficulties as he is a very reserved person.
- [5] The probation services further report that the victim in the case, did not provide his version of how the incident impacted on his life. The probation services recommend that a sentence be imposed on the convict as per the merits of the case and that the victim be compensated.
- [6] In mitigation learned Counsel Mr Clifford Andre stated that the convict did not waste the time of Court but pleaded guilty, the moment negotiations with the Attorney General were complete. The probation services report states the convict expresses remorse at what he had done. Learned Counsel explained that the virtual complainant was preventing him from talking to his daughter because the virtual complainant was then in a relationship

with the mother of his daughter. The altercation had started when the virtual complainant reacted in an aggressive manner to the convict. He stated that the virtual complainant had not attended the probation office even though he was requested by telephone and radio to do so. He stated that this is an indication that he is disrespecting the institution even though the convict had made himself available the moment he was requested to do so. He moved that the Court be lenient in imposing a sentence and moved that the sentence be a non-custodial one. He further moved that no compensation be given to the virtual complainant due to his failure to attend when requested to do so by the probation services.

[7] I have considered the facts set out in the probation services report that the convict in this case is a 36-year-old Stevedore from North East Point. He has pleaded guilty of unlawful assault, and he is a first offender. He admits that he was aggravated into committing the two offences because of a sudden rush of anger and an act of provocation as the virtual complainant had prevented him from communicating with his daughter. I have considered the fact that he is a first offender presently gainfully employed and it is reported that he has been of good conduct in the recent past. It is apparent that the victim is not keen on receiving any compensation or redress as he has failed to report to the probation services when requested to do so. It further appears that the conduct of the victim who is presently living with the mother of the convict's daughter, in preventing the convict from communicating with his daughter and insulting him, has provoked this incident. Giving due regard to all these facts, I proceed to sentence the convict Randy Estrale as follows:

Count 1

A fine of SCR 5000.00 (five thousand). In default of payment of fine 6 months' imprisonment.

Count 2

A fine of SCR 5000.00 (five thousand). In default of payment of fine 6 months' imprisonment.

[8] Right of appeal against sentence explained

Signed, dated and delivered at Ile du Port on 25 July 2024

M Burhan J