

IN THE SEYCHELLES COURT OF APPEAL

Fred Sanguignon

Jean Claude Banane

Pascal Tirant

v.

The Republic

Criminal Appeals Nos. 5, 6 and 12

of 1984

JUDGMENT OF THE COURT

The three appellants, Fred Sanguignon, Jean Claude Banane and Pascal Tirant (hereafter called A1, A2 and A3 respectively) were each charged with the offence of rape contrary to Section 131 of the Penal Code. Each of them was convicted as charged and each was sentenced to 8 years imprisonment. They were also jointly charged with assault occasioning bodily harm contrary to Section 236, with unlawful use of vehicle contrary to Section 279 and with theft contrary to Section 260 of the Penal Code. They were convicted of these offences and sentenced respectively to 6 months, 3 months and 3 months. These terms were consecutive, but were to run concurrently with the term of 8 years imprisonment for rape.

The appellants are only appealing against the sentence of 8 years imprisonment imposed on the rape count.

Very briefly the facts were as follows: the complainant, an expatriate female school teacher employed by the National Youth Service was driving home to Les Mamelles from the Reef Hotel at about 10.00 p.m. on the night of November 14, 1983, when she gave a lift to the three appellants at Anse Aux Fins. She proceeded on her way and when she reached Petit Paris, the appellants asked her to stop as they wanted to get off. When she stopped, the appellants got out, but instead of going away, they opened the door of the car. One of them produced a knife and the complainant was forced into the rear seat sandwiched

between A3 and A1. A2 turned the car round and drove back in the direction of the Reef Hotel. They drove up the Montagne Douée road and there the complainant was taken out of the car and was raped by all the three appellants. After the rape, at some stage the complainant unsuccessfully tried to escape and was beaten up in consequence. Eventually she managed to escape. She was examined medically and it was subsequently discovered that she had been impregnated as a result of the sexual assault, and later her pregnancy was medically terminated.

Before us Mr. Georges appeared for A1 and A2, and Mr. Boullé appeared for A3. All the appellants were young, A1 was aged 29, A2 aged 22 and A3 aged 20.

Mr. Georges submitted that the sentence of 8 years for rape imposed on A1 and A2 was manifestly excessive. He very fairly admitted that there were aggravating factors, but contended that the trial judge had failed to take sufficient account of the mitigating circumstances. He claimed that the complainant was careless in giving a lift at that time of night to three young men. He suggested that that act could have misled them into believing that the complainant would be co-operative in a sexual act. He submitted that the physical assault on the complainant did not result in serious injuries. He also submitted that A3 would seem to have played the leading role, although he was the youngest member. It was A3 who was throttling the complainant during the journey in the car to prevent her struggling. It was A3 who said he wanted to have intercourse with a white woman. It was he who took the bracelets from the complainant. He submitted that both A1 and A2 have no previous convictions and they had only wanted a lift and the act of rape arose suddenly; it was not premeditated. In any event A3 was the leader and the punishment inflicted should have re-

trial judge had not taken that aspect into consideration. He also contended that the judge was wrong in saying in effect that a rape offence would have attracted a 10 year prison sentence; he submitted that the more usual sentence would have been 5 years imprisonment.

Mr. Boullé adopted Mr. Georges's arguments and submissions, except that A3 had played the leading role. He particularly referred to the following statement by the trial judge:

"Normally the sentence in the normal circumstances would be a term of 10 years."

Mr. Boullé contended that the trial judge had misdirected himself. We agree that the expression used by the judge was unfortunate. However, we believe that what the judge meant was that he would have imposed a sentence of 10 years imprisonment in this case, but that he had passed a lighter sentence in view of the mitigating circumstances urged by counsel. Mr. Boullé referred to sentences of imprisonment imposed in Seychelles in other rape cases, and apart from one case in which the sentence was 10 years, the other cases attracted sentences from 3 to 5 years.

We have carefully considered the circumstances in this case. This was a multiple rape. The complainant was beaten up and attacked both before and after the rape. Three young men simultaneously threatened her and she was really in fear of her life. She in fact had a visible constricted mark on her throat caused by the attempt to throttle her. This was a premeditated act as from the moment the complainant stopped the car at Petit Paris to let the appellants off. From that moment the complainant was forcibly abducted for the purpose of sexual assault. A knife was used to intimidate her. She was impregnated as a result of the multiple rape which necessitated an abortion performed by a doctor. That

must have been a deeply traumatic experience. She was doing a good turn by offering a lift to the appellants, and in return she was raped. She had been in this country for several years and she had been giving lifts to people without any mishap before.

Learned Counsel for the appellants and the Republic have asked us to lay down guidelines in the sentencing of persons convicted of rape, something in the nature of a uniform sentencing policy showing the range of sentences to be imposed for the serious and less serious rapes.

In our view there is at present insufficient material in Seychelles for such an exercise. Fortunately there do not appear to be many cases of this nature in the country and it is therefore difficult if not impossible to extract some semblance of a general consensus from the sentences imposed in such cases.

However in this case, there were serious aggravating factors which we have already set out. We agree that the sentence is severe. But it is by no means so severe as to call for interference. Each case has to be decided on its own facts and in our view the trial judge had not misdirected himself in any way.

We are also unable to differentiate between the respective roles played by A1 and A2 on the one hand and A3 on the other. Even if A3 had played a more major role, that would have been balanced against his age, which was a consideration taken into account by the judge.

We dismiss the appeals of all the 3 appellants.

A. Mustafa
..... (A. Mustafa)
President of Appeal

Eric Law
..... (Eric Law)
Justice of Appeal

A. Sauzier
..... (A. Sauzier)