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IN THE SEYCHELLES COURT OF APPEAL

RICHARD FREMINOT **APPELLANT**

Versus

THE REPUBLIC **RESPONDENT**

(Before, H. Goburdhun (P), A. Silungwe (JA) & L. Venchard (JA)

Criminal Appeal No. 6 of 1997

Mr F Bonte for the Appellant
Miss L Pool for the Respondent

JUDGMENT

The appellant was convicted of the offence of Indecent Assault in breach of section 135(1) of the Penal Code. He was sentenced to a term of imprisonment of 3½ years.

This appeal is against sentence only. The grounds of appeal are as follows:

(1) The Appellant being a first offender, the sentencer should have pronounced sentence after having obtained a probation report (social enquiry report). The learned trial judge erred in failing to obtain such a report. In so doing he was therefore no fully appraised of the hardship or otherwise that would be caused to the Appellant's family.

(2) The learned trial judge erred in principle as the sentence of three and a half years was harsh and excessive in the circumstances of this case, because the learned trial judge failed to give proper, or any consideration to the mitigating circumstances, which circumstances, if properly considered should have reduced the sentence considerably.

Mr Bonte submitted that there has been an error in law as the trial judge had failed to call for a probation officer's report. He argued that as the appellant was a first offender it was mandatory and not merely discretionary for the trial judge to obtain such a report before passing sentence.

The Probation of Offenders Act (Cap 184) is not applicable in the present case as the issue raised by counsel does not relate to a probation order. On the other hand, the calling for a social welfare report lies in the discretion of the trial judge and is not mandatory.

It is clear that if the trial judge had already made up his mind to pass a custodial sentence on an offender the need to call for a probation report cannot possibly arise. It is only when he is of opinion that it is expedient to make a probation order that the probation report should be sought.

The facts giving rise to the conviction of the appellant as outlined by Miss Pool were as follows:

> "The complainant is 24 years old. Their house is close to one another. They both live at Pointe Larue. On the 17th June 1996, at around 7.30 am, the complainant was alone in the house, she was in the bathroom, having a bath and while she was having her bath, she was listening to music from a radio cassette in the sitting room. The accused slipped in the complainant's house, got into the sitting room and switched off the radio. When the complainant noticed that the radio had stopped, she came out of the bathroom, wrapped in a towel. At this point the accused grabbed hold of her and pushed her into a spare bedroom and indecently assaulted her. She tried to free herself from the accused, the accused was stronger than her and overpowered her.
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> He pushed her on the bed and touched her private parts. As a result of this attack, the complainant

received bruises on her elbow and on both her arms and she also received a small abrasion on her private parts and she was taken to see a Gynecologist later that day. Briefly, those are the facts. "

It will be observed from the above facts that the offence had been committed after the appellant had slipped into the complainant's house. The safety of a woman in her own house had thus been imperilled and the sanctity of her home breached.

The legislature has, in 1996, obviously because of the prevalence of sexual offences, increased the maximum penalty for such offences from 14 to 20 years.

In the case of Boniface v The Republic, an appeal heard during the current session, this court, as presently constituted, reduced a sentence for a similar offence from 12 to 8 years imprisonment.

In our present case, besides the seriousness of the offence there was the aggravating circumstance of the violation of the complainant's home for the purpose of committing the offence. We find that the trial judge showed undue leniency towards the appellant.

Taking into account all relevant factors as well as the appellant's plea of guilty which we are prepared to accept as an implied expression of remorse, we feel that an appropriate sentence should have been a term of imprisonment for 6 years. We amend the sentence accordingly.

H Goburdhun	A. Silungwe	L. Venchard
President	**Justice of Appeal**	**Justice of Appeal**

Dated this 14th day of August, 1997

Handed down

AD Am JA