

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) , A.Fernando (J.A) , J. Msoffe (J.A) **]**

Criminal Appeal SCA 16/2013
(Appeal from Supreme Court Decision 58/2008)

Francis Crispin

Appellant

Versus

The Republic

Respondent

Heard: 17 August 2015

Counsel: Mr. Nichol Gabriel for the Appellant

Mr. David Esparon for the Republic

Delivered: 28 August 2015

JUDGMENT

F. MacGregor (PCA)

[1] The appellant was charged at the Supreme Court and convicted with two counts of Sexual Assault, contrary to section 130 (2) of the Penal Code and punishable under section 130 (1) of the same Act. He was sentenced to serve 8 years for each count, both terms running concurrently.

[2] The particulars of the offences were that sometimes in 2008, on various days and occasions, at Grand Anse Praslin, he sexually assaulted two sisters who were both under the age of 15 years, by performing indecent assaults with the two girls.

[3] The complainants, in their evidence, told the Court that the assaults had happened

on several occasions, at different locations, in different circumstances to each one of them, and at least on one occasion, both were present when the appellant assaulted them. They further informed the Court that on each occasion of the sexual assault, the appellant threatened them with violence if they disclosed his actions. He further gave them money, ranging from R 10-R50, which, being children they happily shared or bought themselves small gifts to share with their friends.

[4] On conviction, the appellant was sentenced to serve a custodial jail term of 8 years for each of the two counts, both sentences running concurrently. However, the appellant had earlier been convicted and sentenced to 8 years jail term in another sexual assault charge involving an underage girl, who is a relative of the victims in this case, (SC Cr. 57/2008). The Court therefore ordered that his sentence in this case will commence after completing his term in the earlier case.

[5] This is an appeal against the sentence meted on the appellant.

The grounds of appeal are;

Ground 1; The sentence of eight years imposed by the learned judge on the appellant was manifestly harsh and excessive and did not follow the sentencing pattern for cases of a similar nature.

Ground 2; The learned Trial Judge erred in directing that the sentence of eight years be made to run consecutively with a previous sentence imposed during the course of a separate trial.

[6] **Determination.**

Section 130 (1) of the Penal Code provides that –

A person who sexually assaults another person is guilty of an offence and liable to imprisonment for 20 years:

*Provided that where the victim of such assault is **under the age of 15 years** and the accused is **of or above the age of 18 years** and such assault falls under subsection (2)(c) or (d), the person shall be liable **to imprisonment for a term not less than 14 years and not more than 20 years:***

- [7] The Appellant is already serving an 8 year sentence in the case reference, SC Cr. 57 of 2008. He was charged with the current charges while in custody awaiting the determination of Cr. 57/2008 supra. He therefore committed the offences in consideration herein before he was charged with the previous case.
- [8] In sentencing the appellant, the trial judge after considering the background facts of the case invoked a deterrent punishment.
- [9] The guiding principles in sentencing are summed up in four words: retribution, deterrence, prevention and rehabilitation. At the age of 47 years, the appellant is in a parental position to the children he assaulted, they would trust him as a fatherly figure to guide and protect them. He on the other hand, has formed a sinister bestiality to sexually abuse them. He goes on to perform his criminal rituals on one child in the presence of the other. He completely lacks the conscience to feel embarrassed when he undresses in front of such young children. He ignores the mental and physical pain and damage he causes his victims. The society abhors such actions. The Court must add an element of retribution in punishment of this crime to express the pain and disgust of the society when it convicts an accused with such crime.
- [10] The Court is conscious of the particular and lasting trauma the victims have

suffered and will continue to suffer. One must bear in mind that these two girls will have to live with the stigma of being the victims of sexual abuse for the rest of their lives. Especially in the small community like Praslin with its population of around 6,500 people, where everybody knows everybody, these girls will be always seen as the victims of sexual assault. As a result some people may treat them with pity, the others with disrespect, but, either way they will always be reminded of what has happened to them. The Appellant's hideous actions scarred the victims for life, some of these scars can be physical, but emotional scarring has long lasting consequences which impacts the individuals, their family and the community.

[11] The society abhors such actions. The Court must add an element of retribution in punishment of this crime to express the pain and disgust of the society when it convicts an accused with such crime.

[12] To deter offenders and likely offenders, the court must also mete a severe punishment to the offenders. This is considering that given an opportunity, there is nothing to show that the offender would not repeat his earlier actions. A severe sentence also ensures that the offender is kept away from the victims and likely victims, to prevent him from repeating his heinous actions.

[13] In the case of **Godfrey Mathiot v The Republic**, Cr. Appeal No 9/1993, Adam JA, delivering a unanimous judgment held that –

...the proper approach for an appellate court in sentence appeals is only to intervene where (a) the sentence was wrong in principle; (b) the sentence was either harsh, oppressive or manifestly excessive; (c) the sentence was so far outside the normal discretionary limits; (d) some matter has been improperly taken into consideration or

*failed to take into consideration something which should have been;
(e) the sentence was not justified in law.*

- [14] Considering the minimum sentences prescribed by the law, and considering the circumstances of this case, the trial Court does not seem to have deviated from the proper principles of sentencing. It has not been shown to us that the trial court erred in principle on the sentence that was imposed upon the appellant.
- [15] Applying the facts in this case to the classical principles of sentencing, nothing has been shown to us to convince this Court that the sentence given was *harsh, oppressive or manifestly excessive; or was so far outside the normal discretionary limits that there would be good reason to interfere.*
- [16] For the victims of the appellant and for the larger society, there is reason to uphold a deterrent and preventive punishment against the appellant. Ground one of the appeal is therefore dismissed and the sentence of 8 years for count one and eight years for count two are upheld.
- [16] The trial Judge ordered that the sentences in this case herein shall run consecutively with a previous sentence imposed in a separate matter, being Sc Cr. 57/2008, Republic v Francis Crispin.
- [17] The appellant argues that Judge erred in such an order. He has cited section 9(1) of the Criminal Procedure Code to support his position. We hold that section 9(1) of the Criminal Procedure Code refers to sentencing in a trial where the counts in the charge sheet are more than one. Be that as it may, section 9 (1) gives the trial Judge the discretion to order for concurrent as well as consecutive sentences.
- [18] The correct provision for the current situation would be read from Section 36 of

the Penal Code of Seychelles, which holds that –

“Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or of any part thereof..”

[19] The Trial judge was therefore within his powers when he ordered that the sentence shall run consecutive with sentence in a previous conviction.

[20] The trial Judge had an opportunity to see the appellant in Court, hear the witnesses and the complainants. He had an opportunity to consider that the victims were young children, to whom the appellant was in a position of trust, which he shamefully betrayed. The judge considered quite justifiably that he had gone a considerable way to rob them of their childhood.

[21] We have not been shown any compelling reasons to tamper with the direction of the trial judge and ground two of appeal also fails.

[22] The appeal is dismissed

F. MacGregor (PCA)

I concur:. A.Fernando (J.A)

I concur:. J. Msoffe (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 28 August 2015

