

SUPREME COURT OF SEYCHELLES

Reportable

CO95/2023

In the matter between

THE REPUBLIC
(rep. by *Sophie Vel*)

Republic

and

ROBERTSON JAMES
(rep. by *Karine Dick*)

Convict

Neutral Citation: *Republic v R James* (CO95/2023) (25 April 2025)

Before: Burhan J

Summary: Act intended to do grievous harm under section 219 (a) of the Penal Code (Cap158)

Heard: 24 March 2025

Delivered: 25 April 2025

ORDER

The convict Robertson James is sentenced on Count 1 as follows:

A term of one year imprisonment which is suspended for a period of three years and a fine of SCR 25000/- (twenty five thousand) in default of payment of fine one year imprisonment.

SENTENCE

BURHAN J

- [1] The convict Robertson James was convicted on his own plea of guilt in respect of the charge which reads as follows:

Count 1

“Act intended to do grievous harm contrary to and punishable under Section 219 (a) of the Penal Code (Cap 158.)

Particulars of offence - Robertson James 58 years old unemployed of Glacis, Mahe on the 11th of December 2023, whilst armed with a spade, at L'ilot, Glacis Mahe with intention to cause grievous bodily harm unlawfully wounded one Claude Marie with the spade, thereby causing grievous harm in the form of laceration (8x2cm) and Abrasion (4cm) to the head, central laceration (6cm) on the Left ear, fracture of second and third metacarpal bones, abrasion and contusion (4cm) on Left hand, right frontal incisors missing, abrasion (5cm) on left forearm, abrasion (5cm) on right forearm, abrasion (4cm) on the right elbow, abrasion (3cm) on the left side of the chest, abrasions and contusions measuring 8cm and 6cm on the abdomen to the said Claude Marie”.

- [2] In mitigation, learned Counsel for the convict Ms Dick stated that her client is 59 years of age. The convict pleaded guilty to the said charge. He has no children and is a first time offender. He has expressed remorse at the incident that occurred on the 11 December 2023. The convict is employed in the Beau Vallon School as a gardener and general helper and is in receipt of a monthly salary of SCR 7000/-. She further submitted that the victim in this case is a good friend of the convict, even at the present time and despite him receiving injuries at the hands of the convict, he has expressed his intention to forgive the convict. They both still remain the best of friends.
- [3] Learned Counsel submitted that even in his evidence the victim had stated so and admitted that they still socialise and enjoy a few drinks together. On the day of the incident, both the convict and the victim were under the influence of alcohol. The evidence before court reveals that the convict had a partner namely Josette Antoine. Learned Counsel submitted that it is apparent from the evidence of Josette that the complainant (victim) who was also under the influence of alcohol had got on top of the partner of the convict who was sleeping in the bedroom and attempted to sexually assault her. Learned Counsel submitted that that

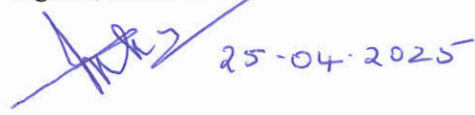
the convict had impulsively and out of anger hit the victim with the spade. It was submitted that at the time he did so, he was deeply concerned with the safety and well-being of his partner, Josette Antoine.

- [4] Learned Counsel further submitted that the convict stands remorseful at the injuries he has caused to his friend and has pleaded guilty to the charge. Learned Counsel submitted that the convict seeks forgiveness as he did not realize the extent of the injuries he has caused his friend, until the following day. Learned Counsel moved for leniency and as the offence is not an excepted offence under Schedule 7 of the Criminal Procedure Code, moved that this Court impose a suspended sentence and an order for compensation to be paid to the victim.
- [5] Prior to the plea of mitigation this Court at the request of learned Counsel Ms Dick called for a probation report. It reports that the convict is 60 years of age and resides with his friend and cohabits with Josette Antoine. The convict has educated himself up to Primary nine but had not joined the National Youth Service (NYS) thereafter but sought employment. He has done numerous jobs over the years ranging from pool boy, maintenance officer, storekeeper and steward. He has last worked as a gardener and general helper. The probation recommends a suspended sentence together with compensation for the victim.
- [6] I observe that the convict pleaded guilty after the evidence of the complainant (victim) had been concluded and the evidence of Josette Antoine had been led by the prosecution. During the course of the evidence, it was revealed that the victim and the convict were good friends and even after this incident remain so. The complainant went to the extent of stating in his evidence that he did not wish that the convict be sent to jail by Court even though the evidence indicates he had sustained serious injuries. During the course of the hearing of the prosecution evidence, it was revealed that on the said day, both the convict and the complainant were having drinks together. The evidence of prosecution witness, Josette indicates that when she went to the room to rest, the complainant (victim) had come into her room and began "jumping" on her. Thereafter, the incident of assault occurred. I

observe that even in her prompt statement to the police she has mentioned same. Therefore, this Court is satisfied that this witness has not subsequently made this up to defend her partner, the convict, nor could she be treated as an adverse witness as her evidence is in line with her statement made soon after the incident.

- [7] The probation report recommends a suspended sentence, a fine and compensation. Considering the facts very peculiar to this case, I am inclined not to award any compensation to the complainant/victim. I am also not inclined to impose a custodial term of imprisonment on the convict considering the provocation leading to the incident was grave and hence strong mitigation circumstances exist. In *Republic v Betty-May Michel & Ors [2021] SCSC 140*, *Republic v Justin Leon [2023] SCSC 177 (23 January 2023)* and *R v Harry Fabien CO 41/22 (24 July 2024)* it was held that, though provocation is not a defence in charges of this nature, it could be considered as a ground in mitigation at the time sentence is imposed. I further observe that both the convict and the victim are once again indulging in their social get-togethers oblivious and unmindful as to what happened earlier. In order to prevent recurrence of this type of incident, I proceed to impose, as recommended by the probation, a suspended term of imprisonment together with a heavy fine to prevent any recurrence of such incidents.
- [8] The convict Robertson James is sentenced on Count 1 as follows:
A term of one year' imprisonment which is suspended for a period of three years and a fine of SCR 25000/- (twenty five thousand) in default of payment of fine one year imprisonment.
- [9] The convict should pay the fine in monthly instalments of SCR 2500/- (two thousand five hundred). Nature of suspended term of imprisonment and right of appeal explained to the convict.

Signed, dated and delivered at Ile du Port on 25 April 2025



M Burhan J