

IN THE SUPREME COURT OF SEYCHELLES

Not Reportable

[2025]

CR79/2020

In the matter between

THE REPUBLIC

(rep. by Ria Alcindor)

Prosecution

and

D.A

(rep. by Daniel Cesar)

Accused

Neutral Citation *The Republic v D.A* (CR79/2020) [2025] delivered on 28th April 2025

Before: Vidot, J

Summary Sexual Assault contrary to section 130(1) read with section 130(2)(2) of the Penal Code and punishable under section 130(1) the Penal Code.

Heard:

Delivered: 28 April 2025

SENTENCE

VIDOT J

- [1] The Accused is charged with and pleaded guilty to one count of sexual assault contrary to section 130(1) and read with section 130(2) and punishable under section 130(1) of the Penal Code.
- [2] The particulars of the offence are that D.A of Grand Anse, on the 09 September 2018, sexually assaulted A.J, aged then 14 years old, by penetrating her body orifice for a sexual pleasure, namely by inserting his penis in the vagina of A.J.
- [3] The Accused was accordingly convicted.

- [4] In his submission in mitigation, Counsel for the Accused begged for leniency on behalf of the Accused. Counsel pleaded to Court not to impose a custodial sentence on the Accused, but should the Court find it necessary to impose a custodial sentence that the Court follows recommendations of the Probation Services as presented in the Probation Pre-Sentence Report ("the Report"). He submitted that the Accused pleaded guilty at the first opportunity and that in doing so, the Accused has shown remorse and acknowledgement of wrong doing and error of judgment. Counsel adds that the guilty plea has saved the Court's precious time and the cost of holding a trial.
- [5] The Report refers to the Accused upbringing. His parents separated when he was still a young child whereby he remained in the custody of his mother at Les Mamelles. He was at the time of commission of the offence leaving with his father at Grand Anse. He had moved to his father's home when he was in post-secondary education. He wanted to avoid the negative social influence of Les Mamelles. It is common knowledge that les Mamelles is infested with drug users and pushers. He found that Grand Anse offered him a more conducive living environment. The Accused had mentioned to the Probation Services that he believed that A.J was more mature than her real age. At the time of the incident he did not know her age. He also stated that when he proposed to A.J to have sex with him, she had consented and there was no force exerted on A.J at the time of the sexual act. He states that since this incident he has changed his life style. He is now more family oriented.
- [6] I have herein mentioned what I consider the most salient point of the Report but for the purpose of this Sentence I have considered the Report in its entirety and have given due consideration to the recommendations of the Probation Services.
- [7] However, I need also to take into account that as per the Report, A.J noted that she did not consent to the sexual act. She in fact states that the Accused forced himself on her and forcefully had sex with her. As a result following the incident she was depressed and had suicidal thoughts. However, she also mentioned that following the incident the Accused tried to approach her to ask for forgiveness, but she did not want to talk to him. This is an indication that the Accused was remorseful of having committed the offence.

- [8] In meting out sentence, I have considered the Report and submission in mitigation fully. I find that offence of sexual assault should always be considered serious especially when committed against minors. However, the absence of violence or coercion are factors that could indeed be mitigating considerations that would affect a sentence positively. Further, in the event that there is no disparity in age courts will be less willing to impose harsh sentences; see; **R v G [2008] ULHL 37**. These situations recognise that children, particularly during their teenage years engage in sex and most times without full appreciation of the consequences of such act. In this case the Accused was 18 years old and A.J 14 years old at the time of the assault.
- [9] Counsel for the Accused referred to the case of **Republic v T.D.A [2023] SCSC 249 CR39/2022** and pleaded that this Court imposes a similar sentence in this case. The latter case was decided by this Court. In the present case the Accused and A.J were respectively of similar age as to T.D.A and the victim in that case. That is where the similarity ends. Otherwise the two cases can be differentiated. In **Republic v T.D.A**, the Accused and the victim were living in the same household and at times sharing the same bedroom. In the present case, the Accused had let himself into another person's house uninvited in the night. At that time the complainant was sleeping when the Accused forced himself on her. In **Republic v T.D.A** there was no evidence of violence being used. The fact that force was used makes the offence more serious.
- [10] Counsel for the Accused also referred to **Republic v YB [2023] SCSC 387 CO109 2021** (delivered on 23rd May 2023), wherein quite lenient sentences were imposed. However, in that case, the Probation Service, through the pre-sentence report had recommended the imposition of minimal term of imprisonment. The Probation Services has not made similar recommendations in this case. In that case also there was no element of violence and coercion and the accused and the complainant were in a relationship. Furthermore, contrary to the present case the victim was not traumatised by the assault. In the present case, the complainant said that she entertained suicidal thoughts. In **Republic v T.D.A (supra)**, the victim was traumatised by the assault. In **Republic v YB**, the accused received a term of 18 months imprisonment for acts that involved penile penetrative sex.

[11] I take into consideration that the Accused is a first time offender who has pleaded guilty and therefore has saved the Court's precious time. Therefore the sentence imposed will not be as harsh compared to sentences that would have been imposed had the case proceeded to full trial. I take particular note that at the time of the incident he was just moving into adulthood, though this is not at all an excuse for the offence committed. I believe it is important that young men are taught that they have to respect women and girls. Unfortunately, in our society the breakdown in social and familial fabric is so pervasive, that young men are not accorded commendable guidance as to appropriate behaviour. They cannot just impose their will on others. From the Report it is apparent that the Accused did not have a wholesome upbringing. Finally, I take special note that the case was filed in 2020 and encountered various delays for whatever reasons and it is now that it is resolved.

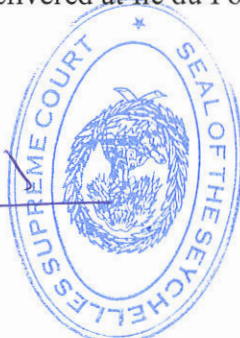
[12] In the circumstances, I sentenced the Accused to a term of 4 years imprisonment.

[13] Time spent on remand shall be discounted against sentence.

[14] If unsatisfied with this sentence, the Accused has 30 working days from today to file an appeal to the Court of Appeal.

Signed, dated and delivered at Ile du Port on 28th April 2025


Vidot J

The seal of the Supreme Court of the Seychelles is a circular emblem. It features a central shield with a bird, possibly a frigatebird, perched on a branch. The shield is surrounded by a wreath. The words "SUPREME COURT" are inscribed in a circle around the top, and "SEAL OF THE SEYCHELLES" around the bottom. A small star is positioned at the top center of the circle.