IN THE SEYCHELLES COURT OF APPEAL

1. Danny Labiche
2. Patrick Florentine — APPELLANTS

v/s

The Republic — RESPONDENT

Cr. App. Nos. 3 & 4 of 1988.

JUDGMENT:

The appellants were both members of the Police Mobile Unit. At 11.00 a.m. on Friday 29th January, 1988 armed with a pistol and two stones they waylaid a pick-up driven by Robert Payet on the Canelles Road. One of them threw a stone at the pick-up shattering the windshield and a shot was fired which fortunately caused Payet no more serious injury than a flesh wound in the neck. This attack brought the pick up to a halt and stunned the driver. When he recovered, a bag containing R187,897.95, which he was taking to the Seychelles Construction Company to meet the pay list, had been stolen.

The appellants were convicted of robbery with aggravation under section 281 of the Penal Code and each was sentenced to 10 years imprisonment. They do not challenge their convictions but appeal against the sentences on the ground that they are manifestly harsh and excessive.

In developing his submissions Mr Juliette for the appellants stated that the maximum imprisonment which could have been imposed for the offence charged was 14 years imprisonment. On that basis he urged that having regard to the mitigating factors, a sentence which exceeded two-thirds of the maximum was manifestly excessive. Mr ~~Lucas~~ Derjacques for the Republic, however, pointed out, correctly, that the maximum for robbery with aggravation was life imprisonment as set out in the Third Schedule to the Criminal Procedure Code Chapter 45. The severity of the prescribed sentence emphasises the seriousness with which the law regards that offence and places the sentence of 10 years in a completely different perspective.

Mr Juliette contended that the trial judge had not taken the mitigating factors into consideration. His submission was that the element of deterrence, of making an example of the appellants as police officers, had resulted in manifest harshness and severity.

The remarks made by the trial judge indicate otherwise. He stated:-

> "By whoever (sic) it is committed, a robbery is a serious offence. When it is committed by policemen turned rogues, it is even more serious because it undermines public confidence in those whom the citizens regard as protectors of their lives and their property. I take into account the pleas in mitigation so eloquently made on their behalf by defence counsel and I give consideration in mitigation to their youth, their previous good character and the remorse they have shown, which resulted in the recovery of the dangerous weapon they used and the workers' wages."

The trial judge was clearly concerned with the seriousness of the offence. The undermining of public confidence when the offenders were policemen aggravated the seriousness. There is no mention of deterrence, nor is there any reference to imposing exemplary punishment because the appellants were policemen. We are satisfied that the approach taken by the trial judge is not open to criticism.

The issue remains whether the sentence at which he arrived is nonetheless excessive. Two cases decided in these courts require consideration.

In Barry Agathine and others v/s The Republic, Criminal Appeals 1 and 3 of 1986 the appellants pleaded guilty to robbery with aggravation. It was, like this case, a daylight robbery of an employee of a company known to be carrying a substantial sum of money. They threatened the employee with knives and stole R145,738.45. The trial judge imposed sentences of 12 years, 9 years and 9 years on the three appellants who had participated in the hold up. They were aged 25 years, 21 years and 19 years respectively. These sentences were on appeal reduced to sentences of 6 years, 5 years and 5 years respectively.

In that case the appellants had pleaded guilty, a factor which always conduces to a significant reduction in punishment. There was no firearm involved nor was there any injury to anyone. The appellants were not policemen which would have been an aggravating factor. Mr Juliette did urge that the injury in this case was not serious but this was mere chance rather than design. The appellants showed a determination to use the pistol. Taking these factors into consideration the distinguishing features in the cases are such that the sentences under consideration cannot be said to be excessive.

The other case is Archange Roseline and others v/s The Republic, Criminal Appeal No. 5, 6 and 7 of 1987. The complainant, an elderly lady, was in her kitchen about 7 p.m. when a masked man entered, clamped a hand to her mouth and ordered her not to cry or he would kill her with a dagger. He dragged her to a bathroom where he was joined by two other men also masked.

All three were in army uniform. They tied her and gagged her and then set off to search the house. They carried away a safe with jewels said to be valued at R490,000.00 which were never recovered. Five men were originally charged of whom three were convicted of robbery with aggravation and sentenced to terms of 6 years, 5 years and 6 years respectively. The trial judge's remarks on sentence, if any, do not appear in the copy of his judgment submitted to us. The Court of Appeal confirmed the sentences, which do not appear to have been challenged, without any comments. While no gun was used and there was no injury to anyone the fact that none of the stolen property was recovered and that the first appellant was a captain in the army do indicate that the sentences may not have adequately marked the seriousness of the offence.

Mr Derjacques developed the concept of a common law of punishment citing authorities mainly from England and urging in effect that we apply here guidance given by the Court of Appeal as to terms of imprisonment in robbery. He placed much reliance on Turner 61 Cr. App. R. 67 in which Lawton L.J. stated at page 9:-

> "We have come to the conclusion that the normal sentence for anyone taking part in a bank robbery or in a hold up of a security van or Post Office Van shall be 15 years if firearms were carried and no serious injury done."

While enlightenment can always be sought from text book writers and cases decided in other jurisdictions on the general principles underlying the imposition of punishment and the purposes it should serve, the issue of the length of the term to be imposed in any particular case must remain a matter of local judgment. Knowledge of local conditions and local reactions is important and a decision based on this should not be disturbed unless it can clearly be shown to be wrong in principle or manifestly excessive.

Accordingly we see no reason to interfere with the sentences imposed by the trial judge. The appeals are dismissed and the sentences confirmed.

..... H. Goburdhun (JUSTICE OF APPEAL)

..... P. T. Georges (JUSTICE OF APPEAL)

..... V. Floissac (JUSTICE OF APPEAL)

Dated this 21st day of October, 1988.