IN THE SEYCHELLES COURT OF APPEAL

PAUL BIBI APPELLANT

V.

THE REPUBLIC RESPONDENT

SUPREME COURT LIBRARY SEYCHELLES

Cr.Ap. No. 2 of 1994

Mr. S. Fernando for the Republic

JUDGMENT OF THE COURT

The appellant was convicted by the Senior Magistrate of the offences of (1) breaking and entering a dwelling house of one Shanmoogum Moothoosamy, on the night of 30th June 1991, to commit a felony therein contrary to sec. 289(1) of the Penal Code and (2) stealing certain items of jewelry from the same house on the same night contrary to section 260 and punishable under section 264(1) of the Penal Code. He was sentenced to two years imprisonment on the first offence and one year on the second. The sentences were to run concurrently. He appealed to the Supreme Court against his sentence on the ground that the sentence was manifestly excessive.

The learned Judge who heard the appeal found that the sentence of the Senior Magistrate erred on the side of leniency and he enhanced the sentence of two years imprisonment on the first charge to three years and the sentence of one year on the second charge to two years. The learned judge further ordered the two sentences to run consecutivetly.

The appellant who is not assisted by counsel has now appealed against the decision of the learned appellate judge.

Mr. Fernando Counsel for the Republic submitted to us that an appeal does not lie to this Court against severity of sentence and as both the sentence and order of the learned judge were in accordance to law, there can be an appeal only in law.

We agree that a second appeal is limited to matters of law.

As there is no memorandum of appeal, appellant being inops consilii, we have closely examined the record and we find that both charges arose out of a single transaction. That being the case and since no exceptional circumstances have been disclosed, the learned judge should not have substituted consecutive sentences for concurrent sentences passed by the Senior Magistrate. The learned judge has also found fault with the Senior Magistrate for not taking into account that a large part of the stolen articles was not recovered. In our view recovery of stolen goods has little bearing on sentence and the learned judge has given undue importance to it to enhance the sentence. On consideration of all the circumstances of the case we, with respect, find the sentence passed by the learned judge harsh and excessive. We accordingly set aside the sentence of the learned judge and restore the sentence passed by the Senior Magistrate, i.e. 2 years imprisonment on the first charge and 1 year on the second. The sentences to be concurrent.

.....H. Goburdhun, P.

..... A. Silungwe, J.A.

..... E. O. Ayoola, J.A.

Delivered on 18/8/94...