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IN THE SEYCHELLES COURT OF APPEAL

CRIMINAL APPEAL NO. 2 OF 1995

DANIEL DOGLEY

APPELLANT

V

THE REPUBLIC

RESPONDENT

Before: Goburdhun P., Ayoola & Adam JJA

Mr. J. Renaud for the Appellant

Mr. S. Fernando for the Respondent

REASONS OF THE COURT DELIVERED BY ADAM JA

The Appellant was convicted on the first count of assault causing actual bodily harm and on the second count of robbery with violence. He was sentenced by Alleeear CJ on February 3rd 1995 on the first count to 1 year imprisonment and on the second count to 5 years imprisonment and he ordered that both sentences run concurrently.

He filed his Notice of Appeal on February 9th 1995 against sentence. His Memorandum of Appeal gives the grounds as the sentence recorded against him being manifestly excessive given all the circumstances.

The Appellant on November 30th 1992 at about 11.30 a.m. entered the shop of the victim. He had a stick in a bag. He asked for 4 crates of beer from her but she informed him the beer had not arrived. The Appellant struck her with the stick on the head causing an injury that bled. The victim rushed out whereupon the Appellant stole SR.1500 from the cashier's till of which SR.400 was recovered by the police.

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The learned Chief Justice indicated that he had taken into account the Appellant's age that he had pleaded guilty, was remorseful, had saved the Court's time, had spared the victim the trauma of testifying in Court. According to Alleeear CJ the Appellant's sentence of March 11th 1991 for attempted murder reduced by this Court to 5 years' imprisonment did not have any relevance to these two offences so he did not think it proper to run them concurrently.

Mr. Renaud for the Appellant submitted that the sentence imposed was manifestly excessive. He mentioned that the victim had not suffered serious injury. But he was unable to refer us to any cases of robbery with violence where the accused had received a lesser sentence.

Mr. Fernando for the Respondent submitted that this Court will only interfere in limited instances and referred to ARCHBOLD Criminal Pleading Evidence & Practice 1992 14th edition Vol.1 at pp.1220-1224. He argued that the Penal Code (Cap. 158) Law of Seychelles, Revised Edition 1991 in section 281 for this specifies that the Appellant could get a sentence up to imprisonment for life. He pointed out that the Appellant was not a first offender.

This Court will quash or alter a sentence when it is not authorised by law - R. v Cain (1984) 79 Cr. App. R.298 at 303; when it has taken into consideration factual matters which should not have been taken into account - R. v. Reeves (1983) Crim. L.R.825 at 826; when it has taken into account inadmissible evidence relating to the accused's character and antecedents - R. v. Van Pelz (1942) 29 Cr. App. R.10; when there was some error in principle - R. v. Gumbs (1926) 19 Cr. App. R. 71 at 75 and when the sentence was manifestly excessive - R. v. Waddingham, (1983) 5 Cr. App.R.(S) 66.

Now in R. v. Turner (1975) 61 Cr.App. R.67 at 90 - Lawton L.J. when dealing with armed robberies observed:

"...the Courts were faced with the problem of what was to be the deterrent for grave crimes involving violence or threat of violence. The only deterrent they could use was that of long term of imprisonment. Hence it comes about that since 1948 sentences have tended to get much longer than they were before that date. There was another reason for this. In the past two decades, criminals have tended to become much more dangerous. They have become better organised. The means they have used have become more sophisticated.

.... the only sentence which can be imposed for the most serious crime known to English law, treason apart, is that of life imprisonment. With very rare exceptions, those who are sentenced to life imprisonment are discharged from prison at some timeVery few, however, are kept in custody after about 15 years.

This has created a difficult problem for the courts. If a man is convicted of murder, and has a reasonable chance of being let out before the expiration of 15 years, what is the appropriate sentence for someone who is convicted of a lesser offence than murder?... It is that aspect of this problem which has concerned this Court very much...

There is another aspect of this problem which we have to bear in mind. Grave crimes fall into categories. There are some which are wholly abnormal. Their circumstances are horrifying. They may endanger the State. What is to be done with those who commit such crimes. There are other crimes which are very grave but which cannot be regarded as wholly abnormal.

Into the first category fall such crimes as bad cases of espionage...We are running into an era when courts are finding themselves having to deal with bombing outrages. The Courts must have some range of penalties to deal with those abnormal crimes.

The other category, however, consists of crimes which are very grave and all too frequent such as bank robberies with which these appeals are concerned.

The problem has been whether crimes of gravity, but of common occurrence, should be

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treated as abnormal crimes. We have come to the conclusion that ~~they should not~~. They fall into a category of their own which calls for sentences lower than those for which would be appropriate for crimes of an abnormal character.

What then is the appropriate kind of penalty for bank robberies... In all the bank robberies we have had to consider, firearms and ammonia squirters were carried; and in some of the robberies firearms were discharged, usually for the purpose of frightening bank employees...

We have come to the conclusion that the normal sentence of anyone taking part in a bank robbery or in the hold-up of a security or a Post Office van, should be 15 years if firearms were carried and no serious injury done. It follows therefore that the starting point for considering all these is a sentence of 15 years."

Again in Attorney-General's Reference (No. 9 of (1989) (R. v. Lacey) (1990) 12 Cr. App. R. (S) 7 Lord Lane C.J. when considering a lenient sentence of 30 months (increased by him to 5 years) imprisonment imposed for robbery involving the use of baseball bat in a threatening manner, said

"Business such as small post offices coupled with sweetie-shops - that is exactly what these premises were - are particularly susceptible to attack. They are easy targets for people who wish to enrich themselves at other people's expense. That means that in so far as is possible the Courts must provide such protection as they can for those who carry out the public service of operating those post offices and sweetie-shops, which fulfil a very important public function in the suburbs of our large cities. The only way in which the Court can do that is to make it clear that if people do commit this sort of offence, then, if they are discovered and brought to justice, inevitably a severe sentence containing a deterrent element will be imposed upon them in order so far as possible to persuade other like-minded robbers, greedy persons, that it is not worth the candle."

Having indicated what principles a sentencing court must be guided by, we turn to the sentence imposed by the learned Chief Justice. Looking at all the factors in this


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case and bearing in mind all matters which Alleeear CJ correctly took into account, the question for us is whether in those circumstances 5 years imprisonment was so excessive that it cannot stand. It is not a question of what sentence we would have imposed if the matter was before us. In our judgment, this sentence was not manifestly excessive that this Court will interfere.

Accordingly the appeal against sentence is dismissed.


H. Goburdhun
PRESIDENT


E. Ayoola
JUSTICE OF APPEAL


M.A. Adam
JUSTICE OF APPEAL

Dated this 20th day of April, 1995.

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