

IN THE SEYCHELLES COURT OF APPEAL

TONY JOSEPH

APPELLANT

Versus

THE REPUBLIC

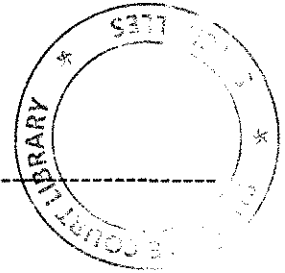
RESPONDENT

(Before, H. Goburdhun (P), A. Silungwe (JA) & L. Venchard (JA))

Criminal Appeal No. 4 of 1997

Mr F Elizabeth for the Appellant

Mr R Kanakaratne for the Respondent



JUDGMENT

This Appellant was convicted of the offence of Robbery with violence and was sentenced to undergo 6 years' imprisonment. The appeal is against both conviction and sentence.

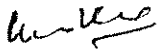
The Memorandum of Appeal challenges the conviction on five grounds and the sentence on four grounds. Mr F Elizabeth who appeared for the appellant however did not press those grounds but preferred to adopt a practical approach which was highly commendable. He did not challenge the findings of fact of the trial judge but submitted that while it could be inferred from the evidence on record that the appellant had the common intention of committing the offence of theft and could be convicted of that offence, there was no evidence from which the aggravating circumstance of 'violence' could be inferred.

He further submitted that, as the appellant had committed a lesser offence than that for which he was convicted, the sentence of 6 years' imprisonment was harsh, excessive and inappropriate.

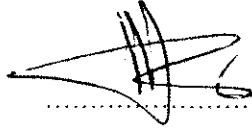
We have carefully perused the record and we agree with learned counsel that the aggravating circumstances of 'violence' have not been established beyond

reasonable doubt. We accordingly, in accordance with section 156 of the Criminal Procedure Code (Cap 54), amend the conviction and find the appellant guilty of the offence of theft in breach of section 253 of the Penal Code punishable under section 264 of the Penal Code.

We also agree that the sentence of 6 years' imprisonment was, in the circumstances, inappropriate and we accordingly reduce the sentence to one of imprisonment for 3 years.



H Goburdhun
President



A. Silungwe
Justice of Appeal



L. Venchard
Justice of Appeal

Dated this ^{14th} day of August, 1997

Handed down

AD Am JA