We consequently amend the judgment of the Supreme Court by substituting for the conviction passed one for robbery whilst armed with a dangerous or offensive weapon. The conviction of the appellant is otherwise affirmed.

With regard to sentence, we consider that the sentence of 15 years' imprisonment passed by the trial Court is neither manifestly harsh or excessive given that (a) the maximum penalty for the offence of aggravated robbery which the appellant had been convicted is life imprisonment and (b) the appellant had a previous conviction in respect of an offence of housebreaking and stealing.

Learned Counsel for the appellant sought under the ground of appeal relating to sentence to argue that the sentence passed on him for the offence of housebreaking and stealing should be merged with the present sentence. We refused to hear him on this point since it was plainly not covered by his ground of appeal against sentence. In any event, the sentence passed by a Court is cumulative unless otherwise ordered – vide Section 36 of the Penal Code.

For the reasons given, the sentence is affirmed. The appeal is otherwise dismissed.

E. O. AYOOLA	**A. G. PILLAY**	**G. P. S. DE SILVA**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 7th day of ***April*** 2000.

IN THE SEYCHELLES COURT OF APPEAL

IN THE MATTER OF:

REFERENCE BY THE ATTORNEY-GENERAL
UNDER SECTION 342A
OF THE CRIMINAL PROCEDURE CODE

(As amended by Act No. 14 of 1998)

Criminal Appeal No: 12 of 1999

[Before: Pillay, De Silva, & Matadeen, JJ.A]

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Mr. A. Juliette for the Appellant
Miss. L. Pool for the Respondent

JUDGMENT OF THE COURT

(Delivered by Pillay, J.)

The point of law on which the Attorney-General wants the opinion of this Court under Section 342A(1) of the Criminal Procedure Act is whether the trial Court in a murder trial with a jury was right to have accepted a plea of guilty to manslaughter tendered by the defendant after the close of the case for the prosecution in spite of the objection of the prosecution.

The facts of the case which have led to the reference to this Court are as follows:-

The defendant was charged with the offence of murder and the prosecution led evidence to substantiate the charge. At the close of the case for the prosecution, the defence in the absence of the jury tendered a plea of guilty to manslaughter on the basis of diminished responsibility, relying on the evidence of a consultant psychiatrist.

The prosecution refused to accept the plea of the defendant on the ground that there was no clear evidence of diminished responsibility and the defence had not discharged its burden of proving diminished responsibility on a balance of probabilities. The trial Court thereupon accepted the plea of guilty of the defendant, in spite of the objection of the prosecution, convicted him on his plea and discharged the jury.

It is quite clear from the two reports of the consultant psychiatrist (Exhibits D1 and P8) and his testimony in Court which were contradictory in many respects that this was certainly not a case where, as in R v Cox (Maurice) (1968) 52 Cr. App. R. 130, the medical evidence showed plainly that a plea of diminished responsibility could properly be accepted by the trial Court.

The issue whether the defendant was at the time of the killing suffering from such abnormality of mind as substantially impaired his mental responsibility for his action should in those circumstances have been left to be determined by the jury, the more so as the plea of guilty to manslaughter had been rejected by the prosecution – vide Archbold (1998 edition) – paragraph 19-68 and R v Byrne (1960) 2 Q.B. 596.

A. G. PILLAY
JUSTICE OF APPEAL

G. P. S. DE SILVA
JUSTICE OF APPEAL

K. P. MATADEEN
JUSTICE OF APPEAL

Delivered at Victoria, Mahe this 7th. day of ***April*** 2000.