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IN THE SEYCHELLES COURT OF APPEAL

NORCY VEL

APPELLANT

versus

THE REPUBLIC

RESPONDENT



Criminal Appeal No: 1 of 2000

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

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Mr. F. Ally for the Appellant

Miss. D. Zatte for the Respondent

JUDGMENT OF THE COURT

(Delivered by Matadeen, JA.)

The appellant was convicted by the Magistrate's Court on an information charging him with the offence of stealing by servant in that he "being a servant of the Ministry of Administration and Manpower stole from the said Ministry of Administration and Manpower 8 single and 4 double mattresses ... being the properties of the said Ministry." His appeal to the Supreme Court was dismissed and he is now, pursuant to Section 326 of the Criminal Procedure Code, appealing against the decision of the Supreme Court essentially on the ground that the evidence before the trial Court did not support the charge as particularised in that the mattresses were not the property of his employer, the Ministry of Administration and Manpower, hereinafter referred to as the Ministry.

The case for the prosecution as established before the trial Court was in substance to the effect that in 1995 the Ministry, where the appellant was employed as driver, was in the process of furnishing new flats built for expatriate employees. In that context, the Director General

of the Ministry had placed an order for the purchase of 24 mattresses with its regular supplier in Mont Fleuri. The purchase order was left at the supplier by a supervisor of the Ministry who in accordance with the established practice would take delivery of the goods. As all the new flats were not ready at the same time the supervisor took delivery of the mattresses on different dates as and when the need arose. Thus, on 22nd June, 18th July and 24th July the supervisor of the Ministry took delivery of a total of 12 mattresses and had them transported to the flats in the pick-up van driven by the appellant. As at 22nd August 1995 the Ministry had to take delivery of the remaining 12 mattresses. On that day, whilst the supervisor was on leave, the appellant, without authorisation, collected the remaining 12 mattresses from the supplier in the Ministry's pick-up van and signed the invoice for the 24 mattresses. The 12 mattresses were never brought to the flats.

It was further established in evidence before the trial Court that the appellant was never authorised to take delivery of the mattresses and never did so on the three previous occasions, that he never went to transport the mattresses in his van except after the supervisor had taken delivery of them against signature, and that the invoice was always signed and collected by the supervisor and not the appellant. It was not disputed either that the signature on the invoice was that of the appellant.

Learned Counsel for the appellant has submitted that in order to find the charge, as particularised, proved, the trial Court had to be satisfied that it was established in evidence that the mattresses were, at the time they were taken from the supplier by the appellant, the property of the Ministry. It was his contention that, in view of the procedure which was invariably followed, the sale was complete and the goods became the property of the Ministry only when they were delivered by the supplier to the supervisor or any authorised agent of the Ministry. The appellant had never been authorised to take delivery of the mattresses on behalf of the

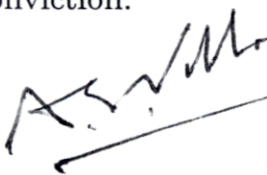
Ministry. In doing so he was only acting on his own initiative and without authority.


In the circumstances we agree with Learned Counsel for the appellant that the 12 mattresses taken by the appellant were the property of the supplier and not that of the Ministry. We take the view, therefore, that the evidence before the trial Court did not support the charge of stealing by servant as particularised in that the goods alleged to have been stolen were not the property of his employer, the Ministry.


As the variance between the evidence and the particulars of the offence relate to a material particular, the offence as particularised had not been proved and the conviction must be quashed: Pillay & Ors v The Republic Cr. App. Nos. 5 & 6 of 1993.

True it is that the evidence on record did disclose that the appellant had obtained the 12 mattresses from the supplier by false pretences. However, we are precluded from substituting under Section 164(1)(b) of the Criminal Procedure Code that offence for the one charged as the appellant was not charged with stealing from the supplier. Consequently we are relieved from considering the other grounds of appeal, specially the one relating to the evidence of the appellant who was not cross-examined by counsel for the prosecution.

In the event, we allow the appeal and quash the appellant's conviction.


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 13th day of **April** 2000.

Sitting of Monday 3rd April 2000 at 9.00 a.m. before their Lordships
E.O. Ayoola P, A.G. Pillay J, and G.P.S. de Silva J.

Evans Alcindor Appellant

v/s

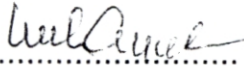
Republic Respondent



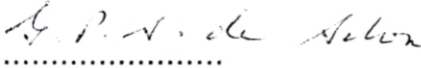
SCA Cr. No.11/99

Mr. F. Simeon for Appellant
Miss K. Domingue for Respondent

Court: The appeal is totally without substance. It is dismissed accordingly.


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E.O. AYOOLA
PRESIDENT


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A.G. PILLAY
JUSTICE OF APPEAL


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G.P.S. De SILVA
JUSTICE OF APPEAL

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Sitting of Tuesday 4th April 2000 at 9.00 a.m. before their Lordships
A.G. Pillay J, G.P.S. de Silva J, and K.P. Matadeen J.

Sandra Basset Appellant

v/s

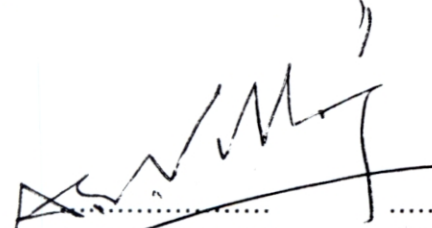
Republic Respondent




SCA No. 13/99

Mr. F. Simeon for Appellant
Mr. R. Govinden for Respondent

Court: We do not consider in the circumstances of the case that the Sentence passed against the appellant by the trial Court is manifestly harsh and excessive; so the appeal is dismissed.


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A.G. PILLAY
JUSTICE OF
APPEAL

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G.P.S. de SILVA
JUSTICE OF APPEAL


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K.P. MATADEEN
JUSTICE OF APPEAL