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IN THE SEYCHELLES COURT OF APPEAL

JOEL MADELEINE Appellant

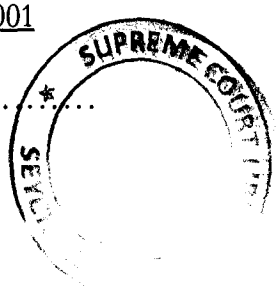
VERSUS

THE REPUBLIC Respondent

Criminal Appeal No: 1 of 2001

(Before: Ayoola, P., Pillay & Matadeen JJ.A)

Miss. K. Domingue for the Appellant
Mr. R. Govinden for the Respondent



JUDGMENT OF THE COURT

(Delivered by Matadeen J.A.)

The appellant was charged with the offence of robbery, in breach of section 281, coupled with section 23 of the Penal Code in that he, together with another joint offender who was armed with a knife, had robbed a couple who owned a shop of the sum of RS.1,500/-. After part of the prosecution evidence had been ushered in, the appellant changed his plea to one of guilty and was consequently found guilty as charged.

The Learned Judge took into consideration the appellant's young age, his clean record as well as the fact that his participation in the commission of the offence was a passive one; but, in view of the seriousness of the offence, he sentenced him to undergo ten years' imprisonment.

The present appeal seeks to challenge the sentence passed on the ground that:-

(a) the trial court failed to call for and consider a probation report before proceeding to sentence the appellant;

(b) it is manifestly harsh and excessive in all the circumstances of the case.

Whilst conceding that calling for a probation report was neither a rule of law nor a rule of practice, learned counsel for the appellant submitted that, in the particular circumstances of the case, a probation report was desirable in as much as the appellant who was at his first offence was *inops consilii* at the time he pleaded guilty to the offence charged. We note, however, that the record shows that the trial Judge had, after hearing evidence, held the view that the circumstances of the case called for an immediate custodial sentence. After perusing the record, we agree that calling for a report would have been futile in the matter – vide R. Freminot v The Republic (Criminal Appeal No. 6 of 1997).

There is, however, an added reason for holding that calling for such a report was not warranted in the circumstances. Section 27A of the Penal Code, as added by Act No. 16 of 1995, provides that the offence of robbery shall, in the case of a first offender, be visited by a minimum sentence of five years' imprisonment. In the circumstances, the learned trial Judge cannot be faulted for not calling for a probation report before proceeding to sentence.

On the issue of the sentence itself, we note that the record shows that the joint offender pleaded guilty to the offence of robbery with violence and was sentenced to twelve years' imprisonment. Indeed it transpired from the evidence that it was the joint offender who not only played an active role in the commission of the offence but also exercised violence against the complainants.

Taking into account the appellant's young age, his plea of guilty, the fact that he did not take an active role in the commission of the offence, the amount

of money stolen as well as the sentence passed on the joint offender who pleaded guilty to the offence of robbery with violence, we are of the view that the mandatory minimum sentence of five years' imprisonment would be appropriate in the circumstances.

We accordingly allow the appeal and amend the sentence passed by substituting therefor one of imprisonment for a term of five years.

E. O. AYOOLA	**A. G. PILLAY**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated at Victoria, Mahe, this 8th day of **August** 2001