

IN THE SEYCHELLES COURT OF APPEAL

[Coram: A. Fernando (J.A), M. Twomey (J.A), F. Robinson(J.A)]

Criminal Appeal SCA05 of 2018

**(Appeal from Supreme Court Decision CN 38/2015
from Magistrates Court case 565/2009)**

Perry Confait

Appellant

Versus

The Republic

Respondent

Heard: 04 December 2018

Counsel: Mr. N. Gabriel for the Appellant

Mr. K. Karunakaran for the Respondent

Delivered: 14 December 2018

JUDGMENT

A. Fernando (J.A)

1. This is an appeal to this Court against a judgment of the Supreme Court, dismissing an appeal (CN 38/2015) filed by the Appellant against a sentence of 7 years imprisonment imposed on him by the Magistrates Court on the 23rd of July 2012 in case C. No. 565/09. The sentence of 7 years had been imposed on the Appellant on being convicted on his own plea of guilt for the offence of Housebreaking contrary to and punishable under section 289(a) of the Penal Code. The sentence of 7 years had been ordered “to run consecutive with any other sentence convict is serving”.
2. The grounds of appeal are as follows:

- i. “The learned Trial Judge erred in dismissing the appeal on the ground that it was out of time despite the fact that the Respondent in the Court below did not object to the hearing of the appeal regardless.
 - ii. The sentence imposed by the learned trial Judge is manifestly harsh, excessive and wrong in law.
 - iii. The sentence of twenty eight years to run consecutively imposed by the learned trial Judge does not correspond to current pattern of sentencing in cases of similar nature.
 - iv. The learned trial Judge failed to consider the principle of totality of sentences.” (verbatim)
3. The appeal in CN 38/2015 had been dismissed by the Supreme Court against the sentence of 7 years imprisonment imposed on him by the Magistrates Court in case C. No. 565/09, as it was out of time and because of the failure “to give valid and acceptable reasons as to the cause of the delay.” According to section 310(1) of the Criminal Procedure Code any appeal against a decision of the Magistrates’ Court shall be ... lodged with the Registrar within 14 days after the date of the order or sentence appealed against. In this case, the appeal had been lodged 3.3 years after the imposition of sentence. There is however, a letter, dated 24th of April 2015, attached to the Appellant’s Skeleton Heads of Argument, addressed to the Registrar of the Supreme Court, by the Appellant, that had been produced at the hearing of the appeal before the Supreme Court. The said letter states, “The reason that the appeal is out of time is that I was advised by my lawyer Mr. Nichol Gabriel to cancel my appeal after receiving the answer of my appeal application”. The Appellant had then gone on to state that he wants to pursue his appeal as at that date “as my family will be paying”.
4. This letter does not make any reference to Magistrates Court case C. No. 565/09, but to other cases and had been written 2.9 years after the sentencing order in case C. No. 565/09. We are therefore not surprised of the statement of the learned appeal Judge of the Supreme Court that “not a single reason has been advanced for such a long delay”, when it was incumbent upon the Appellant “to give valid and acceptable reasons as to the cause of the delay.” To state that he was advised by his lawyer Mr. Nichol Gabriel to cancel his appeal after receiving the answer of his appeal application is certainly not a valid and acceptable ground to grant an extension, but a ground for refusing the extension.
5. Therefore, it is incorrect for the Counsel for the Appellant to state in his ground 1 of appeal that the appeal was dismissed on the ground that it was out of time. The learned appeal Judge was not bound to hear the appeal because the Respondent in the Court below did not object to its hearing. An extension of time to file an appeal out of time may be granted when the Court is satisfied that there had been valid and acceptable reasons for the delay.
6. The learned Counsel for the Appellant has not adduced any reasons even before this Court, as to the delay in appealing against the sentencing order of the learned Magistrate. This alone would have sufficed to dismiss this appeal, if not for the peculiar circumstances of this case. I wish to emphasise that this is not to be taken as a precedent.

7. It is totally incorrect for learned Counsel for the Appellant to state at ground 3 of appeal that a sentence of 28 years to run consecutively was imposed by the learned trial Judge, in Magistrates Court case C. No. 565/09. If not bad drafting, this amounts to misleading the Court. The sentence imposed was 7 years which had been ordered “to run consecutive with any other sentence convict is serving.”
8. We are not pleased with the manner the Counsel for the Appellant has drafted his Skeleton Heads of Arguments. Having appealed against a judgment of the Supreme Court, dismissing an appeal filed by the Appellant against a sentence of 7 years imprisonment imposed on him by the Magistrates Court in case C. No. 565/09, an attempt has been made to confuse this Court by making elaborate references to the several sentences the Appellant is serving in respect of other cases, without specifying the facts of those cases in which the Appellant had been convicted and sentenced. An Appellant cannot file an appeal in one case and expect of the Court to reduce the sentences already passed against him in other cases. Further, without the Court being given an opportunity to know the nature of the other cases an appeal against the sentences therein cannot be considered. Grounds ii and iv of appeal cannot be considered in a vacuum and the Court must be fully appraised of the facts of all the cases and that is, if separate appeals had been filed in respect of those cases.
9. According to the Sentencing Order in Magistrates Court case C. No. 565/09, dated 23rd July 2012, the Appellant at the time of the commission of the offence had been “a young person of 16 years of age”. The Appellant was 22 years at the time of his sentencing in Magistrates Court case C. No. 565/09.
10. In view of the sentences imposed on the Appellant in respect of other cases the Appellant would, according to his Skeleton Heads of Argument, start serving the 7 year sentence imposed in Magistrates Court case C. No. 565/09 only from the 13th of September 2021. He would therefore, according to his Skeleton Heads of Argument, complete serving this sentence on the 13th day of May 2026.
11. The Appellant has submitted that he is presently 27 years old and has already served 7 years in prison. The Appellant who went into prison at the age of 20 years will be 35 years by the time he completes serving the sentence imposed on him in Magistrates Court case C. No. 565/09. I note that all the offences for which the Appellant had been convicted and sentenced had been committed prior to the Appellant becoming 20 years of age. I also note that all the offences were pertaining to stealing from dwelling houses and house breaking. I am therefore of the view guided by the principles laid down by this court in **Jean Fredrick Poonoo, SCA 38/2010** and **Dario Delcy SCA 16 of 2015**, that the ends of justice would be served by varying the sentence of 7 years imposed by the learned Magistrate in Magistrates Court case C. No. 565/09 on the 23rd of July 2012 to run concurrently, instead of consecutively, with the other sentences that he was serving on that date.

12. The appeal is therefore allowed to that extent.

A.Fernando (J.A)

I concur:. M. Twomey (J.A)

I concur:. F. Robinson (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 14 December 2018