

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2021] SCCA 74
SCA CR 12/2020
(Arising from CR 34/2019)

In the matter between

Nelson Flore
(rep. by Mr Joel Camille)

Appellant

and

The Republic
(rep. by Mrs. Luthina Monthy)

Respondent

Neutral Citation: *Flore v R* (SCA CR 12/2020) [2021] (Arising in CR 34/2019) SCCA 74

17 December 2021

Before: Fernando P, Twomey JA, Tibatemwa-Ekirikubinza JA

Summary: Appeal against sentence.

Heard: 1 December 2021

Delivered: 17 December 2021

ORDER

Appeal dismissed.

JUDGMENT

FERNANDO, PRESIDENT

1. The Appellant has appealed against the sentence imposed on him after his conviction on his plea of guilty to charges of unlawful wounding with intent to do grievous harm contrary to section 210(a) of the Penal Code, attempted robbery by assaulting a person with intent to steal money and while being armed with an offensive weapon contrary to section 282 of the Penal Code, assault occasioning actual bodily harm contrary to section

236 of the Penal Code and possession of ammunition without holding a firearm license contrary to section 4(2)(a) of the Firearms and Ammunition Act. The said offences carry a maximum penalty of life imprisonment in respect of first two offences referred to herein, 7 years and 1 year in respect of the third and fourth offences.

2. The Appellant had been sentenced to a term of 8 years imprisonment in respect of the offence of unlawful wounding with intent to do grievous harm, 14 years in respect of the offence of attempted robbery by assaulting a person with intent to steal money and while being armed with an offensive weapon, 3 years in respect of the offence of assault occasioning actual bodily harm and 1 year in respect of the offence of possession of ammunition without holding a firearm license. Since all offences were committed in the course of the same transaction, all sentences were ordered to run concurrently and the Appellant to serve a total period of 14 years imprisonment.

3. According to the facts as narrated to Court by the Prosecuting Counsel, the Appellant wearing a mask, had on the 25th of June 2019 entered the shop of V. Salvan at 19.00 hours armed with a handgun. The Appellant had pointed the gun, with his finger on the trigger at V. Salvan on his face and demanded money saying “I am not joking give me the money”. He had given a bag to Salvan and asked him to put the money into the bag. He had then fired the gun near V. Salvan and the bullet had hit some bottles of alcohol. When Salvan bent down to prevent being attacked, the Appellant had hit Salvan on his head with the back of the gun. When A. Kumar tried to defend Salvan by throwing an object at the Appellant, the Appellant had turned around and shot Kumar in his abdomen. Thereafter both Salvan and Kumar had managed to overpower the Appellant and take the handgun away from him. Thereafter other people had also assisted to bring the Appellant under control and informed the police. Police on arrival had found the mess that had been created inside the shop and the spent cartridges inside the shop. Kumar and Salvan were taken to hospital and the doctors had found a gunshot wound on the right side of Kumar’s abdomen. He had thereafter been admitted to the ward for treatment. V. Salvan had been treated for his injuries at the back of his head and forehead and released. The gun seized from the Appellant had not been registered in Seychelles.

4. The Appellant had accepted the facts set out above and the learned Trial Judge had found him guilty on the basis of his plea of guilty to the charges read out to him and the acceptance of the facts as narrated by the Prosecutor and convicted the Appellant of the charges referred to at paragraph 1 above.
5. In sentencing the Appellant, the learned Trial Judge had taken into consideration the probation report called on behalf of the Appellant and the plea in mitigation of the Appellant's Counsel. His addiction to heroin, which he does not want to give up according to the probation report, should not be a ground to treat him lightly in the circumstances of this case. The Appellant's plea of guilt had come in only on the 6th day the case had been mentioned before the Court. I have perused the detailed Sentencing Order made by the Trial Judge setting out both the mitigating and aggravating facts in detail and the relevant case law and thus find that the learned Trial Judge cannot be faulted in anyway. In fact, he had, in my view, been lenient in passing sentence.
6. None of the well-known grounds where an appellate court would interfere with the sentence passed by the trial court are existent in this case. This was essentially a case where deterrence, denunciation, rehabilitation and community protection had to be considered. I am in total agreement with the Sentencing Judge's statements: "Using a gun during a robbery is a very rare occurrence in the Seychelles and therefore in the view of the court, strong deterrent punishment should be given to ensure that such actions are not repeated." and "The convict according to the report is not in favour of curing his addiction by way of taking methadone but however his stay in remand has kept him away from heroin." This is not merely a case of committing robbery by threatening a person with a gun, but firing a gun with live cartridges. The sentence imposed by the learned Sentencing Judge in my view has not breached, and is in line with the well-known principles of sentencing, namely parsimony, proportionality, parity and totality. The authorities cited by the learned Counsel for the Appellant have no relevance to the facts of this case or the manner adopted by the learned Sentencing Judge in determining the sentence to be imposed on the Appellant.

7. I therefore dismiss the appeal.

Fernando, President

I concur:

M. Twomey, JA

I concur:

L. Tibatemwa-Ekirikubinza, JA

Signed, dated and delivered at Ile du Port on 17 December 2021.