

**The Republic v Belmont
(2004) SLR 97**

David ESPARON for the Republic
Samy FREMINOT for the Accused

Sentence delivered on 13 December 2004 by:

PERERA ACJ: The Third Accused Eddy Georges Belmont, pleaded guilty before the Magistrates' Court, to the offence of robbery, pursuant to Section 281 of the Penal Code. The Learned Magistrate has remitted the case to this Court for sentencing pursuant to Section 7(1) of the Criminal Procedure Code, as his sentencing powers are limited to imposing any sentence up to 5 years.

An offence under Section 281 is punishable with 18 years imprisonment.

According to the facts disclosed, the Accused was a party of three masked men who attacked a shop Assistant at the Baie Lazare Petrol Station on 12 July 2001, and stole cash, telephone prepaid cards, and cartons of cigarettes, all valued at R15,700. Admittedly, the Accused was serving a prison sentence when he escaped and committed the present offence he is charged with. The Learned Magistrate has noted that this Accused had been convicted of offences of house breaking, stealing, and burglary on 15 occasions from 1999 to 2001 and has served prison sentences. The sentence he is presently serving is due to expire in February 2006.

The Third Accused has therefore a dismal record. The numerous prison sentences he has served, and is still serving, have had no reformatory effect on him. It was also disclosed that the present offence was committed as a gang robbery and disguised as masked men in army uniforms. He has therefore graduated to committing sophisticated crimes, and hence the danger he poses to the society has increased.

Mr. Freminot, Learned Counsel for the Accused however urged the Court to pass a concurrent sentence.

Section 36 of the Penal Code is as follows-

Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death or of Corporal punishment, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the Court directs that it shall be executed concurrently with the former or of any part thereof.

Hence, the general rule that the legislative intent to punish the offender for the offence

charged, has to be maintained. Accordingly, while the execution of a sentence immediately after the expiration of any former sentence is the Rule, its execution concurrently is an exception. In this regard the Court has a discretion. Whether or not a sentencing Court will exercise this power and direct that a sentence shall run concurrently with a former sentence would depend on the facts and circumstances of each particular case. In the present case no special reasons have been adduced for this Court to consider a concurrent sentence.

Accordingly, considering all the circumstances of the case including the mitigatory factors adduced, and the fact that the legislature, in a bid to deal with the high incidence- of robberies, has increased the penalty from 14 years to 18 years imprisonment. I impose a sentence of 8 years imprisonment which will be executed immediately after the expiration of the present sentence he is serving.

Record: Criminal Side No 105 of 2004