**IN THE SUPREME COURT OF SEYCHELLES**

**ROY ESTHER**

V/S

**THE REPUBLIC**

Criminal Appeal No. 24 of 2008

Mr. Hoareau for the Appellant

Mr. Durup for the Respondent

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**JUDGEMENT**

*M. N. Burhan (J)*

This is an appeal against sentence.

The Appellant in this case, was charged with assaulting a police officer an offence contrary to and punishable under section 238 (b) of the Penal Code Chapter 158.

The particulars of the offence state, that the accused Roy Esther, residing at Mont Plaisir Grand Anse Praslin, had on the 12th day of October 2008, at Grand Anse Praslin police station, assaulted police officer Curtis Uraine while executing his duties, by head butting the said officer.

The Appellant pleaded guilty to the aforementioned charge and the learned magistrate after convicting the accused on his plea, proceeded to sentence him to a term

of one year imprisonment for the said offence. This appeal is against the sentence of one year imprisonment imposed on the Appellant, on the grounds that the sentence is harsh and excessive.

In support of his application learned counsel for the Appellant urged court to reduce the term of imprisonment imposed, as the Appellant had pleaded guilty at the first instance or opportunity available to him, thereby expressing his remorse in respect of the incident. He also brought it to the notice of this court, that the Appellant had been assaulted by the police officers when he was been placed in a cell and it was during this time, that the said incident had occurred. In fact learned counsel went to the extent of stating that he would have had a valid defence of self defence had the accused not pleaded guilty to the charge. Learned counsel for the Appellant also moved court that as the Appellant had already served a term of three months imprisonment that he be released, as he had undergone sufficient punishment.

Learned counsel for the Respondent did not strenuously object to the grounds urged on behalf of the Appellant. He also informed court that the police officer concerned had not received any serious injury as a result of the said assault.

On perusal of the proceedings it is clear, that the learned

magistrate had taken into account the fact that the Appellant had no previous convictions, prior to imposing the said sentence. Further as the Appellant had unequivocally pleaded guilty to the said charge, the fact that the Appellant had acted in self defence while being assaulted by the police, is not a matter to be considered in this appeal, as this is an appeal against sentence and not an appeal to quash the conviction.

The law relating to this instant case is contained in Chapter XXIV of the Penal Code. Sections 235 to 238 deal with the offence of Assault. Section 235 states as follows;

Any person who unlawfully assaults another is guilty of a misdemeanour, and, *if the assault is not committed in circumstances for which a greater punishment is provided in this Code,* is liable to imprisonment for two years.

Instances where assault is committed in *circumstances for which a greater punishment (than the two years prescribed in section 235) is provided for,* are set out in sections 236,237 and 238 of the Penal Code.

It is to be noted that the Appellant in this case, has been charged under section 238 (b) of the Code which states as follows;

Any person who assaults, resists, or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of such officer is guilty of a felony, and is liable to imprisonment for seven years.

Hence it is clear that the Appellant in this case, has committed an assault which has been considered to be a felony and *in circumstances for which a greater punishment* of up to seven years has been specially prescribed for in the Penal Code, in sharp contrast to assault under section 235 which is considered to be only a misdemeanour and punishable with imprisonment of up to two years only.

It is pertinent to mention at this stage, the legislature thought it fit by Act No. 16 of 1995, to amend section 238 of the Penal Code by repealing the word “misdemeanour” contained in section 238 and substituting the word “felony” and by increasing the term of imprisonment from five years to seven years.

The Penal Code (Amendment) Bill, 1995 (Bill No.12 of 1995) setting out the objects and reasons for enhancing the aforementioned sentence states “Our society appears to be gripped by a rising tide of criminality. Offences involving violence against the person and……. seem to have become more rampant recently.

By seeking to enhance the penalty for these offences and……. it is hoped to reassert our society’s abhorrence for these crimes and its concern about the unwelcome trend of criminality”.

On perusal of the aforementioned bill and the subsequent amendments introduced, the serious nature of the offence committed by the Appellant, in assaulting a police officer

in due execution of his duties becomes glaringly obvious. It is the duty of the Judiciary in interpreting laws promulgated by Parliament to keep the intention of the Legislature foremost in mind. When one considers the intention of the Legislature as set out in the bill, it is crystal clear that courts must treat such offences as offences of serious nature and impose suitable sentences accordingly.

It is to be noted that the Appellant in this case has pleaded guilty to an offence under 238 (b) of the Penal Code, a felony, *committed in circumstances for which a greater punishment* of seven years is prescribed. Hence the imposition of a term of one year imprisonment, cannot be considered to be harsh and excessive, as this term falls within the term prescribed for the lesser offence (misdemeanour) contained in section 235 of the Code. In fact in this context, the sentence of one year imposed by the learned Magistrate, does not reflect the 'greater punishment' envisaged by the legislature for such an offence earmarked as a felony.

It is therefore apparent to this court that, considering the intention of the legislature and the nature of the offence concerned, the sentence imposed, could in no way be considered to be harsh and excessive. It is also pertinent to note, that the grievous nature of the injury is not considered in the relevant section and mere assault is

sufficient to attract a term of imprisonment of up to 7 years. It is settled law that an appellate court will interfere with a sentence passed by an original court, only if it is satisfied that the sentence is harsh and excessive and if so, should not shrink from its task.

For the aforementioned reasons this court is inclined, to reject the Appellant's contention that the sentence of one years imprisonment imposed by the learned Magistrate is harsh and excessive. The sentence imposed by the learned Magistrate is hereby affirmed and the appeal against sentence dismissed.

***M. .N BURHAN***

**JUDGE**

Dated this 23rd day of February, 2009.