

IN THE SUPREME COURT

WILSON UZICE

VS

REPUBLIC

Criminal Appeal no: 14 of 2008

Mr. Georges for the Appellant

Mr. Kumar for the Respondent

JUDGMENT

Burhan, J

This is an appeal against the sentence imposed by the learned senior magistrate (W Mutaki), on the aforementioned accused appellant (here in after referred to as the appellant).

The appellant was charged in the magistrate's court as follows;

Count 1

Idle and Disorderly Person, Contrary to Section 173 (d) of the Penal Code.

The particulars of the offence are that Wilson Uzice, residing at Port-Glaud, Mahe, on the 12th day of December in the year 2005, at Port-Glaud, Mahe, being a public place, conducted himself in a manner likely to cause a breach of the peace.

Count 2

Possession of an offensive weapon contrary to and punishable under section 84 (4) of the Penal Code.

The particulars of the offence are that Wilson Uzice residing at Port Glaud, Mahe , on the on the 12th of December in the year 2005, at Port Glaud, Mahe, without lawful authority or reasonable excuse had in his possession an offensive weapon namely a knife.

Count 3

Threatening Violence Contrary to Section 89 (a) of the Penal Code,

The particulars of the offence are that, Wilson Uzice residing at Port-Glaud, Mahe, on the 12th day of December in the year 2005, at Port-Glaud, Mahe, with intent to cause alarm to Police Officers Marcus Labiche, threatened them with a knife.

Count 4

Obstructing a police officer contrary to section 238 (b) of the Penal Code,

The particulars of the offence are that Wilson Uzice residing at Port Glaud, Mahe on the 12th of December in the year 2005, at Port Glaud, Mahe, willfully and unlawfully obstructed police officers Marcus Labiche, Ronny Julienne and Joseph Bibi whilst in the due execution of their duties.

After trial the learned senior magistrate found the appellant guilty on counts 1 and 3 only and proceeded to convict him of same.

The learned senior magistrate thereafter sentenced the appellant

as follows;

“1st count: To pay fine of SR 3000 or three months imprisonment in default.

3rd count: To pay fine Sr 3000 or three months imprisonment in default.”

The appellant seeks to appeal against the sentence imposed, on the grounds that the said sentence is harsh and excessive. He bases his appeal on the following grounds.

- a) That there was never any evidence that the appellant had actually wanted to visit violence on the officers. That the evidence shows that the appellant had only over reacted at an unfounded accusation that he had something to do with the dirtying of the police vehicle.
- b) That “while pointing a knife aggressively at a police officer might be deemed worthy of a fine of Rs 3000/= (which is not admitted) the same punishment for calling police officers by a derisory name can hardly be put in the same gravity.”

That this is hardly a serious case which warrants such punishment.

Section 173 (d) of the Penal Code 158 reads as follows;

The following persons-

(d) every person who in any public place conducts himself in a manner likely to cause a breach of peace,

shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one year or to a fine not exceeding Rs. 1,000 or to both.

Section 89 (a) of the Penal Code reads as follows;

Any person who,

- (a) threatens another with any injury, damage, harm or loss to any person or property with intent to cause alarm to that person, or to cause that person, to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as a means of avoiding the execution of such threat;

is guilty of a misdemeanour and is liable to imprisonment for five years.

It is therefore apparent when one considers the punishment authorized by law and set out in respect of both offences, the legislature has clearly set out a punishment of a more serious nature for an offence coming under section 89(a) than section 173 (d), clearly indicating that an offence coming under section 89 (a), is of a more serious nature than that under section 173 (d) of the Penal Code. Therefore learned counsel's contention set out in ground (b) above, bears merit.

Section 6 (1) of the Criminal Procedure Code Cap 54, states that a magistrate's court, when presided over by a senior magistrate may pass any sentence "authorised by law."

In this instant case, it is obvious that the sentence of a fine of Rs 3000/= imposed by the learned senior magistrate is not authorized by law, as the maximum fine set down in section 173 (d) of the Penal Code is Rs 1000/=.

Therefore the fine of Rs 3000 /= imposed by the learned senior magistrate in respect of count 1 is set aside and in lieu a fine of Rs 1000/= substituted. Further a term of one month imprisonment is to be imposed in the event of a default in payment of the said fine.

Learned counsel also urged court that the fine of Rs 3000/= imposed by the learned senior magistrate in respect of count 3 was harsh and excessive. When one considers the particulars of the offence set out in count 3, it is clear that the prosecution has succeeded in its attempt to prove the said particulars of the offence beyond reasonable doubt, as no appeal lies against the conviction entered in respect of same. The particulars show that the accused had brandished a knife with intent to cause alarm to Police Officer Marcus Labiche. The evidence shows this incident occurred in a public place which has been accepted by court as the accused has been convicted on count 1 as well. Further the penalty prescribed or authorized by law sets out a maximum punishment of 5 years imprisonment if convicted. The appellant when given an opportunity to mitigate prior to being sentenced had this to say,

“I have nothing to mitigate the police came and cause disturbance to me”

Therefore considering the facts relevant to this case and the punishment set down by law, it cannot be said that the sentence of Rs 3000/= imposed by the learned senior magistrate is harsh or excessive considering the circumstances of this case but is in fact, in the eyes of this court, a reasonable sentence which is authorized by law and conforms to section 28 (a) of the Penal Code. Further considering paragraph 4 of the written submissions of the appellant, learned counsel for the appellant it appears, though specifically not admitting so, seems to indirectly agree too that this offence is of a more serious nature than calling a police officer by a derisory name.

For the aforementioned reasons this court affirms the sentence imposed by the learned magistrate in respect of count 3.

Subject to this variation in sentence the appeal stands dismissed.

M. BURHAN

JUDGE

Dated this 21st day of July 2010