

IN THE SUPREME COURT OF SEYCHELLES

RICKY VICTOR

APPELLANT

VS

THE REPUBLIC

RESPONDENT

Criminal Appeal No: 11 of 2010

Mr. F. Ally Attorney at Law for the Appellant.

Mr. Kumar State Counsel for the Respondent.

JUDGMENT

Burhan J,

This is a consolidated appeal against the sentences imposed by the learned magistrate in cases no. C7 and C8 of 2010. The accused appellant (hereinafter referred to as the appellant) was charged in the magistrate's court in case no. C7 of 2010 as follows:

Count 1

Housebreaking contrary and punishable under section 289 (a) of the Penal Code Cap 158.

The particulars of the offence are that Ricky Victor residing at Anse Korbizeau Praslin, on the 23rd day of February 2010 at Anse Korbizeau Praslin broke and

entered into the dwelling house of Mr. & Mrs. Weston Accouche with intent to commit a felony therein namely stealing.

Count 2

Stealing from a dwelling house contrary and punishable under section 264 (b) as read with section 260 of the Penal Code.

The particulars of the offence are that Ricky Victor residing at Anse Korbizeau Praslin on the 23rd day of February 2010 at Anse Korbizeau Praslin, stole from the dwelling house of Mr. and Mrs. Accouche, cash in a sum of SR 500, one golden ring value at SR 350, one roll-on value SR 29, one spray make shield value SR40.

In case no. C8/2010 the appellant was charged as follows:

Housebreaking contrary and punishable under section 289 (a) of the Penal Code Cap 158.

The particulars of the offence are that Ricky Victor residing at Anse Korbizeau Praslin, on the 25th day of February 2010 at Anse Korbizeau Praslin broke and entered into the dwelling house of Mr & Mrs Weston Accouche with intent to commit a felony therein namely stealing.

After conviction the learned magistrate proceeded to sentence the appellant in case No 7 of 2010 to a term of 4 years imprisonment on count 1 and 3 years imprisonment in respect of count 2. He further stated that both terms were to run concurrently. In respect of case no. 8 of 2010 the learned magistrate proceeded to sentence the accused to the minimum mandatory term of 5 years imprisonment and made order that the said sentence should take effect after the appellant serves the sentence imposed in respect of case no. 7 of 2010 which in effect would mean the appellant would serve a term of 9 years imprisonment for both cases.

In the case of ***Godfrey Mathiot v Republic SCA 9/1993*** the Seychelles Court of Appeal held that in sentencing, courts should consider the principles of retribution, deterrence, prevention and rehabilitation. It further held that in appeals in respect of sentencing the court would intervene only where:

- a) The sentence was harsh, oppressive or manifestly excessive.
- b) The sentence was wrong in principle.
- c) The sentence was far outside discretionary limits.
- d) A matter had been improperly taken into consideration or a matter that should have been taken into consideration was not or,
- e) The sentence was not justified by law.

It is apparent the learned magistrate in passing sentence considered section 36 of the Penal Code which reads as follows:

“ Where a person after conviction of 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 a former sentence under section or any part thereof.”

In the case of ***John Vinda v R (1995) SCA***, the court held that in terms of section 36 of the Penal Code consecutive execution of sentence was the Rule and concurrent execution was the exception. Ayoola JA further held:

“One such circumstance which may justify the application of the exception would be the disproportionality of consecutive sentences to totality of the behaviour of the convicted person or the gravity of the offence.”

Learned counsel has appealed against the said sentences and urges court that the principle of totality of sentences be taken into consideration and the sentences imposed in both cases be made concurrent and a more lenient term of imprisonment be imposed as the sentence imposed, considering the nature and characteristics set out in the particulars of the offence is harsh and excessive.

This principle of totality of sentences has been discussed and set out in our jurisdiction in the case of ***Cliff Emmanuel v Republic Criminal Appeal 3/93*** where having traced the history of the principle, Bwana J went on to enumerate the factors to be considered and stated it applied in the following instances:

- a) To first offenders (of certain crimes) as well as recidivists
- b) To offenders serving sentences arising from felonious as well as misdemeanor offences attention always being paid to the longevity of the sentence to be imposed.
- c) It should be applied in order that the sentence imposed should be “just and appropriate.”
- d) If properly applied should bring a bridge that brings together the hitherto parallel principles of concurrent and consecutive sentencing.

Basically what the principle seeks to achieve is that a sentencing court, sentencing a convict who is already serving another term of imprisonment or who has been convicted of one or more offences in different cases, should consider the effect of the total length of imprisonment imposed in respect of the said offences. In doing so without following the normal procedure of consecutive sentencing set out by

law as set out in section 36 of our Penal Code, it could follow the exception by imposing concurrent terms to ensure the aggregate punishment imposed is “just and appropriate.”

When one considers the facts of this case the accused pleaded guilty to two offences of house breaking committed on the same house within a space of only two days. The prosecution has admitted in its statement of facts that the door of the house was not locked on both occasions. The accused had entered the house by opening the unlocked door and had decided to come back to the same house a few days later. The items stolen by the accused in value amounts in total to SR 919/. Would a term of 9 years imprisonment be a just and appropriate term of imprisonment considering the above circumstances and facts which should be considered in deciding the gravity of the offence committed by the accused?

No doubt in this instant case the statement of the offence may be high sounding but the particulars of the offence are not, especially when one considers the value of the items stolen and the fact that the door of the house was not locked on both occasions as admitted by the prosecution.

Further when one considers the fact that both offences were committed within the short space of a few days and in respect of the same premises one could even argue that considering the facts peculiar to this case, if a broad view is to be taken, both offences could be considered as part of one incident or transaction as discussed in the case of ***Brian Alcindor v The Republic Criminal Appeal No 14 Of 2006***.

Considering the aforementioned facts peculiar to this case, the young age of the convict who pleaded guilty at the first instance, thereby expressing remorse and expecting leniency and who had no previous convictions prior to these two cases, I am of the view that the total sentence imposed of 9 years imprisonment is harsh

and excessive and make order that the terms of imprisonment imposed in both cases run concurrently in order that the accused only serves the maximum term of 5 years imprisonment imposed in case no. 8 of 2010. I am satisfied that a term of 5 years imprisonment in total is a just and appropriate sentence considering the circumstances of this case. The time spent in remand to count towards sentence. As this appeal is only in respect of the sentence imposed in each case, subject to this variation in sentence, the convictions in both cases are upheld.

M. BURHAN

JUDGE

Dated 5th day of August 2011.