

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 15/2013

Appeal from Magistrates Court decision 568/2012

[2014] SCSC

ANDREA SOPHA

Appellant

versus

THE REPUBLIC

Heard: 23 May 2014

Counsel: Mr. Durup Attorney at Law for appellant

Mr. Tachet, Assistant Principal State Counsel for the Republic

Delivered: 16 July 2014

JUDGMENT

Burhan J

[1] This is an appeal against sentence.

[2] The Appellant was charged in the Magistrates' Court as follows:-

Count 1

Breaking and entering into a building and committing a felony therein namely stealing contrary to Section 291(a) of the Penal Code

The particulars of offence are that, Andrea Sopha of Baie Lazare, Mahe on the 13th day of August 2012 at Anse Aux Pins, Mahe, did break and enter in Winners Chapel International Seychelles and stole 2 packets of bin liners all to the total value of R80/- being the property of the Winners Chapel International Seychelles.

Count 2

Damaging property contrary to Section 325(1) of the Penal Code

The particulars of offence are that, Andrea Sopha of Baie Lazare, Mahe on the 13th day of August 2012 at Anse Aux Pins, Mahe, wilfully and unlawfully damaged 3 louver blades being the property of Winners Chapel International Seychelles.

[3] The Appellant was convicted on his own plea of guilt and sentenced on Count 1 to a term of 6 years imprisonment and Count 2 to a term of 6 months imprisonment. Both terms were ordered to run consecutively.

[4] Learned counsel for the Appellant appealed against the said order on the grounds that the sentence was harsh and excessive as the particulars of offence in Count 1 indicated that the Appellant had stolen two packets of bin liners valued at Rs 80/-.

[5] It is to be borne in mind that there exists no charge in respect of the offence of Stealing against the Appellant but the charge for which the accused has been convicted of is Breaking and entering into a building under Section 291(a) of the Penal Code.

[6] According to section 291(a) of the Penal Code, a person who is found guilty of an offence under this section is liable to imprisonment for 14 years.

[7] Further in terms of Section 27 (1) (c) (ii) of the Penal Code as amended by Act 5 of 2012, a person with a previous conviction of a similar or same offence within 5 years prior to the date of conviction, should be sentenced to imprisonment for a term not less than 25 years.

[8] According to the abovementioned provisions and the previous conviction record of the Appellant dated 14th August 2012, the Appellant could have been sentenced to a term of imprisonment not less than 25 years as he had a previous conviction in regard to a similar

offence namely House breaking. However the learned Magistrate having used her discretion as permitted in the case of ***Ponoo v The Republic SCA 38/2010*** sentenced the Appellant to a term of 6 years imprisonment on Count 1.

[9] The issue to consider in sentencing in this instant case is that the sentence is not in relation to stealing two packets of bin liners but in relation to the offence of Breaking and entering into a building which is a distinct offence to that of Stealing and demands a stiffer sentence. The fact that the Appellant had committed a similar offence of House breaking under the same Chapter XXIX is an aggravating factor but yet the learned Magistrate had sought to impose only a term of 6 years imprisonment. In the light of the above the sentence imposed by the learned Magistrate, cannot be said to be harsh and excessive. Learned counsel for the State has not moved for enhancement of sentence and therefore I will uphold the sentence imposed by the learned Magistrate in respect of Count 1.

[10] The proviso to section 36 as amended by Act 20 of 2010 reads as follows;

“Provided that it shall not be lawful for a court to direct that any sentence under Chapter XXVI, Chapter XXVIII or Chapter XXIX be executed or made to run concurrently with one another or that a sentence of imprisonment in default of a fine be executed concurrently with the former sentence under section 28 (c) (i) of this Code or any part thereof.”

[11] It is apparent the charge in Count 2 is under section 325 (1) of the Penal Code and does not come under any of the Chapters contained in the proviso but under Chapter XXXIII of the Penal Code. Therefore the learned Magistrate could have used her discretion and ordered that the term of imprisonment imposed in Count 2 to run concurrently, as both charges are in respect of the same incident.

[12] Considering the fact the Appellant pleaded guilty expecting leniency and in doing so expressed remorse and regret and having taken into consideration the fact that both Counts are in respect of the same incident, this court makes order that the sentence of 6 months imprisonment imposed in respect of Count 2 be made to run concurrently with

the sentence of 6 years imprisonment imposed in respect of Count 1. Subject to this variation in the sentence, the appeal is dismissed.

Signed, dated and delivered at Ile du Port on 16 July 2014

M Burhan
Judge of the Supreme Court