

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 64/2013**

**Appeal from Magistrates Court decision 207/2013**

**[2014] SCSC**

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**ALLEN CLIFFORD RAOUDY**

Appellant

versus

**THE REPUBLIC**

Respondent

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Heard: 26 May 2014

Counsel: Mr. Nichol Gabriel Attorney at Law for Appellant

Mr. Hemanth Kumar, Assistant Principal State Counsel for the Republic

Delivered: 21 July 2014

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**JUDGMENT**

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**Burhan J**

[1] This is an appeal against sentence.

[2] The Appellant in this case was charged in the Magistrates' Court as follows;

**Count 1**

*Stealing from vehicle contrary to Section 264(c) of the Penal Code.*

*The particulars of the offence are that, Allen Clifford Raoudy of Corgate Estate, Mahe, during the night of the 3<sup>rd</sup> May 2013 to the early hours of the 04<sup>th</sup> May 2013 at Cascade, Mahe, stole*

*from motor vehicle car registration No S1529 one car battery to the total value of Rs 1500 being the property of father Gustave Lafortune.*

## **Count 2**

*Damaging property contrary to section 325(1) of the Penal Code.*

*The particulars of offence are that Allen Roudy of Corgate Estate Mahe during the night of the 3<sup>rd</sup> May 2013 to the early hours of the 4<sup>th</sup> May 2013 at Cascade Mahe wilfully and unlawfully damaged one triangular window of car registration No S1529 to the total value of Rs 2000 being the property of father Gustave Lafortune.*

- [3] The Appellant was convicted on his own plea of guilt and sentenced on Count 1 to a term of 5 years imprisonment and on Count 2 to a term of 12 months imprisonment. It was ordered that both terms run consecutively.
- [4] Learned counsel for the Appellant contended that the said term of imprisonment was harsh and excessive as the Appellant had pleaded guilty to the said offence and further moved in appeal that both terms of imprisonment be ordered to run concurrently.
- [5] I have considered the reasons set out by the learned Magistrate prior to sentencing the Appellant. She has taken into consideration the long history of similar convictions of the Appellant. It is apparent that despite lenient sentences being imposed on the Appellant his conduct indicates, he continuously refuses to lead an honest and crime free life. I also take into consideration the fact that the law prescribes that a person convicted of an offence under Count 1 is liable to imprisonment for a term of 10 years. Therefore considering the antecedents of the Appellant, this court is satisfied that the learned Magistrate has imposed a just and appropriate sentence of 5 years in regard to Count 1.
- [6] The proviso to section 36 of the Penal Code 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.*

- [7] The offence in respect of Count 2 is under section 325 (1) of the Penal Code. This offence falls under Chapter XXXIII and therefore it is the view of this court, that as it does not fall under the Chapters set out in the amended proviso referred to above, it would not be unlawful to make order that the said term be made to run concurrently.
- [8] Considering the fact that the Appellant pleaded guilty to this offence and the fact that it was committed during the course of the same transaction, this court makes order that the term of 12 months imprisonment imposed in respect of count 2, be made to run concurrently with the term of 5 years imprisonment imposed in respect of Count 1.
- [9] Subject to this variation in sentence the appeal is dismissed.

Signed, dated and delivered at Ile du Port on 21 July 2014

M Burhan  
**Judge of the Supreme Court**