

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 70/2013

Appeal from Magistrates Court decision 510/2011

[2014] SCSC

ALVIN ESTRO

Appellant

versus

THE REPUBLIC

Respondent

Heard: 26 May 2014

Counsel: Mr. Nichol Gabriel Attorney at Law for appellant

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

Delivered: 21 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

The statement of offence Stealing from person Contrary to and Punishable under Section 264 (a) of the Penal Code.

The particulars of offence are that Alvin Estro residing at Mont Buxton, Mahe, on the 28th day of April, 2011 at Mont Buxton, Mahe, stole from Gertrude Henry one handbag containing one mobile phone make Nokia value one thousand rupees, one purse value five hundred rupees, two hundred rupees in notes, one tin of milk value twelve rupees and fifty cents, one bottle of oil value twenty-five rupees, one torch value eighty rupees, one umbrella value thirty-five rupees, one set of keys and one I.D card value one hundred and fifty rupees being the property of the said Gertrude Henry.

- [3] The Appellant was found guilty after trial, convicted and sentenced to a term of 3 years imprisonment.
- [4] Learned counsel for the Appellant appealed on the ground that the sentence was harsh and excessive as the learned Magistrate failed to make order that the sentence run concurrently to the term the Appellant is serving at present.
- [5] The learned Magistrate cannot be faulted as he had used his discretion and acted in terms of section 36 of the Penal Code and the proviso contained therein. Section 9 of the Criminal Procedure Code is not applicable as it refers to sentences passed at one trial on different counts.
- [6] Learned counsel for the Appellant has mentioned that the Appellant is serving a term of 33 years of imprisonment. However in this instant case before me, there is no reference to the charges he was convicted and neither are there any appeals pending before this court in respect of the 33 year term of imprisonment he is said to be serving. Learned counsel for the Appellant is not precluded from appealing from each of the sentences that constitute the total of 33 years and move by way of appeal for any necessary relief.
- [7] Meanwhile considering this instant case before me, it is apparent that the Appellant is liable to imprisonment for a term of 7 years for the said offence. Considering the nature of the offence and the details set out in the evidence of the complainant, a 67 year old lady who has stated she had been threatened with a stick by the Appellant and her hand bag snatched and taken away from her, it cannot be said that the term of 3 years imprisonment imposed on him in this instant case is harsh and excessive.

[8] The sentence imposed by the learned Magistrate is upheld and the appeal against sentence dismissed.

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

M Burhan
Judge of the Supreme Court