

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 22/2013

Appeal from Magistrates Court decision 753/2012

[2014] SCSC

SAMANTHA DENIS

Appellant

versus

THE REPUBLIC

Respondent

Heard: 13 May 2014

Counsel: Mr. Nichol Gabriel Attorney at Law for appellant

Mr. Kalyaan Karunakaran, State Counsel for the Republic

Delivered: 23 July 2014

JUDGMENT

Burhan J

[1] This is an appeal against sentence.

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

Count 1

Housebreaking Contrary to Section 289 (a) of the Penal Code.

The particulars of the offence are that Samantha Denis residing at Anse Royale, Mahe, on the 27th day of November, 2012, at Anse Royale, Mahe, did break and enter into the dwelling house of Marie-Henriette Marie with intent to commit a felony therein namely stealing.

Count 2

The statement of offence is Stealing Contrary to Section 260 and Punishable under Section 264 (b) of the Penal Code.

The particulars of offence are that Samantha Denis residing at Anse Royale, Mahe, on the 27th day of November, 2012, at Anse Royale, Mahe, stole from the dwelling house of Marie-Henriette Marie, (5) skirts, (6) blouses, (1) dress, (1) pair of shorts, (2) black bags, (2) pairs of shoes, (1) pair of slippers, (3) bottles of perfume all amounting to the total value of SR3,720/- being the property of Marie-Henriette Marie.

- [3]** The Appellant was convicted on her own plea of guilt and sentenced to a term of 10 years imprisonment on Count 1 and to a term of 1 year imprisonment in respect of Count 2. The learned Magistrate further ordered that both terms of imprisonment run consecutively.
- [4]** Learned Counsel for the Republic conceded that in terms of section 6 (2) of the Criminal Procedure Code, the learned Magistrate had exceeded her limits of jurisdiction in respect of her sentencing powers, in imposing a total sentence of 11 years as the section provided that a sentence imposed by a Magistrate if imprisonment should not exceed 8 years.
- [5]** It is apparent the offence in this case was committed on the 27th of November 2012. In terms of section 27 (1) (b) (i) of the Penal Code as amended by Act 5 of 2012 the Appellant was liable to imprisonment of not less than 8 years if she were a person convicted for the first time. The previous conviction record of the Appellant indicates that she has previously been convicted for the same offence of Housebreaking on 4 occasions.

However it is to be noted the Appellant has not within five years prior to the date of this conviction been convicted of the same or similar offence.

- [6] Considering the fact that the learned Magistrate had exceeded her limits in sentencing the Appellant to 10 years imprisonment on Count 1, the said sentence is set aside. Even though the Appellant has a long history of previous convictions of the same offence of House breaking on record, as these convictions are not within the period of 5 years prior to this conviction, this court will substitute the sentence with a sentence of 8 years which is the sentence to be imposed for a first conviction in terms of section 27 (1) (b) (i) of the Penal Code. The Appellant is sentenced to a term of 8 years imprisonment in respect of Count 1.
- [7] The sentence of 1 year imposed by the learned Magistrate in respect of count 2 is maintained. If this sentence was to run consecutively once again the term of imprisonment would exceed the sentencing limit of the learned Magistrate prescribed in section 6(2) of the Criminal Procedure Code. Further considering that both offences were committed in respect of the same incident and therefore part of the same transaction, I make order that both terms run concurrently.
- [8] For the purpose of clarification the Appellant in appeal is sentenced to a term of 8 years imprisonment on Count 1 and to a term of 1 year imprisonment in respect of Count 2. Both terms of imprisonment to run concurrently.

Signed, dated and delivered at Ile du Port on 23 July 2014

M Burhan
Judge of the Supreme Court