

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 21/2014

Appeal from Magistrates Court decision 177/2013

[2014] SCSC

MARC ALBERT D'OFFAY

Appellant

versus

THE REPUBLIC

Respondent

Heard: 23 June 2014

Counsel: Mr. Nichol Gabriel Attorney at Law for appellant

Mrs. Carmen Cesar, Assistant Principal State Counsel for the Republic

Delivered: 25 July 2014

JUDGMENT

Burhan J

[1] This is an appeal against sentence.

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

Count 1

Exceeding the speed limit contrary to regulation 76 (i) as read with regulation 80 (k) of the Road Transport Regulations and punishable under section 24(2) of the Road Transport Act Cap 206.

The particulars of offence are that Marc Albert D'Offay, residing at Au Cap Mahe, on the 12th day of September 2013 on Providence highway, Mahe drove motor vehicle registration No. 8097 on the public road at a speed of 86 kmph which exceeds the speed limit of 80 kmph permitted on that road.

- [3] The Appellant was convicted on his own plea of guilt and sentenced to a fine of SR 6000/=.
- [4] Learned counsel for the Appellant appealed from the said sentence on the grounds that the said sentence was harsh and excessive considering the nature of the offence and the fact that the Appellant had pleaded guilty at the first instance.
- [5] The nature of the offence as set out in the particulars of offence is that the Appellant had driven at excess speed on the public road. The speed he had been driving at has been 86 kmph (Kilometres per hour) whereas the speed limit was fixed at 80 Kmph. Further the Appellant it appears is 57 years of age (a fact not contested by the prosecution) and had no previous convictions in regard to same or similar offences.
- [6] 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.

[7] It is apparent that the learned Magistrate had taken into consideration the fact that the offence attracted a term of 2 years imprisonment and a fine of SR 10.000/= prior to imposing the said fine.

[8] Having considered the following factors especially;

- a) the nature of the charge.
- b) the fact that the Appellant was driving at only 6 Kmph above the speed limit.
- c) the fact that the Appellant at the age of 57 had no previous convictions of same or similar nature.
- d) the fact that the Appellant had pleaded guilty at the first instance thereby expressing remorse and saving the time and expense of a trial by court,

I am of the view that in this instant case strong mitigatory facts as set out above exist. Further this is not an offence which would usually attract a custodial term of imprisonment and the maximum fine prescribed by law is SR 10.000. Therefore the fine of SR 6000 imposed by the learned Magistrate in the light of the aforementioned facts in the view of this court is harsh and excessive.

[9] The sentence imposed is set aside and a fine of SR 3000/= substituted. In default of payment of fine, the Appellant is to serve a term of 1 month imprisonment.

Signed, dated and delivered at Ile du Port on 25 July 2014

M Burhan
Judge of the Supreme Court