

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 10/2013**

**Appeal from Magistrates Court decision 418/2010**

**[2014] SCSC**

---

**GERARD NICHOLAS**

Appellant

versus

**THE REPUBLIC**

Respondent

---

Heard: 3 June 2014

Counsel: Mr. Joel Camille Attorney at Law for appellant

Mr. Kalyaan Karunakaran, State Counsel for the Republic

Delivered: 25 July 2014

---

**JUDGMENT**

---

Burhan J

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

**Count 1**

*Breaking into building and committing a felony therein namely Stealing Contrary to and Punishable under Section 291 (a) of the Penal Code.*

*The particulars of offence are that Gerard Nicholas residing at Saint Louis, Mahe, on the 10<sup>th</sup> day of March, 2009, broke and entered the office of Felicite Island Development and stole the amount of eight thousand, two hundred and seventy rupees.*

[2] The Appellant was found guilty after trial, convicted and sentenced to a term of five years imprisonment on the aforementioned charge.

[3] Learned counsel for the Appellant appealed from the said conviction and sentence on the following grounds;

*a) the learned Magistrate erred in law and the facts in convicting the Appellant on the finger print evidence found at the alleged crime scene.*

*b) the learned Magistrate erred in law and the facts in wrongly and insufficiently assessing the evidence of PW4 namely Natasha Marie.*

[4] The background facts of the case are that on the 11<sup>th</sup> of May 2009 around 6.45 a.m, Natasha Marie a cleaner working at Felicite Island Development had opened the main door of the office and noticed that the door leading to the accounts section had been broken open. She had immediately telephoned the Human Resources Manager and reported the incident. She had also noticed the sliding window was slightly open. Thereafter the police together with the finger print division of the Scientific Support and Crime Record Bureau (SSCRB) had been called in to investigate the crime scene.

[5] Lance Corporal Tony Joseph had arrived and observed that the lock of the office door had been tampered with and the door forced open and the office ransacked. Sub Inspector James Tirant attached to the Scientific Support and Crime Record Bureau described the manner in which the fingerprint was lifted from the wooden door lipping from the door that had been forced open. Chief Superintendent Elizabeth in his evidence described how the finger print lifted from the door lipping matched the finger print of the Appellant and stated he had found 10 points of characteristics on both impressions which were alike and agreed in sequence and details of ridge characteristics and produced the chart confirming same.

- [6] The main ground urged by learned counsel for the Appellant as borne out in his submissions is that the learned Magistrate had failed to take into consideration the evidence of Natasha Marie who stated that the Appellant had worked earlier with her at Youth Enterprise Services. It is apparent from the evidence of Conrad Johnson that Youth Enterprise Service and Felicite Island Development were two different offices with the same director situated close to each other. The break in however had occurred at the office of Felicite Island Development and not Youth Enterprise Service where the Appellant was supposed to have worked earlier.
- [7] The evidence of Josepha Adam who was the Accounts Assistant at Felicite Island Development is that the Appellant worked at Youth Enterprise Services and she categorically states that the Appellant did not work in her office and had never come to the accounts section in Felicite Island Development, the place where the break in occurred. The evidence of Natasha Marie too is that the Appellant did not work at Felicite Island Development. It is apparent therefore the place she refers to in her evidence that the Appellant had frequented was not Felicite Island Development where the break in occurred but Youth Enterprise Services.
- [8] Therefore based on the aforementioned facts, the learned Magistrate cannot be faulted in arriving at his finding of guilt based on the circumstantial evidence as there was no explanation before him as to how the Appellant's finger print appeared on a door liping of a door forcibly opened to gain entry to the office of Felicite Island Development.
- [9] It is apparent that the learned Magistrate had carefully analysed the evidence of the finger print experts namely Sub Inspector Tirant and Superintendent Elizabeth, in coming to a conclusion that the evidence was authentic and could be accepted by court. Identification by finger prints by a person expert in such prints is allowed and maybe sufficient even though the only evidence of identification ***R v Court (1960) 44 Cr.App.R. 242.***
- [10] The learned Magistrate had thereafter addressed his mind to the requisites of circumstantial evidence in coming to his finding of guilt. I see no reason as to why the learned Magistrate's findings in respect of same should be set aside. This court will not seek to interfere with the findings of the trial judge in respect of the truthfulness of the witnesses as it is not apparent that the witnesses's testimonies in this instant case are so

improbable that no reasonable tribunal would believe it *Eddison Alcindor v The Republic SC. Cr. App, Side No. 20 of 2008.*

- [11] For the aforementioned reasons both grounds urged by learned counsel for the Appellant bear no merit. The conviction is upheld and the appeal in respect of conviction dismissed.
- [12] In regard to the appeal against sentence, the Appellant after conviction was sentenced to a term of 5 years imprisonment. The offence was committed on the 10<sup>th</sup> of May 2009. A person convicted under section 291(a) of the Penal Code in terms of the amending Act 16 of 1995 was liable to a term of 14 years imprisonment. Section 27 A (1) (c) (i) of the Penal Code as amended by Act 16 of 1995 sets out that a person convicted for the first time of such an offence be sentenced to imprisonment for a period of not less than 5 years.
- [13] Therefore the learned Magistrate cannot be faulted for sentencing the Appellant to a term of 5 years imprisonment. Considering the nature of the offence, the manner it was committed and the amount stolen, the sentence cannot be said to be harsh and excessive.
- [14] For the aforementioned reasons the conviction and sentence of the learned Magistrate is upheld.
- [15] The appeal is dismissed.

Signed, dated and delivered at Ile du Port on 30 July 2014

M Burhan  
**Judge of the Supreme Court**