

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 68/2013**

**Appeal from Magistrates Court decision 80/2013**

**[2014] SCSC**

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**JAMES LABONTE**

Appellant

versus

**THE REPUBLIC**

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Heard: 23 May 2014, 31 July 2014

Counsel: Mr. Gabriel Attorney at Law for appellant

Mr. Thachett, Assistant Principal State Counsel for the Republic

Delivered: 24 September 2014

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**JUDGMENT**

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Burhan J

**[1]** The Appellant was charged in the Magistrates' Court as follows-

**Count 1**

*Housebreaking Contrary to Section 289 (a) of the Penal Code Cap 158.*

*The particulars of offence are that James Philip Labonte, on the 21<sup>st</sup> September, 2012, at Glacis, Mahe, broke and entered into the dwelling house of Mrs. Hugette Estro with intend to commit a felony there in, namely stealing.*

## Count 2

*Stealing from dwelling House contrary to Section 260 and Punishable under Section 264 (b) of the Penal Code Cap 158.*

*The particulars of offence are that James Philip Labonte, on the 21<sup>st</sup> September, 2012, at Glacis, Mahe, stole from the dwelling house of Mrs. Hugette Estro, the following items namely, the sum of SR900/- in coins of SR1/- 25cts and 10cts, one litre of Martini, value SR205/-, one litre of Amarula liquor, value SR475/- and one litre of Champagne, value SR107/-, being the property of the said Mrs. Hugette Estro.*

[2] The Appellant denied the charges. After trial held in his absence the Appellant was found guilty on both charges and convicted of same. He was sentenced to a term of 8 years imprisonment on Count 1 and to a term of 2 ½ years imprisonment on Count 2. It was further ordered that the sentences run consecutively.

[3] Learned counsel for the Appellant appealed against the conviction and sentence on the following grounds-

*The learned Magistrate erred in conducting the trial, passing judgment and entering conviction and sentence in the absence of the Appellant.*

*The sentence imposed by the learned Magistrate is manifestly harsh, excessive and wrong in law.*

*The sentence of eight years imprisonment on the first count and two years and six months imprisonment on the second count imposed by the learned Magistrate should have been made to run concurrently.*

*The sentence given by the learned Magistrate in the absence of the Appellant is a nullity.*

[4] I will first refer to Articles 19 (2) (i) and 19 (12) of the Constitution of the Republic of Seychelles.

Article 19 (2) (i) reads as follows-

*Every person charged with an offence-*

(a) ....

(b) ....

(i) *“shall, except with the person’s own consent, not be tried in the person’s absence unless the person’s conduct renders the continuance of the proceedings in the person’s presence impracticable and the court has ordered the person to be removed and the trial to proceed in the person’s absence.”*

[5] Article 19 (12) reads as follows-

*“For the purposes of clause 2(i), a person who has, in accordance with law, been served with a summons or other process requiring the person to appear at the time and place appointed for the trial and who does not so appear shall be deemed to have consented to the trial taking place in the person’s absence.”*

[6] It is therefore apparent that a person who fails to appear at the time and place appointed for trial is deemed to have consented to the trial taking place in his absence. In this instant case as borne out by the proceedings the Appellant had been summoned to court on the 27<sup>th</sup> of March 2013. He had been represented by learned counsel and in his presence the Appellant was warned to appear on the trial date which was the 23<sup>rd</sup> of May 2013. He was further warned by the learned Magistrate Mr. K Labonte that if he failed to appear trial would proceed in his absence.

[7] Section 133 A (1) of the Criminal Procedure Code Cap 54 reads as follows;

*133A.(1) The trial of any person before the Supreme Court with or without a jury or before any Magistrates’ Court may commence and proceed or continue in his absence if the Court is satisfied that the summons or other process requiring the person appear at the time and place appointed for the trial has in accordance with law, been served on such person and that –*

*(a) he had consented to the trial taking place in his absence; or*

*(b) he does not appear in court; or*

*(c) by reason of his conduct the continuance of the proceedings in the person's presence has become impracticable and the court has ordered the person to be removed and the trial to proceed in the person's absence.*

- [8]** On the 23<sup>rd</sup> of May 2013 both the Appellant and his counsel were not present. The trial proceeded in the absence of the Appellant. The Appellant was found guilty and sentenced on the same day. The Appellant continued to abscond from court until he was arrested on the 20<sup>th</sup> of June 2013 and brought to court. He was informed of his conviction and sentence and his right to appeal. The record does not indicate that the Appellant made any excuse regarding his absence from court on the 23<sup>rd</sup> of May 2013 or attempted to satisfy court that his absence was bona fide as provided for under section 133A(3) of the Criminal Procedure Code.
- [9]** It is apparent that having been informed of the trial date in the presence of his learned counsel the Appellant cannot state that he was unaware the case was fixed for trial. The learned Magistrate therefore cannot be faulted for coming to a finding that the Appellant had deemed to have consented to the trial taking place in his absence as the law provides for same. It is apparent even after his arrest he had not sought to explain his absence on the said trial date though he had an opportunity to do so.
- [10]** In the light of the aforementioned provisions which learned counsel for the Respondent has aptly brought to the notice of court, I am of the view that the contention of learned counsel for the Appellant that the learned Magistrate erred in conducting the trial, passing judgment and entering conviction and sentence in the absence of the Appellant, bears no merit.
- [11]** I will now proceed to deal with the appeal against sentence. It is apparent that the learned Magistrate had sentenced the Appellant to a term of 8 years imprisonment on Count 1 and to a term of 2 ½ years imprisonment on Count 2 and further ordered that both terms run consecutively. Understandably the learned Magistrate was acting under the amended section 36 of the Penal Code as amended by Act 20 of 2012. In total the Appellant would have to serve a term of 10 ½ years imprisonment.

[12] Section 6 (2) of the Criminal Procedure Code reads as follows-

*'The Magistrates' Court when presided over by a Magistrate other than a Senior Magistrate may pass any sentence authorised by law:*

*'Provided that such sentence shall not exceed, in the case of imprisonment, 8 years, and in the case of a fine, Rs.75,000.'*

[13] Section 9 (2) of the Criminal Procedure Code reads as follows-

*'For the purpose of appeal the aggregate of consecutive sentences imposed under this section in the case of convictions for several offences at one trial shall be deemed to be a single sentence.'*

[14] Therefore as the law stood at the time the offence was committed, a reading of section 6 (2) together with section 9 (2) of the Criminal Procedure Code indicates the maximum sentence that could have been imposed by the learned Magistrate at one trial ( emphasis added) would have been a term of 8 years imprisonment. Further it is apparent that the provisions of the Criminal Procedure Code have been enacted recognizing the hierarchy of Courts. The powers of sentencing have too been enacted apportioning the powers accordingly. If the learned Magistrate felt a higher sentence was warranted he was not precluded from referring the case to the Supreme Court.

[15] I therefore proceed to reduce the sentence of 2 ½ years in Count 2 to two years and order that both terms of imprisonment run concurrently. The Appellant to serve in total a term of 8 years imprisonment.

[16] Subject to the above variation in sentence the appeal against conviction stands dismissed.

Signed, dated and delivered at Ile du Port on 24 September 2014

M Burhan  
**Judge of the Supreme Court**