

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 32/2013

Appeal from Magistrates Court decision 81/2013

[2014] SCSC

PETRINA PRUDENCE

Appellant

versus

THE REPUBLIC

Heard: 24 July 2014
Counsel: Mrs. Karen Domingue Attorney at Law for Appellant
Mrs. Langsinglu, Assistant Principal State Counsel for the Republic
Delivered: 24 October 2014

JUDGMENT

Burhan J

- [1] This is an appeal against sentence.
- [2] The Appellant in this case was charged in the Magistrates' Court as follows;

Count 1

The statement of offence is 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 Petrina Prudence, residing at Port Glaud, Mahe, on the 19th of February 2013, at Anse Soleil Resort, Baie Lazare, Mahe, stole from the room, being occupied by Mr. Vladimir Tichi, a Czech tourist the sum of SR4000/- in notes of five hundreds, being property of the said Mr. Vladimir Tich.

- [3] The Appellant was convicted on her own plea and sentenced to a term of 3 years imprisonment by the learned Magistrate Mr. B. Adeline.
- [4] Learned counsel for the Appellant seeks to appeal from the said sentence on the grounds that the sentence is harsh and excessive. In her oral submissions she submitted that the sentence was harsh and excessive for the following reasons-
- a) The accused had pleaded guilty without wasting the time of court and she had cooperated with the police.
 - b) The accused had expressed remorse and had tendered an apology to the victim.
 - c) The accused is a person having a family and a two year old child and a first offender.
 - d) Learned counsel however admitted the accused had entered the room with the consent of the victim and had sex with him and thereafter stolen his money.
- [5] Learned Counsel for the Respondent contended that the Appellant had breached the trust imposed on her and stolen a sum of SR 4000 from the tourist who was on holiday in the Seychelles.
- [6] Having considered the submissions of both the Appellant and the Respondent, it is apparent and admitted by both parties that the Appellant had been charged under section 264 (b) of the Penal Code read with section 260. A person convicted of such an offence is liable to a term of ten years imprisonment.
- [7] The offence was committed on the 19th of February 2013. Therefore the Penal Code (Amendment Act No 5 of 2012) which came into force on the 6th of August 2012 would apply. In terms of section 27 (1) (b) (i) as amended, the accused would be liable to a sentence of *not less than 8 years for the said offence* (emphasis added).

[8] Learned counsel for the Appellant's contention therefore that the term of imprisonment of 3 years was manifestly harsh and excessive bears no merit as the learned Magistrate was empowered to sentence the Appellant to a minimum mandatory term of 8 years imprisonment. The Respondent has not sought enhancement of sentence. It appears the learned Magistrate has sought to impose a sentence lesser than the minimum mandatory term having given consideration to the facts in mitigation and using his discretion in sentencing as permitted in the case of *Jean Frederick Ponoo v Attorney General SCA 38/2010*.

[9] For the aforementioned reasons this court is of the view that the sentence cannot be considered to be harsh and excessive. The sentence is affirmed and the appeal against sentence is dismissed.

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

M Burhan
Judge of the Supreme Court