

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 20/2013

Appeal from Magistrates Court decision 273/2014

[20114] SCSC

CHARLES ESTICO

Appellant

versus

THE REPUBLIC

Heard: 20 October 2014

Counsel: Mr Joel Camille for appellant

Ms Emily Gonthier , Attorney General for the Republic

Delivered: 29 October 2014

JUDGMENT

Akiiki-Kiiza J

[1] The appellant was charged with breaking into a building and committing a felony therein namely stealing, Contrary to Section 291 (a) of the *Penal Code Act* and punishable under the same section. He pleaded guilty and was convicted and sentenced to 10 years imprisonment. The appellant was not satisfied with the conviction and raised one ground in his memorandum of Appeal:

(1) That the learned Magistrate erred in law in having admitted the facts pertaining to the guilty plea of the appellant, as mere admission of appellant's Attorney as to the facts.

- [2] The Lower Court record on the day the plea of guilty was recorded shows the following:-
- “11/02/13*
- Mrs Medaline for Republic: Present*
- Accused and Mr Bonte : Present*
- Mr Bonte: May the charge be put to the accused in Creole.*
- Accused: Guilty.*
- Facts: As per charge sheet. Accused removed one louver blade and got access inside. Police were informed. Accused print was discovered on the blade.*
- Mr Bonte: Facts admitted on his own plea.*
- Prosecutor: First offender.*
- Mitigation: Accused is 33 years old. Not wasted Court’s time. To be magnan mass in mercy as possible.*
- Sentence: I have considered the guilty plea of accused and the mitigation of his counsel and sentence the accused to 10 years imprisonment. Sentence to take immediate effect. Accused has a Right of Appeal to Supreme Court within 14 days.*
- Signed: K. Labonte (Mr)*
- Magistrate”.*
- [3] It is generally the law that an accused person who pleaded guilty cannot appeal against the conviction but can appeal against the extent or legality of the sentence. **(Section 309 (1) Criminal Procedure Code).**
- [4] In the case of **PAUL OREDDY VS THE REPUBLIC S.S.A 9/07** the Seychelles Court of Appeal held as follows:

“ It is trite law that one cannot appeal against a plea of guilty entered. However, it should be distinguished between a plea of guilt freely and unequivocally entered and one that is obtained through inducement or coercion”.

[5] This means that, although the accused has pleaded guilty, he may appeal against conviction if the plea was equivocal.

[6] Apart from inducement or coercion, a guilty plea could be held equivocal if the accused has not himself admitted the facts, but someone else does so on his behalf. This is borne out by the wording of Section 181 (2) of the Criminal Procedure Code.

“181 (2):

*If the accused person admits the truth of the charge, **HIS ADMISSION** shall be recorded as near as possible in the words **USED BY HIM**”.* (Emphasis mine).

[7] This means that it is the accused person who has to accept the facts himself, but not his counsel. (See the case of **MARCEL DAMIEN QUATRE [2014] SCSC CN 10/14**). This appears also to be the position of the Seychelles Court of Appeal in the case of **RAYMOND TARNEEKI VS REPUBLIC S.C.A Cr. App No 4/96** where their Lordships said:-

*“If an admission of any fact constituting an offence is to be binding for the purpose of the conviction it is to be made by the accused and not by a third party **which in this case, was the appellant’s counsel** at the Supreme Court”.* (emphasis mine)

[8] In the instant case, the Lower Court record as outlined above shows that Mr Bonte counsel for the appellant is the one who admitted the facts as narrated by the prosecution, but not the appellant himself. This is clearly contrary to both statutory and the case law as outline herein above.

[9] The learned counsel for the Respondent Mrs Gonthier, and rightly so in my view, never contested the appeal given the position of the law.

[10] All in al this appeal succeeds. The conviction is quashed and the sentence of 10 years is set aside.

[11] The case is remitted back to the Magistrate's Court for the appellant to take a fresh plea before a different Magistrate with competent jurisdiction.

Order accordingly.

Signed, dated and delivered at Ile du Port on 29 October 2014

D Akiiki-Kiiza
Judge of the Supreme Court