

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 45/2013

Appeal from Magistrates Court decision 102/2010

[2014] SCSC 450

NELSON DOROTHEE

Appellant

versus

THE REPUBLIC

Heard: 17th July 2014, 31st July 2014
Counsel: Mr. Joel Camille Attorney at Law for Appellant
Mrs Carmen Cesar, State Counsel for the Republic
Delivered: 21 November 2014

JUDGMENT

[1] Burhan J This is an appeal against conviction and sentence.

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

Count 1

“Housebreaking contrary to section 289(a) of the Penal Code.

The particulars of offence are that Nelson Dorothee, 20 years old residing at Matata Estate, Pointe Larue, Mahe, on the 17th February 2010, break and enter into the house of Denis Gabriel with intent to commit a felony therein namely stealing.”

Count 2

“Stealing contrary to section 269 of the Penal Code

The particulars of offence are that Nelson Dorothee, 20 years old residing at Matata Estate, Pointe Larue, Mahe, on the 17th February 2010 stole from the dwelling house of Mr. Denis Gabriel of Matata Estate, Pointe Larue, Mahe, 8 ladies gold ring value of SR3000/-, 2 men gold ring value of SR1500/-, 2 gold chains value of SR1500/-, 4 gold necklaces value of SR5095/-, 2 gold earrings value of SR700/-, 1 man watch value of SR300/-, 1 mobile phone make Motorola value of SR2800 and 75 Euro notes all to the total value of SR16095/- being the properties of Mr. Denis Gabriel.”

- [3] The Appellant was found guilty after trial and on conviction was sentenced to a term of 8 years imprisonment on Count 1 and to a term of 12 months imprisonment on Count 2 to run consecutively. The learned Magistrate further ordered that the terms of imprisonment, commence after the expiration of the term the Appellant was serving at the time of sentencing.
- [4] Learned counsel for the Appellant has appealed from the said conviction and sentence on the following grounds-
- a) *“the learned Magistrate erred in law in having failed to satisfy himself in his conclusions that the latent impression found on the loose louver blades at the house of the virtual complainant was without doubt the impression of the Appellant.*
 - b) *alternative to Ground 1 above, the Learned Magistrate, erred in law in having failed to make a finding as regards to the latent impression, found in the case.*
 - c) *the Learned Magistrate erred in law and on the fact to have concluded that the Respondent/Prosecution’s evidence, taken in its entirety as being purely circumstantial evidence, satisfied him that the inculpatory facts are incompatible with the innocence of the Appellant in the case.*
 - d) *that the sentence meted in the case is wrong in law and contrary to principles in being harsh and excessive.”*
- [5] In his reasoning the learned Magistrate Mr. K. Labonte has come to his finding that the charges had been proved beyond reasonable doubt, having taken into consideration the entirety of the circumstantial evidence led at the trial. He has carefully prior to coming to the finding of guilt, analysed the various details of evidence including the finger print evidence where both finger print experts Robin Omblime and Reginald Elizabeth, state

that the finger print lifted from the louver blade that had been dislodged at the scene of the incident was the right thumb print of the Appellant Nelson Dorothee.

- [6] It is clear therefore the learned Magistrate has relied on this evidence in the identification of the Appellant. Therefore the contention of learned counsel for the Appellant, that the learned Magistrate failed to satisfy himself in his conclusions that the latent impression found on the louver blade at the house of the virtual complainant was without doubt the impression of the Appellant or that the learned Magistrate erred in law in having failed to make a finding as regards to the latent impression found, bears no merit.
- [7] The evidence clearly indicates that the prosecution relied mainly on the finger print evidence taken at the scene of the incident to prove the identity of the intruder. 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***. Further the fact that a louver blade had been dislodged and entry made into the house and items stolen are borne out by the evidence of WPC Marlene Cherry and Denis Gabriel the victim.
- [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 the dislodged louver of the window at the virtual complainant's house.
- [9] 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 learned trial judge in accepting the evidence of the prosecution as it is not apparent that the witnesses' 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 and Akbar v R (SCA 5/1998)***.
- [10] For the aforementioned reasons the grounds of appeal in respect of conviction fail and the appeal against conviction stands dismissed.
- [11] Learned counsel for the Appellant has appealed against the sentence imposed by the learned Magistrate in that the "*sentence meted in the case is wrong in law and contrary to principles in being harsh and excessive.*" According to the law prevailing at the time

the offence was committed, the accused was liable to a term of 10 years imprisonment on Count 1 and liable to a term of 10 years imprisonment in respect of Count 2. Therefore the imposition of a term of 8 years imprisonment on Count 1 and 12 months imprisonment on Count 2 cannot be said to be unlawful.

[12] Learned counsel for the Appellant has further complained the sentence was harsh and excessive. Considering the nature of the crime and the items stolen as set out in the particulars of offence, it cannot be said that the sentence of 8 years imposed in respect of Count 1 is harsh and excessive. However it is to be borne in mind, that the proviso in section 36 of the Penal Code making unlawful, concurrent sentencing in respect of offences under Chapters XXVI, Chapter XXVIII and Chapter XXIV as set out in Penal Code Amendment (2) Act 20 of 2010, was not in force at the time the offence in this case was committed.

[13] Therefore considering the fact that both offences were committed in the course of the same transaction, this court makes order that the sentence of 8 years imprisonment imposed in Count 1 and 12 months imprisonment imposed in Count 2 run concurrently. In total, the Appellant is to serve a term of 8 years imprisonment. Time spent in remand to count towards sentence. The sentence of 8 years imposed in this case, is to commence at the expiration of the term of imprisonment the Appellant was serving at the time he was sentenced.

[14] Subject to this variation in sentence the appeal is dismissed.

Signed, dated and delivered at Ile du Port on 21 November 2014

M Burhan
Judge of the Supreme Court