

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 35, 50 and 57 /2013**

**Appeal from Magistrates Court decision 738, 762 and 739 /2012**

**[2015] SCSC 128**

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**GERARD VOLCY**

Appellant

versus

**THE REPUBLIC**

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Heard: 03rd June 2014 and 15th May 2014, 29th October 2014 and 15th September 2014,  
03rd June 2014 and 15th May 2014 (written submissions)

Counsel: Mr. Joel Camille Attorney at Law for Appellant

Ms. Brigitte Confait State Counsel and E. Gonthie, Assistant State Counsel for  
the Republic

Delivered: 12 May 2015

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**JUDGMENT**

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**Burhan J**

[1] In CA 35/2013 the Appellant was charged in the Magistrates' Court case number  
738/2012 as follows:

**Count 1**

*Housebreaking contrary to and punishable under section 289(a) of the Penal Code.*

*The particulars of offence are that, Gerard Volcy residing at Baie Lazare, on the 31<sup>st</sup> day of October 2012, at Mont Plaisir, Mahe, broke and entered into the dwelling house of Leslie Judith with intent to commit a felony therein.*

**Count 2**

*Stealing from dwelling house contrary to section 260 and punishable under section 264 (b) of the Penal Code.*

*The particulars of offence are that, Gerard Volcy residing at Baie Lazare, on the 31<sup>st</sup> day of October 2012, at Mont Plaisir, Mahe, stole from dwelling house of Leslie Judith the following, a Laptop value SR7000/-, 10 CD's value SR250/-, 1 hammer drill value SR3000/-, 1 grinder disk value SR170/- , 1 external 500GB value SR1500/-, 4 shower curtain value SR650/-, 4 bed sheets value SR1000/-, 1 silver necklace value of SR1000/- to the total value of SR15,070/- being the property of Leslie Judith.*

**Count 3**

*Damaging property contrary to section 325(1) of the Penal Code.*

*Particulars of offence are that, Gerard Volcy residing at Baie Lazare on the 31<sup>st</sup> day of October 2012, at Mont Plaisir Mahe, wilfully and unlawfully damaged an internet modem value of SR2200/-, 3 solid doors value of SR5000/-, 2 security lock value of SR1000/- and 1 security camera valued Sr2500 to the total value of SR 10,700/- being the property of Leslie Judith.*

[2] The Appellant was convicted on his own plea of guilt on all three counts and sentenced on the 6<sup>th</sup> day of March 2013 to a term of 9 years imprisonment on Count 1, 4 years imprisonment on Count 2 and 1 year imprisonment on Count 3.

[3] The learned Senior Magistrate made further order that all three terms of imprisonment run consecutively.

[4] In CA 50/2013 the Appellant was charged in the Magistrates' Court case number 762/2012 as follows:

**Count 1**

*Housebreaking contrary to and punishable under section 289 (a) of the Penal Code.*

*The particulars of offence are that, Gerard Volcy residing at Baie Lazare, on the 29<sup>th</sup> day of October 2012 at Dan Zanblon, Mont Plaisir, Mahe, broke and entered into the dwelling house of Sheila Gomme with intent to commit a felony therein.*

**Count 2**

*Stealing from dwelling house contrary to section 260 and punishable under section 264 (b) of the Penal Code.*

*The particulars of offence are that, Gerard Volcy residing at Baie Lazare on the 29<sup>th</sup> day of October 2012 Dan Zonblon, Mont Plaisir Mahe, stole from dwelling house of Sheila Gomme the following, a Laptop make Toshiba value of SR7000/-, 3 packet of pasta value of SR30/-, 1 packet of lentil to the total value of SR15/-, 3 packets of biscuits value of SR45/-, SR2000/- in note of SR100, 1 perfume value of SR10/- each, 1 perfume make Cool Off value for SR150/-, 1 silver bracelet value for SR450/-, 1 packet of biscuit value for SR 12.75/-, 2 oranges value of SR8/-, 1 pen drive 4GB colour black value SR395/-, 1 backpack SR525/-, DVD film and music CD's value for SR300/- to the total value of SR13, 395/- being the property of Sheila Gomme, Rency Desaubin and Vivitte Marie.*

**Count 3**

*Unlawful possession of property contrary to and punishable under section 310 of the Penal Code.*

*Particulars of offence are that, Gerard Volcy residing at Baie Lazare, Mahe on the 05<sup>th</sup> day of November 2012 at Anse Aux Pins Mahe had in his possession 1 backpack, 1 perfume make Cool Off, 1 silver bracelet and 1 charge Laptop.*

[5] The learned Magistrate dismissed Count 3 and the Appellant was convicted on his own plea of guilt on Counts 1 and 2 and sentenced on the 7<sup>th</sup> day of May 2013 to a term of 10 years imprisonment on Count 1 and 2 years imprisonment on Count 2.

[6] The learned Magistrate made further order that:

*“All three (sic) sentences shall run consecutively and run consecutive to the sentence he is presently serving”.*

[7] In CA 57 of 2013 the Appellant was charged in the Magistrates’ Court case number 739/2012 as follows:

**Count 1**

*Housebreaking contrary to and punishable under section 289 (a) of the Penal Code.*

*The particulars of offence are that, Gerard Volcy residing at Baie Lazare, on the 23<sup>rd</sup> day of October 2012 at Pointe Aux Sel, Mahe, broke and entered into the dwelling house of Regina Balette with intent to commit a felony therein.*

**Count 2**

*Stealing from dwelling house contrary to section 260 and punishable under section 264 (b) of the Penal Code.*

*The particulars of offence are that, Gerard Volcy of Baie Lazare, on the 23<sup>rd</sup> day of October 2012, at Pointe Aux Sel Mahe, stole from dwelling house of Regina Balette the following items, a blender make Philips SR500/- and some bras, panty and socks value SR300/- to the value of SR800 being the property of Regina Balette.*

[8] The learned Senior Magistrate convicted the Appellant on both counts on his plea of guilt and sentenced the Appellant on the 10<sup>th</sup> of June 2013 to a term of 12 years imprisonment on Count 1 and to a term of 4 years imprisonment on Count 2.

[9] It was further ordered that:

*“All sentences shall run consecutive to one another and consecutive with any other sentence convict is currently serving and time spent on remand shall be deducted towards sentence”.*

[10] Therefore the Appellant would serve in total a term of 42 years imprisonment for all three cases.

[11] Learned counsel for the Appellant has appealed only against the sentence imposed in all three cases on the grounds that the sentence imposed on the Appellant in each case is harsh and excessive.

[12] Although learned counsel for the Respondent objected to all three cases being consolidated by this court, this court is of the view that in the interests of justice in order that a proper finding on sentence could be made, all three cases should be consolidated and one judgment given.

[13] It is apparent that in ordering consecutive sentencing in one trial and in respect of several trials, the learned Magistrates’ were taking into consideration the provisions contained in section 9 (1) of the Criminal Procedure Code and section 36 of the Penal Code that read as follows;

[14] Section 9 (1) of the Criminal Procedure Code reads as follows:

[15] *“When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefore which such court is competent to impose, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently”.*

[16] Section 36 of the Penal Code reads as follows:

*“Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court direct that it shall be executed concurrently with the former sentence or of any part thereof;*

*Provided that it shall not be lawful for a court to direct that any sentence under Chapter XXVI, Chapter XXVIII or Chapter XXIX be executed or made to run concurrently with one another or that a sentence of imprisonment in default of a fine be executed concurrently with the former sentence under section 28 (c) (i) of this Code or any part thereof “.*

[17] The Seychelles Court of Appeal in the recent case of **Roddy Lenclume vs The Republic Criminal Appeal SCA 32/2013** (which was decided after the amendment of section 36 of the Penal Code by Act 20 of 2010 ) **A.Fernando J.A** held as follows:

*“ It is our view that despite the fact that the Penal Code provided for a mandatory term of imprisonment of 10 years for burglary and section 9 of the Criminal Procedure Code provided as a rule that the sentences in case of conviction of several offences at one trial should be consecutive; a Magistrate cannot exceed his powers of sentencing set out in section 6 (2) of the Criminal Procedure Code”.*

[18] Further in paragraph 19 of the said judgement it was further held:

*“We do not venture out to say that the mandatory jail term of 10 years for burglary or the application of consecutive sentences in respect of offences under Chapters XXVI, XXVIII or XXIX are by themselves unconstitutional or offend the principle of proportionality in sentencing. The imposition of such sentences may be appropriate in certain cases of aggravated burglary and the concerns of the legislature will be met by such imposition”.*

[19] In the said case the Seychelles Court of Appeal on considering the fact that the Appellant was 18 years old and the value of the items stolen being in one case SR 320 and the fact that the Appellant was a first offender in respect of the case 527/12, proceeded to reduce the sentences in each of the three cases and made further order that the sentences run concurrently, resulting in the Appellant in that case having his sentence reduced from a total of 18 years to a total of 5 years imprisonment in all three cases he was convicted.

[20] In its reasoning the Seychelles Court of Appeal held that:

*“We are also of the view the order made for the sentences of imprisonment of 10 years and 8 years to be executed consecutively on the Appellant who was 18 years old and a first time offender is grossly disproportionate to what would have been appropriate and tantamount to cruel and inhuman punishment in the circumstances”.*

[21] Having thus analysed the reasons set out by the Seychelles Court of Appeal in reducing the sentences in the Roddy Lenclume case (supra), I proceed to consider the facts as borne out in these appeals.

[22] In line with the Seychelles Court of Appeal reasoning, I proceed to reduce the sentence of 14 years imposed in case number CA 35/2013 by the learned Senior Magistrate to a total term of 10 years imprisonment as it is apparent it exceeds the sentencing powers as provided for the Senior Magistrate in section 6 (2) of the Criminal Procedure Code. Similarly in case number CA 50/2013, I reduce the term of imprisonment of 12 years imposed to a total term of 8 years imprisonment as the learned Magistrate has exceeded the sentencing powers as provided for in section 6 (2) of the Criminal Procedure Code.

[23] The value of the items stolen in cases 35/2013 and 50/2013 are SR15, 070/ and SR 13, 395/ respectively. However in terms of the Roddy Lenclume case supra, it appears that the total term of 16 years imposed in CA 57/2013 by the Magistrates’ Court is harsh and excessive, when one considers that the value of the items stolen were only SR 800. I would therefore proceed to reduce this term to a total term of 3 years imprisonment to be in conformity to the Lenclume case (supra).

[24] However on the other side of the scale unlike the Lenclume case (supra), in these instant cases the accused in all three cases Gerard Volcy is a matured individual who has a long history of breaking and entering into houses and stealing. He has a previous record dating back to 2008 and six previous convictions including house breaking and stealing as per his previous conviction record filed in the case record. It appears courts have on several occasions treated him leniently but to no avail. In fact it appears that he has been released from prison on the 30 of April 2012 but soon thereafter, in the months of October and November 2012, proceeded to commit the offences set out above.

- [25] In such circumstances a term of 5 years imprisonment as imposed in the Lenclume case would not be appropriate or adequate considering the circumstances peculiar to this case.
- [26] I therefore proceed to make order that the terms of 10 years imprisonment imposed by this court in case CA 35/2013 and the term of 8 years imprisonment imposed in CA 50/2013 and the term of 3 years imprisonment in CA 57/2013 by this court run consecutively. That is in terms of section 36 of the Penal Code, the 8 year term of imprisonment in CA 50/2013 should commence at the expiration of the term of 10 years imprisonment imposed in CA 35/2013.
- [27] This court further orders that the term of 3 years imprisonment imposed by this court in CA 57/2013 commence at the expiration of the terms of imprisonment ordered in cases CA 35/2013 and 50 /2013. Therefore in total the Appellant would serve a term of 21 years imprisonment.
- [28] Accordingly the total term of 42 years imprisonment imposed on the Appellant in the aforementioned three cases is reduced to a total of 21 years imprisonment. Time spent in remand to count towards sentence.

Signed, dated and delivered at Ile du Port on 12 May 2015

M Burhan  
**Judge of the Supreme Court**