

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 30/2013 and CN 83/2013**

**Appeal from Magistrates Court decision 325/2012 and 626/2011**

**[2015] SCSC 13**

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**RON ROY VICTOR**

Appellant

versus

**THE REPUBLIC**

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Heard: 15 July 2014 and 26 September 2014

Counsel: Mr. Joel Camille Attorney at Law for appellant

Ms. Emily Gonthier , Assistant State Counsel for the Republic

Delivered: 23 January 2015

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**JUDGMENT**

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**Burhan J**

[1] There are two appeals CN 30/2013 and CN 83/2013 before this court in respect of the sentence imposed in each case on the Appellant Ron Victor. The judgments in both appeals are therefore consolidated and given below.

[2] In CN 30 of 2013 the Appellant was charged in the Magistrates' Court Case No; 325 of 2012 as follows:-

**Count 1**

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

*Particulars of offence are that, Ron Roy Victor residing at Anse Royale Mahe, or c/o Montagne Posée Prison, on the 09<sup>th</sup> day of June 2009, broke and entered the dwelling house of Marie-Josee Marengo with intent to commit a felony therein namely stealing.*

## **Count 2**

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

*Particulars of offence are that, Ron Roy Victor residing at Anse Royale Mahe, or c/o Montagne Posée Prison, on the 09<sup>th</sup> day of June 2009, stole from the dwelling house of Marie-Josee Marengo one pair of gold stud, one pair of gold earrings, two gold necklaces, one gold bracelet, one silver ring, two earrings and silver pendant to the total value of eight thousand rupees being the property of the said Marie-Josee Marengo.*

[3] The Appellant pleaded guilty to the charge and was sentenced to term of 3 years imprisonment on Count 1 and to a term of 2 years imprisonment on Count 2. The learned Magistrate made further order that both terms run consecutively and consecutive to the term he was serving namely 21 years.

[4] Learned counsel for the Appellant submits that the sentence is harsh and excessive as the learned Magistrate had failed to consider the “totality principle” in sentencing the Appellant as he was already serving a term of 21 years.

[5] I have observed the record and note there exists no record of previous convictions to indicate that the accused was serving a term of 21 years imprisonment. It is to be noted that learned counsel for the prosecution has stated thus-

[6] “According to this file, he is a first time offender and to our knowledge he is a convict.”

[7] In such a situation the proper procedure would have been to adjourn sentencing until the discrepancy was clarified. It is the view of this court it would be unsafe to rely on what the accused states or admits when sentencing, without clarification from the prosecution or by a previous conviction report.

[8] I have observed that the offence was committed on the 9<sup>th</sup> of June 2009. The Appellant was liable to a term of 10 years imprisonment on each count. Considering the facts before court, the serious nature of the charge of Housebreaking and the items said to have been stolen, I am of view that the sentence of 3 years imposed on Count 1 and the sentence of 2 years imposed in respect of Count 2, is not harsh and excessive.

[9] It is to be observed that at the time the offence was committed, the amendment to the Penal Code, Act 20 of 2010 which makes it unlawful for the imposition of concurrent sentences in offences under Chapters XXVI, XXVIII and XXIX was not in force.

[10] Therefore as both offences as set out in Counts 1 and 2 were committed in the same transaction, this court makes order that the sentence imposed in respect of Count 1 and the sentence imposed in respect of Count 2 be made to run concurrently. Therefore in total the Appellant is to serve a term of 3 years imprisonment in this instant case.

[11] I will now proceed to deal with CN 83 of 2013 where the Appellant was charged in the Magistrates' Court in case no; 626 of 2011 as follows;

### **Count 1**

*Housebreaking contrary to and punishable under section 289 (a) of the Penal Code Cap 158 (as amended by Act 16 of 1995)*

*Particulars of offence are that, Ron Victor, residing at Anse Royale, on the 14<sup>th</sup> day of September 2011. At Sweet Escote Anse Royale, Mahe, broke and entered into the dwelling house of Udra Esparon with intent to commit a felony therein namely stealing.*

### **Count 2**

*Stealing from dwelling house contrary to section 260 and punishable under section 264 (b) of the Penal Code Cap 158.*

*Particulars of offence are that, Ron Victor residing at Anse Royale on the 14<sup>th</sup> day of September 2011, at Sweet Escote Anse Royale Mahe stole from the dwelling house of Udra Esparon the following items namely Rs.900/- in cash, one (1) electric drill to the value of Rs.2500/-, one (1) silver chain and a pendant to the value of Rs.1500/-, two (2) silver rings to the value of Rs.1000/, one mobile phone make Nokia C6 to the value of Rs.5500/-, one (1) mobile phone make Wifi to the value of Rs.3500/-, one (1) mobile phone make Nokia to the value of Rs.800/- and one ice tong for to the value of Rs.150/-, all amounting to the total value of Rs.15,700/- being the property of Udra Esparon.*

[12] The Appellant was found guilty after trial and was sentenced on Count 1 to a term of 8 years imprisonment and on Count 2 to a term of 1 ½ years imprisonment. It was further ordered that both terms run consecutively. In total a sentence of 9 ½ years imprisonment.

[13] In the case of ***Neddy Onezime v The Republic SCA 06/2013 Msoffe JA*** held;

*“Notwithstanding the above general position of the law, the question in this case is whether in the justice of this case the order for consecutive sentence meets the best interests of justice.” This is the crucial question we have to answer for purposes of a fair decision in the matter”.*

It was further held that;

*“We consider that a further additional mandatory sentence of 15 years imprisonment would violate the principle of proportionality advocated in the Ponoo case.” (Jean Frederick Ponoo v The Attorney General SCA 38/201).*

[14] The Seychelles Court of Appeal proceeded to reduce the term of 15 years imprisonment to 5 years as it was to run consecutively with another term of 15 years imprisonment for a similar offence and held as follows-

*“In the overall circumstances of this case , we reduce the sentence to 5 (five) years so that the total sentence the Appellant would serve after taking into account the consecutive order would be 20 (twenty) years imprisonment”.*

[15] I am of the view considering the overall circumstances of this case, the personal circumstances of the Appellant set out in the plea of mitigation that in the interests of justice the term of 9 1/2 years imprisonment on both Counts in CN 83/2013, should be reduced to a term of 8 years imprisonment. The Appellant is sentenced accordingly.

[16] In the Neddy Onezime case (supra) having considered section 36 of the Criminal Procedure Code it was further held, *“Hence in law the order for consecutive sentence ordered in this case is well grounded in terms of section 36.”*

[17] Therefore it is ordered in terms of section 36 of the Criminal Procedure Code the sentence of 3 (three) years imprisonment imposed in CN 30/2013 and the sentence of 8 (eight) years imprisonment imposed in CN 83/2013 herein, to run consecutively and considering the facts peculiar to this case, consecutive to any other sentence the Appellant is serving at present.

Signed, dated and delivered at Ile du Port on 23 January 2015

M Burhan  
**Judge of the Supreme Court**