

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 37/2013

Appeal from Magistrates Court decision 562/2012

[2015] SCSC 147

ANTOINE ALBERT

Appellant

versus

THE REPUBLIC

Heard: 02nd February 2015 and 09th March 2015

Counsel: Mrs. Alexia Amesbury Attorney at Law for appellant

Mrs. Carmen Cesar, Assistant State Counsel for the Republic

Delivered: 25 May 2015

JUDGMENT

Burhan J

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

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

Count 1

Breaking and entering into a building and committing a felony therein contrary to and punishable under section 291 (a) of the Penal Code Cap 158.

Particulars of the offence are that, Antoine Albert, on or around the 09th of July 2012, broke and entered into the Seychelles National Youth Council office at the Orion Mall, Victoria Mahe and stole therein the following items, namely:- one digital sound recorded make ‘Sanyo’ with earphones and connection cable, one flat screen TV make ‘Sony’, one DVD player make ‘Philips’, three packets of juice, two tins of coffee make ‘Nescafe’, twenty-two t-shirts, two pendrives, eight mobile phones and chargers make ‘Zte’, three watches colored silver make ‘Seiko’, one blackberry mobile phone and charger, amounting to the total value of Rs.42,946.00/- being the property of the Seychelles National Youth Council.

[3] The Appellant was found guilty after trial of the aforementioned charge and on conviction was sentenced to a term of 15 years imprisonment.

[4] Learned counsel for the Appellant has appealed from the said conviction and sentence on the following grounds:

a) the learned Magistrate relied only on the finger print evidence which was the only evidence the prosecution was able to bring against the Appellant. The learned Magistrate failed to consider the fact that the finger print was found not inside the premises but found on the outside of the window.

b) the learned Magistrate failed to take into consideration the evidence of the defence witness who stated he had pleaded guilty to the said crime and in his evidence had stated he had no accomplice at the time he committed the said offence.

c) that the sentence meted in the case is harsh and excessive in that the sentence is illegal and ultra vires and excessive as it fails the test of constitutionality laid out in the case of **Jean Frederick Poonoo vs The Attorney General SCA 38/2010**.

[5] The background facts of the case are that the office of the Seychelles National Youth Council had been broken into by the frame of a sliding window been opened. This had been observed on the morning of the 9th of July 2012 by the cleaner who had notified

Mary Lou Wirtz the private secretary of the Chief Executive Officer. Thereafter the police had been called in and officers of the Crime Bureau were able to find and lift a finger print on the outside of the sliding window which frame had been forced open. On further investigation the finger print was found to be identical to the left thumb print of the Appellant. Mary Lou Wirtz described the items that had been stolen and stated the total value was around Rs 42, 000/-.

- [6] 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 Dave Azemia and Reginald Elizabeth, state that the finger print lifted from the outside of a sliding window which frame had been forced open, on comparison with the left thumb print of the accused (Appellant) Antoine Albert was found to be identical.
- [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.*** Therefore learned counsel for the Appellant's contention that as it was the only evidence against the Appellant it is not sufficient to identify the Appellant bears no merit.
- [8] Further the facts that a sliding window frame had been forced open and entry made into the premises and items valued at Rs 42,946.00 stolen are borne out by the evidence of Mary Lou Wirtz and PC Freddy Malbrooke.
- [9] 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 at the scene of crime. The Appellant in his evidence states he does not know how his print got there.
- [10] 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 on analysing the evidence in this instant case, 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).***

[11] It is apparent when one considers the defence, the accused having denied that he had committed the said offence in his evidence under oath, states one Neddy Onezime had been convicted of the offence and sentenced to 12 years imprisonment. Mr. Neddy Onezime was called and gave evidence under oath on behalf of the defence and admitted he was convicted of the offence of "breaking and stealing" and was serving a term of 12 years imprisonment. However he was unable to clarify whether it was this same case he was convicted in. Further it is apparent the Appellant in his evidence has been unable to give an explanation as to how his finger print was found at the scene of crime. In the light of this evidence from the defence the learned Magistrate cannot be faulted for rejecting the defence.

[12] For the aforementioned reasons the grounds of appeal in respect of conviction fail and the appeal against conviction stands dismissed.

[13] In regard to the sentence of 15 years imposed by the learned Magistrate on the 13th of March 2013, it is apparent than in sentencing the Appellant to a term 15 years, the learned Magistrate has exceeded his sentencing powers which at that time was limited to imprisonment up to 8 years.

[14] In the case of ***Roddy Lenclume vs The Republic SCA Criminal Appeal 32/2013*** the Seychelles court of Appeal held:

" 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 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".

[15] I therefore proceed to quash the sentence of 15 years and further taking into consideration the Appellant was a first offender, substitute it with a term of 8 (eight) years imprisonment.

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

Signed, dated and delivered at Ile du Port on 25 May 2015

M Burhan
Judge of the Supreme Court