IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 16/2013

Appeal from Magistrates Court decision 264/2012

[2015] SCSC 148

DAVID MELLIE
Appellant

versus

THE REPUBLIC

Heard: 06th January 2015 and 06th 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 follow

Count 1

Breaking and entering into building and committing a felony therein namely stealing contrary to section 291 (a) of the Penal Code.

Particulars of the offence are that, David Mellie residing at Quincy Village, Mahe, during the weekend of the 4th to the 5th of February 2011 at Lucky House Ma Constance Mahe, broke and entered the building and stole (5) bottles of wine to the value of Rs.1500, (5) bottles of whisky to the value of Rs.2000/-, (5) packets of pet lemonades to the value of Rs.1900/-, (4) crates of beers to the value of Rs.2000/- all amounting to the total value of Rs.7400/-, being the properties of Marie-Anne Kwan.

[1] The Appellant was convicted on his plea of guilt and on conviction was sentenced to a term of 10 years imprisonment.

[2] 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 failing to issue notice on learned counsel appearing by way of legal aid for the Appellant.

b) Further no effort was made to clarify whether the notice issued was served on the counsel and therefore as the Appellant was a first offender and 25 years of age and 23 at the time he was charged had not been subject to a fair trial.

c) that the sentence meted in the case is harsh and manifestly excessive as the sentence failed the test of constitutionality in that it was excessive and not in proportion to the offence committed.

[3] On a perusal of the journal entries in the record, it is apparent on the 6th of June 2012 the Appellant had been present in court and the learned Magistrate had informed the Appellant the name of his counsel and made order that notice issue on the learned counsel. On the next date 20th June 2012 learned counsel appointed by legal aid for the accused had appeared before the Magistrate and documents had been served on her.

[4] Thereafter it appears until the 27th of September 2012 learned counsel for the Appellant had failed to appear for the Appellant even though, learned counsel had been informed on the 20th June 2012 of the next date and despite notice being issued several times and served on learned counsel in court on the 10th of August 2012 (refer endorsement on back of notice dated 2nd August 2012 in file). Therefore having been informed of the next date

and having notice served on her, it would be unfair and incorrect for learned counsel to blame court and state proper steps had not been taken by court to procure her attendance.

[5] It appears that finally on the 27th of September 2012, the Appellant had informed court in the absence of his lawyer *"I wish to change my plea"*.

[6] The learned Magistrate had addressed the Appellant as follows:

"This is a serious offence if convicted liable to imprisonment for a minimum of 10 years. Do you understand"?

[7] The Appellant had replied in the affirmative and further stated, *"I understand and wish to change my plea. I have no problem with such sentence"*.

[8] It appears from the above that the Appellant on his own volition had decided to dispense with his counsel and enter an unequivocal plea of guilt and accept the sentence being well aware of same.

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

[10] In regard to the sentence of 10 years imposed by the learned Magistrate on the 27th September 2012 it is apparent, that in sentencing the Appellant to a term of 10 years, the learned Magistrate had exceeded his sentencing powers which at that time was limited to imprisonment up to 8 years.

[1] In the case of ***Roddy Lenclume vs The Republic Criminal Appeal SCA 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 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".

[11] In such circumstances and also considering the fact that the Appellant was 23 years old at the time he committed the offence and a first offender and considering the remorse he has expressed in pleading guilty knowing well the serious consequences he faced, the sentence of 10 years is quashed and a sentence of 7 (seven) years substituted in its place. Time spent in remand to count towards sentence.

[12] 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