IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 55/2013

Appeal from Magistrates Court decision 803/2011

[2015] SCSC 157

JOEL ADONIS
Appellant

versus

THE REPUBLIC

Heard:	08 October 2014 and 01 December 2014
Counsel:	Mr. France Bonte Attorney at Law for appellant
	Ms. Brigitte Confait, , State Counsel for the Republic
Delivered:	29 May 2015

JUDGMENT

Burhan J

[1] The Appellant in the case was charged in the Magistrates' Court with three others as follows:

Count 1

"Breaking and entering into building and committing a felony therein contrary to section 291 (a) read with section 23 of the Penal Code.

Particulars of offence are that, Joel Adonis, Darren Arrisol, Danley Nasim and Rafman Moustache, all residing at Port Glaud, Mahe, during the night of the 22nd day of November 2011

leading to the early hours of 23rd day of November 2011, at RTK Trading Shop, Port Launay Port Glaud, Mahe, broke and entered the shop and stole therein one (1) carton of Red Label whisky valued at Rs.3000/-, one (1) television valued at Rs.800/-, six (6) rice cookers make Philips valued at Rs.2200/-, twenty (20) cartons of diapers valued at Rs.5400/-, four(4) cartons of chicken meat valued at Rs.2400/-, one (1) carton of goat meat valued at Rs.1200/-, ten (10) cartons of twisties valued at Rs.2400/-, twenty (20) cartons of juice valued at Rs.5300/-, one (1) carton black label whisky valued at Rs.8000/-, sixteen (16) cartons of Eat-some-more biscuits valued at Rs.8400/-, twenty (20) cartons of chitato chips valued at Rs.5700/-, one (1) mobile phone make nokia valued at Rs.400/-, two (2) cartons of flip-flops valued at Rs.1700/-, two (2) of milk mark Celia valued at Rs.1000/-, two (2) cartons of cheddar chips valued at Rs.2500/-, twenty (20) cartons of chilli sauce valued at Rs.4800/-, two (2) cartons of Heineken valued at Rs.1600/-, four(4) cartons of super-rings valued at Rs.900/-, and two (2) cartons of oatmeal valued at Rs.1100/-, all amounting to the total value of SR 67,000/-, being the properties of V J Veerapandiyan being the owner of the RTK Trading".

[1] The Appellant was found guilty after trial on the aforementioned charge 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 ground-

a) *"the judgment is against the weight of evidence.*

b) *the sentence was manifestly harsh and excessive in all circumstances of the case".*

[3] In his reasoning the learned Magistrate has come to his finding that the charges had been proved beyond reasonable doubt against the Appellant by relying on the evidence of witness Georges Camille who had identified the Appellant (1st accused) on the night of the 23rd of November 2011 around 3.45 a.m. outside the shop on the ground floor with both hands raised, catching something which was being thrown to him from the 1st floor of the shop. Witness who was occupying a part of the 1st floor had come down and from about 12 feet away from the Appellant had shouted in Kreole, *"Hey Joel you are stealing why are you doing this"*. The Appellant on seeing him had run away.

[4] Witness further stated he was able to identify the Appellant as the security light was on and as the Appellant was related to his wife. Witness also stated he had seen another male person who he could not identify come down from the 1st floor of the shop and run away. Mr. V Pillay testified to the fact that on an inventory being taken after the incident he had discovered that goods amounting to SR 67,000 had been stolen that night. An inventory of the missing items was marked as PE 1.

[2] The learned Magistrate also relied on the repudiated statement under caution given by the Appellant who repudiated the statement on the ground the signature was not his. The learned Magistrate proceeded to hold a voire dire and come to a finding that it was the signature of the Appellant. Although the necessity to hold a voire dire could be faulted the finding of the learned Magistrate that it was the signature of the Appellant that was on the statement is acceptable.

[3] To further understand this issue I will refer to the case of ***The Republic v. Valentin & ors [1989] SLR 40.***

In this case the accused was charged before the Magistrates' Court with burglary and when his statement was produced, the accused denied that he had made any statement and alleged that during the time he had been in the cell, one detective inspector had got his thumb impression on a piece of paper. The Magistrate after holding a trial within a trial, held that the statement was inadmissible. It was held: (1) All the Magistrate had to decide *as a matter of fact* was whether or not the statement was made by the accused. (2) In the instant case voluntariness was not in issue at all. (3) The Magistrate misdirected himself on the question he posed in the trial within trial.

[5] The learned Magistrate also addressed his mind to the fact that all the accused were acting with common intention. I see no reason to interfere with his findings in this regard.

[4] 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 vs The Republic SC. Cr. App, Side No. 20 of 2008 and Akbar v R (SCA 5/1998).***

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

[7] Learned counsel for the Appellant has appealed against the sentence imposed by the learned Magistrate in that it was harsh and excessive when one considers the circumstances of this case. In mitigation it was stated and accepted that the Appellant was 23 years of age and a first offender. His complicity in the crime is mitigated to the extent he remained outside the premises and caught the items which were being thrown from the 1st floor of the shop by another accused who had broken in.

[8] According to the law prevailing at the time the offence was committed, the Appellant was liable to a term of 10 years imprisonment

[1] In regard to the sentence of 10 years imposed by the learned Magistrate on the 17th of May 2013, it is apparent that in sentencing the Appellant to a term of 10 years, the learned Magistrate had exceeded his sentencing power which at that time was limited to imprisonment up to 8 years.

[9] 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".

[2] 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 his limited complicity in the offence, 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.

[5] Subject to this variation in sentence the appeal against conviction is dismissed

Signed, dated and delivered at Ile du Port on 29 May 2015

M Burhan
Judge of the Supreme Court