

IN THE SUPREME COURT OF SEYCHELLES

Revision Side: RV01/2013

Revision in Magistrates Court Case 588/2010

[2015] SCSC 158

THE ATTORNEY GENERAL

Appellant

versus

DANIEL MARIE

Respondent

Heard: 29th September 2014

Counsel: Mrs. Lansinglu Rongmei, Assistant Principal State Counsel for the
Appellant
Mr. Nichol Gabriel Attorney at Law for the Respondent

Delivered: 29 May 2015

JUDGMENT

Burhan J

[1] This is a revision application filed by the Attorney General in terms of section 328 of the Criminal Procedure Code Cap 54, in respect of the sentence passed by the learned Magistrate on the Respondent (Accused) Daniel Marie.

[2] Section 328 of the Criminal Procedure Code reads as follows:

“The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrates’ Court for the purpose of satisfying itself as to the correctness,

legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrates' Court”.

[3] The Respondent Daniel Marie was charged in the Magistrates' Court as follows:

“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 Daniel Marie of Belvedere, Mahe on the 28th August 2010 at Amalgated Tobacco company at Anse Dejeuner, Mahe, broke and entered into the store of the said company and did steal therein 23 packets of cigarettes Mahe king to the total value of Rs.14950/- being the property of Amalgated Tobacco company”.

[4] The background facts of this case are that the Respondent while being represented by learned counsel was found guilty after trial in respect of the aforementioned charge and on conviction was sentenced to a term of 5 years imprisonment by the learned Magistrate.

[5] Learned counsel for the Attorney General seeks the revision of the sentence of 5 years on the basis that in terms of the amendment to section 27 of the Penal Code by Act 20 of 2010 the minimum mandatory term of 10 years imprisonment as prescribed by law for the said offence should have been imposed.

[6] Section 329 (1) (b) of the Criminal Procedure Code reads as follows:

“In the case of any proceeding in the Magistrates' Court the record of which has been called for or which has been reported for orders, or which otherwise comes to his knowledge, the Supreme Court may –

a).....

b) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 316, 318 and 319 and may enhance the sentence.”

[7] It is apparent that according to the charge sheet the offence was committed on the 28th of August 2010. The law applicable would have been the Penal Code amending Act of 20 of

2010 which came into force on the 17th of August 2010 in which section 27 (1) (c) (i) as amended, specifies a minimum mandatory term of 10 years imprisonment for such an offence.

[8] The learned Magistrate in her reasoning at the time of sentencing proceeded to sentence the Respondent to a term of 5 years imprisonment taking into consideration the fact that the Respondent was a first offender and the items stolen were 23 packets of cigarettes.

[9] It is now virtually trite law since the cases of *Jean Frederick Ponoov vs The Attorney General SCA 38/2010*, *Roddy Lenclume vs The Republic Criminal Appeal SCA 32/2012* and *Neddy Onezime vs The Republic Criminal Appeal SCA 06 / 2013*, that it is the duty of the sentencing court to decide whether the imposition of mandatory terms of imprisonment as prescribed by law and the imposition of consecutive terms of imprisonment as prescribed by law meet the best interests of justice, in that the sentence imposed is not disproportionate to what would be appropriate and therefore what matters most is that the sentencer should impose a just and appropriate punishment proportionate to the offence committed.

[10] It is apparent that on this basis in the aforementioned cases, the Seychelles Court of Appeal proceeded to impose sentences below the minimum mandatory and make order that consecutive terms imposed run concurrently, in order to arrive at a just and appropriate sentence.

[11] I have observed that the learned Magistrate (Miss Laura Pillay) in her reasoning in sentencing has taken into consideration the fact the Respondent was a first offender and the fact that the items stolen were 23 packets of cigarettes and it is apparent from the facts of the case the items stolen were recovered at the scene. I am satisfied with the sentence imposed by the learned Magistrate and it appears clearly to be in line and proportional to the offence committed and the mitigating circumstances adduced by learned counsel for the Respondent. I therefore will not vary or revise the term of 5 years imprisonment imposed by the learned Magistrate.

[12] However on consideration of paragraphs 21 and 22 of the *Roddy Lenclume case (supra)*, I proceed to make order in terms of section 30A of the Penal Code that the Respondent

pay compensation in a sum of SR 3000/= (three thousand) to the Company for the damage caused while breaking and entering the said premises. The compensation order shall take effect at the expiry of the Respondent's term of imprisonment and shall be paid within 6 months of his release from prison. The Respondent is further informed his failure to pay the aforementioned compensation without reasonable cause is an offence.

[13] The sentence imposed by the learned Magistrate stands revised accordingly.

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

M Burhan
Judge of the Supreme Court