

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 58,59,92/2013 and 57/2014

Appeal from Magistrates Court decision 03, 04, 09 and 10/2013

[2015] SCSC 169

MICHAEL LESPERANCE

Appellant

versus

THE REPUBLIC

Heard: 25 November 2013 and 15th May 2014, 25th November 2013 and 5th May 2014 , 3rd November 2014 and 7 November 2014, 3rd November 2014 and 28th November 2014 (written and oral submissions).

Counsel: Mr. Rene Durup Attorney at Law for appellant

Mr. Kumar Asst Principal State Counsel and Mrs. Lansinglu Rongmei
Assistant Principal State Counsel and Mrs Brigitte Confait , State Counsel for the Respondent

Delivered: 02 June 2015

JUDGMENT

Burhan J

[1] In CA 58/2013 the Appellant was charged with another in Magistrates' Court case number 03/ 2013 as follows;

Count 1

Criminal trespass contrary to Section 294 as read with Section 23 of the Penal Code.

Particulars of offence are that, Raoul Constant residing at Anse Boudin Praslin and Michael Lesperance residing at Cote D'or Praslin on the 25th day of November 2012 at the Villa D'or Hotel at Cote D'or Praslin enters into property of another being the property of Villa D'or Hotel.

[2] The Appellant was convicted on his plea of guilt and sentenced on the 24th of June 2013 to a term of 6 months imprisonment. The learned Magistrate made order that the sentence should take effect from the date the Appellant completed his current term of imprisonment.

[3] In CA 59 of 2013 the Appellant was charged in Magistrates' Court case number 04/2013 as follows:

Count 1

Breaking into building with intent to commit a felony contrary to Section 291(a) of the Penal Code.

Particulars of offence is that, Michael Lesperance residing at Cote D'or Praslin on the 19th day of January 2013 at L'Hirondelle guest house at Cote D'or, Praslin break and enter building with intent to commit a felony namely stealing.

Count 2

Stealing contrary to Section 260 of the Penal Code.

Particulars of offence is that, Michael Lesperance residing at Core D'or Praslin on the 19th day of January at L'Hirondelle guest house at Cote D'or Praslin stole six crates of empty pints of Eku and Seybrew being the property of Percy Vidot the owner of L'Hirondelle guest house.

[4] The Appellant was convicted on both Counts on his plea of guilt and sentenced on the 24th day of June 2013 to a term of 4 years imprisonment on Count 1 and to a term of 2 years imprisonment on Count 2. It was further ordered that both terms run consecutively

and shall take effect once the Appellant had completed his six months prison sentence in case number MC 03/13.

[5] In CA 92 of 2013 the Appellant was charged in Magistrates' Court case number 09/2013 as follows:

Count 1

Entering a dwelling house with intent to commit a felony therein contrary to section 290 of the Penal Code

Particulars of offence are that, Michael Lesperance residing at Cote D'or Praslin on the 31st January 2013 at Cote D'or Praslin, entered into the dwelling house of Guilbert Lesperance with intent to commit a felony therein namely stealing.

Count 2

Stealing from a dwelling house contrary to section 260 of the Penal Code.

Particulars of offence are that, Michael Lesperance residing at Cote D'or Praslin , on the 31st of January 2013 at Cote D'or Praslin, stole from the dwelling house of Guilbert Lesperance Euro 500 and SR 2000/- being the property of one Stephanie Lesperance". (Amended at time of plea proceedings of 11-2 2013).

[6] The Appellant was convicted on both Counts on his plea of guilty and sentenced on the 11th of February 2013 to a term of 5 years imprisonment on Count 1 and 3 years imprisonment on Count 2. It was further ordered that the terms of imprisonment run consecutive in that the Appellant shall serve a term of 8 years imprisonment.

[7] In case number CA 57 of 2014 the Appellant was charged in Magistrates' Court case number 10 of 2013 as follows;

Count 1

Housebreaking contrary to section 289 (b) of the Penal Code.

Particulars of offence are that Michael Lesperance residing at Cote D'or Praslin, on the 06th of February 2013 at Cote D'or Praslin, broke and entered the dwelling house of Mr. Gilbert Lesperance with intent to commit a felony therein namely stealing.

Count 2

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

Particulars of offence are that Michael Lesperance residing at Cote D'or Praslin on the 06th day of February 2013 at Cote D'or Praslin, stole from the dwelling house of Mr. Gilbert Lesperance Euro 1500, the sum of Rs. 7,735/- to the value of Rs. 32, 860/- being the property of Mr. Gilbert Lesperance.

[8] The Appellant was convicted on both Counts on his plea of guilt and sentenced on the 11th day of February 2013 to a term of 3 years imprisonment on Count 1 and to a term of 5 years imprisonment on Count 2.

[9] It was further ordered that:

“The three years and five years shall run consecutive, in that the convict shall serve a total term of imprisonment of eight years, which eight years shall run consecutive to his eight years prison sentence in Case No 9/13”.

[10] A reading and summary of all the sentences imposed in each of the abovementioned cases indicate the learned Magistrate had made order that each of the sentences imposed on the Appellant in all 4 cases should run consecutively which would mean the Appellant would have to serve a total term of 22 years and 6 months imprisonment in the 4 abovementioned cases he was convicted.

[11] Learned counsel for the Appellant has appealed only against the sentence imposed in all four cases on the grounds that the sentence imposed on the Appellant in each case is harsh and excessive based on the age of the offender who is presently only 22 years old.

[12] Considering the nature of the appeal is in respect of the totality of the sentences imposed, this court is of the view that in the interests of justice in order that a proper finding on sentence could be made, all four cases should be consolidated and one judgment given.

[13] It is apparent that in ordering consecutive sentencing in one trial and in respect of several trials, the learned Magistrate was taking into consideration the provisions contained in section 9 (1) of the Criminal Procedure Code and section 36 of the Penal Code that read as follows;

[14] Section 9 (1) of the Criminal Procedure Code reads as follows:

(1) “When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefore which such court is competent to impose, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently”.

[15] Section 36 of the Penal Code reads as follows:

“Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court direct that it shall be executed concurrently with the former sentence or of any part thereof;

Provided that it shall not be lawful for a court to direct that any sentence under Chapter XXVI, Chapter XXVIII or Chapter XXIX be executed or made to run concurrently with one another or that a sentence of imprisonment in default of a fine be executed concurrently with the former sentence under section 28 (c) (i) of this Code or any part thereof “.

[16] In the recent case of **Roddy Lenclume vs The Republic Criminal Appeal SCA 32/2013** (which was decided after the amendment of section 36 of the Penal Code by Act 20 of 2010) **A.Fernando J.A** held at paragraph 19 of the judgement as follows:

“We do not venture out to say that the mandatory jail term of 10 years for burglary or the application of consecutive sentences in respect of offences under Chapters XXVI, XXVIII or XXIX are by themselves unconstitutional or offend the principle of proportionality in sentencing. The imposition of such sentences may be appropriate in certain cases of aggravated burglary and the concerns of the legislature will be met by such imposition”.

[17] In its reasoning at paragraph 20 the Seychelles Court of Appeal further held that:

“We are also of the view the order made for the sentences of imprisonment of 10 years and 8 years to be executed consecutively on the Appellant who was 18 years old and a first time offender is grossly disproportionate to what would have been appropriate and tantamount to cruel and inhuman punishment in the circumstances”.

[18] In the said case the Seychelles Court of Appeal on considering the fact that the Appellant was 18 years old and the value of the items stolen being in one case SR 320 and the fact that the Appellant was a first offender in respect of the case 527/12, proceeded to reduce the sentences in each of the three cases and made further order that the sentences run concurrently resulting in the Appellant in that case having his sentence reduced from a total of 18 years to a total of 5 years imprisonment in all three cases he was convicted.

[19] Therefore it is apparent from the above findings by the Seychelles Court of Appeal that if a sentencing court is of the view that the imposition of sentences of imprisonment to be executed consecutively on an offender would result in a sentence which is grossly disproportionate to what would have been appropriate, the sentencing court could order that the sentences run concurrently as was decided in the ***Lenclume case (supra)***.

[20] In this instant case the Appellant Michael Lesperance who admitted in court at the last sitting he was 22 years old, would have been approximately of the age of 20 to 21 years when he committed the offences between the 19th of January and the 6th of February 2013. It is also apparent in convicting and sentencing the Appellant in CA 92/2013 the learned Magistrate has treated him as a first offender.

[21] Considering the aforementioned circumstances and findings by the Seychelles Court of Appeal, I am inclined to follow the findings in the ***Lenclume case (supra)*** and order that the term of 5 years imprisonment imposed on Count 1 and 3 years imprisonment imposed

on Count 2 in CA 92/2013 run concurrently and not consecutively as ordered by the learned Magistrate. It is the view of this court the sentence of 5 years imprisonment in CA 92/2013 would be a proportionate and appropriate sentence and is accordingly substituted.

[22] Similarly in case CA 57/2014 for the reasons set out above this court would order that the sentence of 3 years imprisonment imposed in Count 1 and the sentence of 5 years imprisonment imposed in Count 2 in the said case run concurrently. It is the view of this court the sentence of 5 years imprisonment in CA 57/2014 would be a just and appropriate sentence and not disproportionate to the circumstances of the case and is accordingly substituted.

[23] When one considers case CA 59/2013, it appears that the term of 4 years imprisonment on Count 1 and 2 years imprisonment on Count 2 ordered to run consecutively totalling 6 years is harsh and excessive for having stolen 6 crates of empty pints of Eku beer. No value has been mentioned in the particulars of offence. In the *Lenclume case (supra)* the Seychelles Court of Appeal held in paragraph 20 that;

“We are also of the view that the imprisonment of 8 years imprisonment in respect of case numbered 528/12 for house breaking and theft of items valued at SR 9082/- was illegal and grossly disproportionate to what would have been appropriate. We accordingly quash the sentence of 8 years imprisonment on the Appellant and substitute thereof a sentence of 3 years”.

[24] Accordingly this court makes order that the consecutive terms of imprisonment imposed in CA 59/2013 by the learned Magistrate be quashed and substituted thereof with a term of 2 years imprisonment which would be in the view of this court a just and appropriate sentence and not disproportionate considering the items stolen and the age of the offender in the case.

[25] It is the view of this court that the term of 6 months imprisonment imposed in case number CA 58 /2013 for the offence of criminal trespass is justifiable.

[26] I further proceed to make order that the terms of 5 years imprisonment imposed by this court in case CA 92/2013 and the term of 5 years imprisonment imposed in CA 57/2014

and the term of 2 years imprisonment in CA 59/2013 imposed by this court run consecutively. That is in terms of section 36 of the Penal Code, the 5 year term of imprisonment in CA 57/2014 should commence at the expiration of the term of 5 year imprisonment imposed in CA 92/2013.

[27] This court further orders that the term of 2 years imprisonment imposed by this court in CA 59/2013 commence at the expiration of the terms of imprisonment ordered in cases CA 92/2013 and 57 /2014. Considering the number of sentences imposed on the Appellant this court makes order that the sentence of 6 months imprisonment imposed in CA 58/2013 run concurrently with all other sentences imposed.

[28] Therefore in total the Appellant would serve a total term of 12 years imprisonment.

[29] Accordingly the total term of 22 years 6 months imprisonment imposed on the Appellant in the aforementioned four cases is reduced to a total term of 12 years imprisonment. Time spent in remand to count towards sentence.

Signed, dated and delivered at Ile du Port on 2 June 2015

M Burhan
Judge of the Supreme Court