IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 94/2013

Appeal from Magistrates Court decision /20

[2015] SCSC 192

DANNY CADEAU

Appellant

versus

THE REPUBLIC

Heard: 24 April 2015

Counsel: Mr Gabriel for appellant

Mr Kumar , Attorney General for the Republic

Delivered: 24 April 2015

JUDGMENT

Akiiki-Kiiza J

[1] This is an appeal from the sentence and orders of her worship Mrs Laura Pillay dated the 10th of October 2013, whereby she sentenced the appellant to serve 12 years imprisonment on a charge of breaking into a building and committing a felony therein contrary to section 291 (a) and section 260 of the Penal Code.

[2] The appellant raised the following grounds in his memorandum of appeal.

a) That the sentence of 12 years imprisonment was manifestly harsh, excessive and wrong in principle.

b) That the sentence imposed by the learned senior Magistrate was in excess of her jurisdiction.

c) That the learned trial Magistrate failed to consider the facts that some of the stolen property had been recovered.

[3] He prayed for the quashing of the sentence. At the hearing, Mr Nichol Gabriel, appeared for the State and Mr Kumar appeared for the respondent. The law and the jurisdiction of Magistrate is enshrine in section 6 (2) of the Criminal Procedure code. Before the 2014 amendment, a senior Magistrate was empowered to impose a custodial sentence of not more than 10 years. Both Mr Gabriel and Mr Kumar agree on this point. This means that, the sentence of 12 years imposed by the learned trial Magistrate was illegal and cannot be allowed to stand. It is quashed accordingly. This means the second ground of appeal succeeds. As to the severity of the sentence, Mr Gabriel stated that the offence took place in a non residential place on commercial premises. Hence, no danger to life of the occupants, no violence was used by the accused and no injury was reported to anybody. The maximum sentence under section 291 is 14 years imprisonment. However, in 2012, Act 5/12 amended section 27 (1) (c) of the Penal Code and provided as follows:-

"*27(1) (c) (i)*

Where the offence is punishable with imprisonment for more than 10 years or with imprisonment for life and :

i) It is the first conviction of the person for such an offence be sentenced to an imprisonment for a period of not less than 15 years.."

[4] Clearly the appellant on the facts of this case falls within this amended section. This is what the section creating the offence imposes a maximum sentence of 14 years. This is what is authorised by law under section 291 (a) of the Penal Code. It is my considered view that as such a Court cannot impose 15 years on a convict of an offence created by

section 291 (a) of the Penal Code Act. Secondly section 27 (1) (c) (i) is a general provision which in my view cannot override a specific provision as is the case of section 291 (a) of the Penal Code. In other words a Court will be limited to the 14 years maximum prescribed by section 291 (a) of the Penal Code but not to the 15 years prescribed by section 27 of the Penal Code as this is a general provision.

[5] Now returning to the merits of this case, I tend to agree with the learned trial Magistrate that the accused having had a previous record of stealing from a person contrary to section 264 (a) of the Penal Code, cannot be treated as a first offender. The accused has acknowledged the conviction thought it was suspended. The learned trial Magistrate noted that, the appellant was a young man, with a child and regret committing the offence. This means he was remorseful. She further noted that the property stolen had been recovered. Although it was a full hearing, the appellant acknowledged to have taken part in the offence in his statement from the dock. He stated the flowing:-

"*That day of the incident do not recall the date and day. It happened at night. It was with Andy Albert. The place was already opened when we went there. We took a few things. The police retrieved the things from my mother. I was not there the shop had already been broken into we just went in. That's all*"

[6] It is clear to me that from the above statement by the appellant at his trial, that he was not accepting the offence he was charged with that of breaking and entering the building contrary to section 291 (a) of the Penal Code. In those circumstances the appellant cannot be legitimately stated that he had pleaded guilty though belatedly. I think, the learned Magistrate was right not to refer to it in her ruling on sentence.

[7] Putting everything into consideration I will substitute the illegal sentence of 12 years with a sentence of 7 years imprisonment. The rest of the orders made by the Magistrate will remain intact.

Order accordingly.

Signed, dated and delivered at Ile du Port on 24 April 2015

D Akiiki-Kiiza
Judge of the Supreme Court