

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 88/2013

Appeal from Magistrates Court decision 832 /2011

[2015] SCSC 227

RANDY CHARLES

Appellant

Versus

THE REPUBLIC

Heard: 20 April 2015

Counsel: Mr. Gabriel for appellant

Mr. Kumar, Principal State Counsel for the Republic

Delivered: 25 June 2015

JUDGMENT

Akiiki-Kiiza J

[1] This is an appeal from the decision of the learned Senior Trial Magistrate dated the 26/03/2013 sentencing the appellant to five years imprisonment in the first count and 3 years imprisonment on the second count.

[2] He was on convicted of the offences of House Breaking *Contra Section 289 (a)* and punishable under the same section of the *Penal Code* and was stealing from a Dwelling House *Contra Section 260* as read with *Section 264 (b)* and punishable under the same section of the Penal Code respectively. The two sentences where to run consecutively.

[3] The appellant's memorandum of Appeal contains the following grounds:-

- a) *that the sentence imposed by the learned Senior Magistrate was manifestly harsh, excessive and wrong in principle*
- b) *that the sentence of 5 years imprisonment on the first count and 3 years imprisonment on the second count imposed by the learned Senior Magistrate should have been made to run concurrently.*
- c) *that the sentence given by the Senior Magistrate failed to consider the mitigating factors put forward by the Appellant.*

As can be seen from the above, the appellant is appealing against sentence only.

- [4] At the hearing of the appeal, the appellant was represented by Mr. Nicole Gabriel and the Respondent/Republic was represented by Mr. Kumar.
- [5] It was Mr. Gabriel's contention that as the offences in the two counts charged in one file, and were of the same transaction, and were committed in the same place in addition to the value of the stolen property being low (RS 1,115/-) and other mitigating factors, the learned trial magistrate should not have ordered the sentences to run consecutively but should have ordered them to run concurrently.
- [6] On the other hand Mr. Kumar supported the sentence as imposed by the learned Senior Magistrate.
- [7] Upon perusal of the Lower Court Record and after considering the submission of both learned counsel, I am satisfied that the sentence of 5 years imprisonment on the 1st count, and 3 years imprisonment on the second count were appropriate, if not lenient. The only question for my determination, as I see it, is whether the 2 sentences should have been ordered to run concurrently or consecutively.
- [8] Two section under our law provides for consecutive or concurrent sentences. *Section 9 (1) of the Criminal Procedure Code* regards sentencing in a case of conviction of several offences (counts) in one trial that is to say, convictions of an accused of several counts charged in a single charge sheet.

[9] On the other hand *Section 36 of the Penal Code* which covers situations whereby an accused is convicted of offences charged in different trial/files, which should be made to be run consecutively, unless exceptional circumstances existed. (**BRIAN ALCINDOR VS R SCSC 14/06, CITIING JOHN VINDA VS R SCA CR 6/95**). It also appears to be the rule that, both provision (*Section 9 of Criminal Procedure Code and Section 36 of Penal Code*) pertaining to sentencing, shall run consecutively unless the court directs that the sentences should be executed concurrently. (**See EXCEL JEAN VS THE REPUBLIC SCA CR 12/13**). In that case (EXCEL JEAN) their Lordships of the Court of Appeal stated as under regarding the operation of *Section 9 of Criminal Procedure Code*.

“.....the appellant court hearing the appeal can consider whether the aggregate of consecutive sentences imposed by the sentencing court on the accused for the several offences of which he (the accused) was charged together in the same indictment is in proportion to the totally of the behaviour of the convict or the gravity of the offences committed”

In this particular case, the Lower Court Record in indicates that the offences were committed on the same day in the same place and against the same victim. The appellant stole food stuffs and other house hold items. All were valued at SR 1115/-. In mitigation the appellant told the court that he was 28 years old and that he had given some money from the items stolen back to the victim. He was also a first offender.

[10] It is my considered view that in the above circumstances, and though noting that the cases of this nature were of the increase in the nation, the mitigating factors out weighted the aggravating circumstances warranting to apply the exception in *Section 9 (1) of the Criminal Procedure Code*.

[11] In the premises therefore, I quash the order of the trial court making the sentence of 5 and 3 years on both counts to run consecutively and substitute it to an order making the two sentences on both counts run concurrently.

Order accordingly.

Signed, dated and delivered at Ile du Port on 25/06/2015

D Akiiki-Kiiza
Judge of the Supreme Court