

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 22/2014

Appeal from Magistrates Court decision 295 /2013

[2015] SCSC 228

NELSON CESAR

Appellant

Versus

THE REPUBLIC

Heard: 15 April 2015

Counsel: Mr. Gabriel for appellant

Mr. Vipin, State Counsel for the Republic

Delivered: 27 April 2015

JUDGMENT

Akiiki-Kiiza J

- [1] The appellant was tried and convicted in the Magistrate court of the offence of stealing from a person *Contra Section 264 (a) of Penal Code Act* read with *260 of the same Act*. He was sentence to a term of 5 years imprisonment. It appears the appellant had been convicted earlier on in different files whereby he was sentenced to serve 5 years in one file and 3 years in another.
- [2] The Magistrate ordered all the sentences in all three files to run consecutively. The appellant being dissatisfied with the above orders has now appealed to this court on sentence only.
- [3] The memorandum of Appeal has raised 3 grounds:-

- a) That the sentence imposed by the learned Senior Magistrate is manifestly harsh and excessive.
- b) That the sentence of five years to run consecutively with any other sentence imposed by the learned Senior Magistrate does not correspond to the current pattern of sentencing in case of similar nature.
- c) That the Senior Learned Magistrate failed to take into account the appellants plea in mitigation.

He therefore prayed for the quashing of the sentence imposed by the learned trial Magistrate.

[4] At the hearing, the appellant was represented by Mr. Nicole Gabriel and Mr. Vipin Benjamin represented the Respondent/Republic.

[5] Mr. Gabriel submitted to the effect that the maximum sentences for offences under *Section 264 (a) and 260 Penal Code* is 10 years. The offence was committed in 2009. That this was before the passing of *Act 5/2012* which imposed a minimum of 5 years imprisonment as a mandatory sentence if the accused had similar past offences when he was convicted. Hence it was Mr. Gabriel's submission that the learned trial Magistrate, should not have ordered consecutive sentences with 2 earlier sentences of 5 and 3, making the accused to sentence a total of 13 years. He was of a view of that the learned trial Magistrate, should have ordered a concurrent sentence which should have resulted in appellant serving a total of 8 years instead of 13 years.

[6] On the other hand Mr. Vipin for the Respondent submitted to the effect that, the learned Magistrate was right to order a consecutive sentences total of 13 years. He cited *Section 36 of the Penal Code* where by the court has to impose consecutive sentences, when there is another sentence the appellant is serving prior to the latest conviction **UNLESS** the totality of the consecutive sentence would be unjust in the circumstances. Which is not the case here. **(see the case of CLIFF EMMANUEL VS REPUBLIC, SCA 3/93).**

- [7] The appellant in this case, under went a full trial. Apparently he appeared to acknowledge that he had previous convictions in his mitigation. The property stolen where never recovered. Although the learned Magistrate never specifically mentioned that she had taken it into account the sentence imposed of 5 years out of 10 years under *Section 260 of Penal Code* was not harsh but appropriate in the circumstances of this case.
- [8] In any case, this appears not to be what the appellant is complaining about but that the sentence should have run concurrently with the earlier, 5 and 3 years imposed on him for earlier conviction.
- [9] There appears to have been no appeal against the 8 years sentence imposed on the appellant which means he had been satisfied with it. The 3 years imposed on him also appears to be of similar type of offences as the other two.
- [10] In the premises therefore, I find that the sentence imposed by the learned trial Magistrate was within her discretion and was not harsh, nor excessive. I would in the circumstances, uphold the orders she made regarding sentence.
- [11] All in all the appeal fails and is accordingly dismissed. Order accordingly.

Signed, dated and delivered at Ile du Port on 27/04/15

D Akiiki-Kiiza
Judge of the Supreme Court