

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 48/2014

Appeal from Magistrates Court decision /20

[2015] SCSC 250

CURTIS SINON

Appellant

versus

THE REPUBLIC

Heard: 23 March 2015

Counsel: Mr D. Lucas for appellant

Ms Tania Potter, Attorney General for the Republic

Delivered: 20 April 2015

JUDGMENT

Akiiki-Kiiza J

[1] The accused was charged on 3 different files.

In file 274/14, he was sentenced to a term of 6 years imprisonment on the first count for housebreaking and term of 3 years on second count for stealing.

In file 275/14, he was sentenced to 6 months imprisonment and a charge for escaping from lawful custody and 6 months for assaulting a police officer in the second count.

In the file 278/14 the appellant was sentenced to 8 years imprisonment for housebreaking on the first count and 3 and a half years imprisonment for stealing on the second count.

[2] All the sentences in the 3 files were to run concurrently. This means that in file 274/14, the maximum sentence to be served was 6 years imprisonment. In file 275/14, he would serve a maximum of 6 months imprisonment and in file 278/14, he would serve a maximum of 8 years imprisonment. The learned Magistrate ordered further that the sentence in files 274 and 278, would run consecutively which means that the appellant would serve a total of 14 years imprisonment. Being dissatisfied by the above orders, the appellant has now appealed to this Court against only the sentence.

The memorandum of appeal raised the following grounds:-

1. ***That the sentence passed was wrong in law and in principle.***
2. ***That the learned Magistrate erred in principle in that he failed to give due weight to the mitigating factors in favour of the appellant and to take into account matters which should have been taken into consideration when sentencing the appellant.***
3. ***That the learned Magistrate failed to properly apply the principle of totality of sentences.***
4. ***That the learned magistrate failed to apply in his mind and to give weight and consideration to the fact that the offences were so closely related in time and location and circumstance so that to form part of the same offence or offences committed.***
5. ***That in all circumstances of the case, the sentence of the case was harsh and manifestly excessive.***

[3] At the hearing Mr Lucas appeared for the appellant and Ms Potter appeared for the respondent. Mr Lucas argued on grounds, 2 and 4 together. The main thrust of his submission, as I understood him, was that the learned trial magistrate by imposing a total of 14 years imprisonment as a consecutive sentence for both file 274 and 278 he was in

breach of the totality of principle. It was his submission that the consecutive sentence in both files (274 and 278) could and should not have exceeded the maximum sentence of 10 years imposed to be imposed in both files 274 and 278 of the Penal Code. As to the 2 and 5 grounds of appeal he submitted that the learned Magistrate never took into account the plea of guilty entered against the appellant, his young age and his being a first offender.

- [4] On the other hand, Ms Potter of the respondent submitted to the effect that the learned trial Magistrate properly exercised his discretion and followed the principles in **PONOO CASE** and imposed an appropriate sentence in both files. She was of a view that the Court should uphold the sentences.
- [5] I have carefully perused the Lower court record and I have carefully reviewed the submissions of both learned counsel along with reviewing the authorities cited by both parties. The cases of **JOHAN VENDA VS REPUBLIC S.C.A C App 6/95** was cited during submissions along with **REPUBLIC VS VOLCY [2014] SCSC 292** and **REPUBLIC VS SAVY [2014] SCSC**. The case of **VINDA** and **VOLCY** were cited I believe in support of the submission by appellant's counsel that the sentences imposed in files 274 and 278, should not have run consecutively but should run concurrently.
- [6] In file 274/14, the conviction is for housebreaking for 6 years on first count, and 3 years in the second count- total is 6 years on first and 3 years on second count – total is 6 years (concurrently). File 278/14, housebreaking sentence to 8 years imprisonment first count, and 3 and a half years on second count. Both also to run concurrently. File 275/14 was for escaping from lawful custody sentenced to 6 months on both counts. This was to run concurrently with the 6 months on file 274/14. The learned Magistrate ordered further that the sentences of 8 years in file 278/14 and 6 years in file 274/14, were to run consecutively that a total of 14 years imprisonment, less the remanded period. This I believe in compliance with section 36 of the Penal Code.
- [7] The appellant committed the offences in file 274/14 on the 22nd April 2014 at Anse Aux Pins. The offences in file 278/14 were committed on the 29/4/2014 7 days later at Pascal Village. The distance from Anse Aux Pins to Pascal Village if one follows the main road

could be about 20 – 25 kilometers. Hence it cannot be said to be in the same locality. In the **VENDAS CASE**, cited above the Court of Appeal stated that:-

- *Where the offender has committed a series of offences of moderate gravity and has secured an aggregate sentence equivalent to the sentence which would have been imposed for an offence of much more serious nature.*
- *Where the offender is relatively young and has no previous custodial sentence.*
- *Where an offender who is sentenced to a long time imprisonment for a grave offence is also to be sentenced to a much shorter term for the same of the matter.*

[8] Their Lordship concluded that the totality principle where properly applied may justify the application of the exception permitted in section 36 to the general rule of consecutive execution of sentence. The Magistrate in my considered view gave legitimate reasons for reducing the sentences imposed in files 274/14 and 278/14. Otherwise instead of 20 years imprisonment he imposed 14 years. Hence in my view he applied **VINDA** to the case.

[9] The learned counsel for the appellant also submitted to the effect that the learned trial Magistrate considered the fact that the accused had pleaded guilty to the charge and that he never put into consideration his age and in absence of proof previous conviction he was to be taken as a first offender. That if he had considered the above, he should have imposed a much lesser sentence than the 14 years imprisonment. It is now settled that a plea of guilty would attract at least a 20 % reduction of the sentence to be imposed on him. The Magistrate has also said so in his ruling on sentence. (**ARCHBOLD 2012 Ed. Para 5 -112**). However a careful perusal of the lower Court record shows that it is devoid of this observation by the learned trial Magistrate in his ruling on sentence. He never specifically pointed that he had taken into consideration the plea of guilty. The age of the appellant has not been given and it is therefore not known as at the trial.

[10] It is my considered view that the prosecution should always endeavour to provide the age of an accused on the charge sheet or at least should file a medical report regarding his age at the time of his arrest. This would assist the Court to impose an appropriate sentence on a convict.

- [11] As regards the appellant being a first offender it appears from the record that his counsel admitted previous convictions. But there was no prosecutors list on the record showing the previous record. In any case the appellant himself never admitted the previous record during the proceedings. In my view there was no proof for previous convictions in respect of the appellant. He has to be taken as a first offender. All in all had the trial Magistrate taken into account the plea of guilty on part of the appellant and given the absence of proof of his previous record, the Magistrate should have reduced the final sentence on both file 274/14 and file 278/14 more than what he had done.
- [12] As to whether the Court can impose concurrent sentences despite the provision of section 36 of the Penal Code, the Court of Appeal in a recent case of **NEDDY ONEZIME VS THE REPUBLIC SCA App 6/13**, held to the effect that although the sentences in chapters XXV1, V111 and XX1X has to run consecutively with previous sentence under section 36 of the Penal Code question was whether the order for consecutive sentence meets the best interests of Justice in a particular case.
- [13] Putting everything into consideration, I reduce the sentence in file 274/14 from 6 to 5 years and the sentence in file 278/14 for 8 years to 6 years. Both sentences would run consecutively to one another as the conditions mentioned in **VINDA VS REPUBLIC** and **NEDDY ONEZIME** cases, are not satisfied in this case to warrant the Court to order them to run concurrently. This means that the appeal succeeds to the extent of the appellant serving 11 years imprisonment instead of 14 years. The orders made of the learned Magistrate remain intact.
- [14] Order accordingly.

Signed, dated and delivered at Ile du Port on 20 April 2015

D Akiiki-Kiiza
Judge of the Supreme Court