IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 68/2014

Appeal from Magistrates Court decision 101/2014

[2015] SCSC 251

AARON TIRANT

Appellant

versus

THE REPUBLIC

Heard: 3 June 2015

Counsel: Mr Gabriel for appellant

Mrs Lansinglu, Attorney General for the Republic

Delivered: 3 June 2015

JUDGMENT

Akiiki-Kiiza J

[1] This is an appeal against both sentence and conviction. It was decided by a senior Magistrate whereby she sentenced the appellant to a fine of 16,000/- Seychelles Rupees and suspended his driving licence for six months. The Memorandum of Appeal has the following grounds:-

1. Appeal against conviction

a) That the appellant was unrepresented and that he did not appreciate the nature of the charge against him and he pleaded guilty on a misapprehension of the law and the facts.

b) That the appellant right of a fair hearing was not respected in view that he was not served with a prosecution docked prior to taking of the plea. Further, the case had been set for … evidence which did not materialise.

Appeal against sentence

a) That the fines total SR 16, 000 were manifestly harsh and excessive.

b) That the suspension of the appellant's driving licence was not justified in law.

He therefore prayed for the quashing of the conviction and sentence imposed by the trial Court. At the hearing Mr Nicol Gabriel represented the appellant and Mrs Lansinglu appeared for the Republic. The brief facts regarding this appeal that the appellant had pleaded guilty to 2 counts under the Road Transport Act, ca 206. The first count was dangerous driving contrary to section 25 of the Road Transport Act, whereby it was alleged that, he on the 19/10/2014, at Belombre, Mahe, drove vehicle registration number S16025 on the public road in a manner which was dangerous to the public having regard to all circumstances of the case. The second count, was with regard to driving a motor vehicle with alcohol consumption above the prescribed limit contrary to regulation 3 (1) and 9 (1) of the Road Transport (sober driving) regulations 1995 and punishable under section 24(2) of the Road Transport Act, cap 206. It was alleged that the appellant drove the said vehicle while his breath contained a proportion of alcohol exceeding the prescribe limit of 35 micrograms of alcohol per 100 millilitres of breath set out in schedule and statutory …10/95 that is to say his breath contained 55 micrograms of alcohol per 100 millilitres of breath.

[2] After appellant had pleaded guilty and was convicted upon his own plea of guilt, the Court reserved sentence till the afternoon. Then on the ruling on sentence, the learned Magistrate wrote the following:-

" Prior to considering the determination of the sentence in this case, the Court observes that the statement of the offence on count one of the charge of 24/10.14, in relation to the offence of "dangerous driving" against the accused (as stated in the statement of the offence), makes reference to the provision of section 25 of the Road Transport Act (cap 206) (herein after referred to as the act).

2. Likewise, the particulars of the offence on count one relates to the offence of dangerous driving as above started and same was read to the accused in creole and he pleaded guilty and admitted the facts as read. Now upon careful reading of the said section 25 of the Act, I find that it is in reference to the offence of causing death by dangerous driving and not dangerous driving as per the statement and particulars of the charge. The Court therefore finds therefore that since the particulars of offence refers to the offence of dangerous driving and the said offence is stated in the statement of the offence is obviously and error for the citation of section 25 thereof. Further since the accused was very well aware of the offence as specified in the statement of the offence and particularly as read and admitted in Creole by the accused in open Court, I find no prejudice has and or is going to be caused to the accused by the said error and hence, I amend the section of the Act, for the purposes of this sentence to be that of section 23 (1) (b) of the act, instead of section 25 thereof".

[3] The learned Magistrate then proceeded to cancel the 5 in 25 and put 4 (1) (b) after which she never read and sentenced the appellant to a term of SR 16,000 on the 1stt count. Under our law in Seychelles, amendments arte governed by section 187 of the Criminal Procedure Code. Section 187 (1) provides as follows:-

" ***where it appears to the Court that, the charge is defective, the Court may make such order for the amendment of the charge as the Court think necessary to meet the circumstances of the case, unless having regard to the merits of the case, the requested amendments cannot be made without injustice".***

Section 187 (2) provides that:-

"*An amendment may be made-*

a) *Before trial or at any stage of a trial, except that in a trial held by a Magistrate's Court, no amendment may be made after the close of the case for the prosecution*"

b) …..

3. Where a charge is amended

a) The amendment shall on the charge…..

Provided that, where the amendment is by way of substitution or addition of a new charge, the accused shall be called upon to plead to the new charge (emphasis added).

Hence section 187 of the Criminal Procedure Code allows the amendment to the charge generally in the circumstances described therein, provided injustice is caused to the accused person. However, as far as the Magistrate's court is concerned, such amendment must come before the prosecution closes its case. In the instant case, there was no full trial in the lower Court. The accused pleaded guilty as soon as the charge were read to him. He chose to represent himself though the Magistrate had explained to him his right to counsel as provided by the Constitution.

[4] It is my considered view that, as the appellant was a mature man, aged 18 years, he was free to make the choice he did. He was an adult as far as the law was concerned and that is why he had qualified to get a driving licence. Hence, though he was a young adult he was never the less an adult and we have a to treat him as such.

[5] Going back to the merits of the case, as there was no full trial, no evidence was called by the prosecution and consequently there was no case for the prosecution to close within the meaning of section 187 (2) (a) of the Criminal Procedure Code.

[6] In the circumstances therefore, the learned trial Magistrate could make the amendments as she did. The learned counsel for the appellant appear to suggest that, this was a belated amendment, which was done in the ruling on sentence and that the appellant was

not called upon to plead it. Prima facie, this appears to be the case, as the proviso of section 187 (3) (a) provides to that effect.

[7] However, the proviso, talks of "*amendment by way of substitution or addition of a new charge.*". What the Magistrate did in this case was the deletion of figure 5 in 25 and an addition of (4) (1) (b) in the statement of the offence which means the new section was 24 (1) (b) instead of 25 of the Road Transport Act. The question is, was a new charge substituted or added to the original charge the appellant had earlier pleaded to and was convicted of? To resolve question we have to look at the proceedings. As pointed out therein above the body of the statement of the offence fully supported the charge to under section 24 (1) (b) of the Road Transport Act. The appellant was charged with dangerous driving hence endangering the public. On the other hand, section 25 of the same Act. Talks of causing death.

[8] It is my considered view that, the accused was not mislead in any way when section 25 was read to him instead of 24 (1) (b) of the Road Transport Act, as he knew what he has done and readily agreed with the facts narrated in Court regarding what had transpired upon his arrest. Hence any lingering doubt or confusion is cleared by the facts lead to him in Court, and which were accepted by the appellant as correct.

[9] The Court of Appeal in the case of **VOLCERE VS REPUBLIC 20/12 [2014] SCCS 14** their Lordship had the following to say:-

"***The law in the matter is that where there is an amendment to an information (charge) and the amendment is material, the accused should be invited to plead to the amended information (charge). But where the amendment is not of a material nature there is no need to do so".***

[10] I respectfully agree with the above statement of the law. It is my finding that the amendment, carried out by the learned Magistrate was not material in nature hence, there was no need for her to invite the appellant to plead afresh and there was no injustice occasioned to the appellant at all, given the circumstances of this case. I accordingly dismiss the grounds advanced against conviction.

[11] Regarding the sentence, the Magistrate had the following to say:-

"(6) In this case, the convict as admitted by the prosecution, is a first offender and admitted by the convict in mitigation he has just obtained his driving licence in May 2014. The Court notes however, that the injuries suffered by the complainant are very severe in nature,…in the head, on the knee and broken ribs which have necessitated her hospitalization to date, this is as per facts narrated to Court by the prosecution and admitted by the convict".

(7) The Court notes also that the convict was driving under the influence of alcohol hence an aggravating factor for the purpose of the sentence. The learned Magistrate then sentenced the appellant to a fine of SR 8000/- on each count, or 3 months imprisonment in default. The maximum sentence in case of a conviction is provided under section 24 (2) of the same Act; is 2 years imprisonment or to a fine not exceeding SR 10.000/- or both.

[12] It is my considered view that given the mitigating factor such as the accused was spared the custodial sentence and was given a first option of paying a fine s the first option. Given the fact that the appellant had taken alcohol beyond the permitted levels a fine of SR 8000/- each count was reasonable if not lenient. I do not see any reason to justify my interfering with it. The suspension orders made by the learned trial Magistrate are within the law as per section 27 of the same Act.

[13] All in all, this appeal fails in totality and is accordingly dismissed.

Signed, dated and delivered at Ile du Port on 3 July 2015

D Akiiki-Kiiza
Judge of the Supreme Court