IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 44/2014

Appeal from Magistrates Court decision 325/2013

[2015] SCSC 308

ANDRE MICHEL
Appellant

versus

THE REPUBLIC

Heard:	21 July 2015
Counsel:	Mr Gabriel for appellant
	Mr Kumar, Attorney General for the Republic
Delivered:	30 July 2015

JUDGMENT

Akiiki-Kiiza J

[1] The appellant was sentenced to 7 years imprisonment by the Magistrate Court on count 1 for the offence of entering a dwelling house contrary to section 290 of the Penal Code and punishable under the same section. He was also sentenced to 8 years imprisonment on the 2nd count and on the 3rd count for the offence of stealing from a dwelling house contrary to section 260 and 264 (b) of the Penal Code. The learned trial Magistrate ordered the sentences on the 3 counts to run consecutively. This means the appellant has to serve a cumulative sentence of 23 years imprisonment. The memorandum of appeal had the following grounds:-

Appeal against conviction

(a) That the appellant being a first offender and unrepresented by counsel did not appreciate the nature of the charge against him and pleaded guilty on a misapprehension of the law and facts.

(b) That the rights of the appellant were not properly explained to him prior to taking of the plea.

Appeal against sentence

(a) The sentence imposed by the learned senior Magistrate is manifestly harsh, excessive and wrong in principle.

(b) That the learned senior Magistrate failed to consider concurrent sentencing for the appellant.

(c) That the learned Magistrate failed to consider the mitigating factors of the appellant and the fact, that the stolen items were retrieved.

[2] In the premises therefore, the appellant prayed for the quashing of the conviction and sentences imposed by the lower Court.

[3] At the hearing, the appellant was represented by Mr Gabriel and Mr Kumar represented the Respondent/Republic. The case for the appellant regarding the conviction is basically that, as he was not having any legal representation at plea taking and that as the lower Court record does not expressly indicate that, he had been explained fully his rights about legal representation prior to the taking of the plea, he did not fully comprehend the legal implications involved. Hence, the plea was equivocal.

[4] In Seychelles, the Superior Courts have held that while taking a plea the presiding judicial officer should explain in detail the nature of the offence, in accordance with Article (19 (2) (d) of the Constitution. Secondly the trial Court must expressly put on record that it had informed the accused of the availability of legal aid to him. **(See the case of DAVID JEAN BAPTIST VS REPUBLIC. SCSC Cr App 37/98. ASHELY**

FARABEAU VS THE REPUBLIC SCSC Cr App 4/09 and LENNY TERRRENCE HENRY SCSC app 54/13).

[5] The relevant parts of the lower Court record shows the following:-

" Court: Informs the accused that there are three charges filed against him and accused read his Constitutional rights (as per Article 19(2) (d) and the motion of prosecution for debenese evidence and what he is going to do."

Accused: Going to defend myself.

Court: Informs accused that there is a minimum mandatory on count 1 and hence whether still maintains he will conduct own defense. Informed also that the other two counts will also attract imprisonment sentences in view of its nature and whether still will maintain that will conduct his own defense.

Accused: Elects to conduct his own defense, upon explanations of Court, Court informs him if he requests documents prior to plea and accused states that he does not need documents."

[6] Thereafter, the learned Magistrate put the charge to the accused. What the learned trial Magistrate told the accused, is not apparent on the record. According to the cases cited above, the details of what the Court stated must be recorded on the file. Also the exact words used by the accused in answer must be also recorded as he stated them. Secondly there is no specific reference to the trial Magistrate expressly informing the appellant the existence of legal aid for his defence. Also there appeared to be urgency to have the matter heard there and then, due to the need for the complainant to leave the country. This left little room and time for the appellant to fully appreciate the legal implications of what was going on in Court. There is a great possibility that he never fully understood the legal implications and what a *de benesse* hearing involved/or what it meant.

[7] Thirdly, although the accused is recorded to have admitted the facts as narrated by the prosecution, the learned Magistrate never recorded the exact words the appellant used while admitting the facts. This is contrary to the well known procedure in recording

pleas of guilty. (**See ADAN VS THE REPUBLIC [1973] EA 445; TANECKI VS REPUBLIC SCA 4/96, MARCEL DAMIEN QUATRE VS THE REPUBLIC SCSC CA 10/14).** This requirement is in conformity also with section 181 (2) of the Criminal Procedure Code, which eracts as follows:-

"If the accused person admits the truth of the charge HIS admission SHALL be recorded as near as possible in his own words USED BY HIM". (emphasis mine).

[8] The combination of the above shortcomings, I find that the submissions of Mr Gabriel has some merit and I accordingly find the plea of guilty was equivocal due to misapprehension of legal consequences and for failure to record what the accused said in his own words after the narration of the facts by the prosecution.

[9] Assuming the plea was unequivocal the cumulative sentence of 23 years imposed by the learned trial Magistrate was clearly beyond her jurisdiction as per section 6 (2) of the Criminal Procedure Code before the amendment of 2014, which enhanced the sentencing powers of the Magistrates, allowed her up to 10 years only. Hence, the cumulative sentence of 23 years was illegal and cannot be allowed to stand. **(see RODDY LENCLUME VS THE REPUBLIC SCA Cr App 32 /13.)**

[10] As I have found the conviction nullity, I will not consider what the appropriate sentence to impose on the appellant. The end result is that, the appeal succeeds on both grounds raised by the memorandum of appeal. The conviction is quashed and the sentences are set aside. However after balancing the interests of the public with the individual rights of the appellant, I deem it fit to order that the appellant takes a fresh plea before another Magistrate with competence jurisdiction.

[11] Order accordingly.

Signed, dated and delivered at Ile du Port on 30 July 2015

D Akiiki-Kiiza
Judge of the Supreme Court