IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 2/2015

Appeal from Magistrates Court decision 269/2014

[2015] SCSC 319

BRIAN REVERA
Appellant

versus

THE REPUBLIC

Heard:	15 July 2015
Counsel:	Mr Gabriel for appellant
	Ms Potter, Attorney General for the Republic
Delivered:	28 July 2015

JUDGMENT

Akiiki-Kiiza J

[1] The appellant was convicted and sentenced to 8 years imprisonment by the Magistrate's Court for House Breaking contrary to section 289 (a) of the Penal Code read with section 22 and 23 of the same Code. The appeal is against sentence only. The following grounds appear in the Memorandum of Appeal.

a) That the sentence imposed by the learned trial Magistrate is manifestly harsh, excessive and wrong in principle.

b) That the sentence given by the learned Magistrate failed to consider the mitigating factors put forward by the appellant and the fact that he had pleaded guilty.

c) That the learned trial Magistrate failed to consider the fact that about half of the value of the items (stolen) was recovered.

[2] He therefore prayed for the quashing of the sentence imposed by the trail Court.

[3] At the hearing of the appeal Mr Nichol Gabriel appeared for the appellant. Mr Kumar appeared for the Respondent/Republic.

[4] It was Mr Gabriel's contention that the learned trial Magistrate never took into consideration the mitigating factors and never mentioned them specifically in the ruling before he imposed the sentence of 8 years on the first count and 2 years on the second count. That it was wrong to imposed the mandatory sentence of 8 years and he suggested 5 years should be appropriate in the circumstances of the case.

[5] On the other hand Mr Kumar submitted on behalf of the respondent to the effect that the learned trail Magistrate was justified imposing the sentence given the fact that he had previous record. He therefore prayed for the dismissal of the appeal.

[6] The lower Court record reveals the following regarding mitigation:-

" Mitigation by Mr Gabriel

Accd number 1 is 29 years living with his parents at Anse Aux Pins. Was in employment prior to the arrest. Accd is serving a 6 months sentence. Pleaded guilty in this case. Remorseful. Consider sentence not harsh and excessive. Pray for sentence to run concurrently. There are other cases before Supreme Court on appeal where Court has allowed discount in sentence when one pleads guilty. Pray for lesser than the minimum sentence."

[7] Thereafter the learned Magistrate adjourned the case for his ruling on sentence. In the consequent ruling, the learned Magistrate had the following to say:-

" I have considered the guilty plea of both accused persons and the mitigation of their counsel and I sentence each one as follows:-

1st Accd – count 1, House Breaking – 8 years imprisonment and on count 2 – 2 years stealing from a dwelling house – 2 years imprisonment. I order that the above sentences are to run concurrently and that the time accused was held on remand be deducted from the sentence".

[8] The maximum sentence to be imposed on a convict, under section 289 (a) of the Penal Code is 10 years imprisonment. Also section 289 falls under part XX1X of the Penal Code, as amended by Act 5/12, which imposes a minimum of 8 years imprisonment. (see section 27 (1) (b) (i) of Act 5/12). Perhaps that is why the learned trial Magistrate had imposed the 8 years imprisonment on the first count. The appellant had acknowledged that he had previous record and the prosecutor's list on the file reveals that, the appellant had 5 previous convictions and four of which were committed in 2010. Out of these, three were committed on the same day. They involved burglary and stealing and entering a dwelling house with intent to commit a felony, stealing from a dwelling house, house breaking and theft. He had been sentenced to 5 years in three of the five previous convictions. It appears only one laptop was recovered. The second laptop value (about 36,000/-) US dollars 3,000 never recovered. The other properties not recovered amounted about SR 1500/-.

[9] The main issue before me is whether in the circumstance of this case the appellant was entitled to a lesser sentence than the 8 years imposed by the learned trial Magistrate. Mr Gabriel submitted that he was entitled to a reduction of sentence but Mr Kumar prayed that this Court upholds the 8 year sentence.

The Court of Appeal in the recent past, has pronounced itself on the minimum mandatory provision of the section 27 of the Penal Code. In the case of **PONOO VS THE ATT. SCR 38/10** the Court of Appeal held that, the trial Court is entitled to impose a lesser sentence than the minimum mandatory as provided by section 27 of the Penal Code. Their Lordship stated that the Court is concerned in a case to case basis the actual sentence that should be meted out to the particular offender.

[10] Hence, the learned trial Magistrate should have considered **PONOO** case and applied the mitigating factors to reach a lower sentence than the minimum mandatory sentence of 8 years he had imposed on the appellant. Usually the Court give a rebate of 1/3 of the sentence or 20% upon plea of guilty (**see ARCHBOLD 2014 Ed, para 5 - 113 and 5 – 117 - 118).** However, though one of the laptops was recovered, another worth US dollar 3,000 (altogether SR 36,000/-) disappeared.

[11] In the circumstances of the case, and after balancing the plea of guilt and other mitigating factors mentioned by Mr Gabriel and also noting that the appellant had 5 previous convictions, and some of the properties were never recovered and applying **PONOO** principles, I would find that the minimum mandatory sentence of 8 years imprisonment was harsh and excessive. In the circumstances I would quash it and substitute a sentence of 6 years imprisonment instead. The other orders made by the learned trial Magistrate remains valid and operational.

[12] Order accordingly.

Signed, dated and delivered at Ile du Port on 28 July 2015.

D Akiiki-Kiiza
Judge of the Supreme Court