

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 48/2012

[2015] SCSC 59

JEAN PAUL MOUTOU

Appellant

versus

THE REPUBLIC

Heard: 23 February 2015

Counsel: Mrs Alexia Amesbury for appellant

Mrs Lansinglu Rongmei, Assistant State Counsel for the Republic

Delivered: 28 May 2015

JUDGMENT

McKee J

- [1] The Appellant appeals against Sentence in Magistrates Court case 578/2011. I have been provided with the Magistrates Court file relating to this case and the Notice of Appeal dated 9th November 2012.
- [2] I looked to the Notes of Proceedings on 20th January 2014 when the Appellant stood unrepresented before this Court. I drew his attention to another case file 577 of 2011 and asked whether he was entering an appeal in this matter although no Notice of Appeal was in the file. The Appellant confirmed to me that he did not lodge an appeal in that matter.
- [3] Some time passed before the Appellant had the opportunity to fully instruct Mrs Amesbury to represent him in the appeal. On 9th October 2014 the Appellant again

confirmed that there is no formal appeal in case number 577/11. Accordingly I consider that the only appeal before this court carries the reference no 578/11. However I will refer to the sentences imposed in 577/11 in this appeal judgment since both cases were finalized on the same day.

[4] In the case number 578/11 the Appellant was charged with the following offences:

1] Housebreaking contrary to and punishable under section 289[a] of the Penal Code.

[5] The particulars of the offence were as follows:

[6] Jean-Paul Moutou residing at North East Pointe Mahe on the 9th August 2011 at La Retraite, Mahe, broke and entered the dwelling house of Eddie Horeau with intent to commit a felony therein, namely stealing.

[7] [2] Stealing from a dwelling house contrary to section 260 as read with section 264[b] and punishable under section 264[b] of the Penal Code.

[8] The particulars of this offence were as follows:

[9] Jean-Paul Moutou, residing at North East Pointe, Mahe, on the 9th August 2011 at La Retraite, Mahe, stole from the dwelling house of Eddie Horeau the following items, namely, one flat screen make L G 32 inch, value SR 15,000/-, one flat screen make Panasonic 32 inch value SR 15,000/-, one compressor value SR6,000/- and one grass cutter make Fugita value SR2,000/- all being the property of Eddie Horeau.

[10] Only the Record of Proceedings relating to case 578/11 is produced to the Court. It shows that the Appellant made his first appearance before the Magistrates Court on 6th September 2011. He pleaded not guilty. On 18th April 2012, the Appellant did not answer to bail and the trial proceeded in his absence, the evidence of Eddie Horeau was taken and the case adjourned. On 5th October 2012 the Appellant surrendered to court and was remanded in custody. On 22nd October 2012 the Appellant reappeared and tendered pleas of Guilty to the charges of Housebreaking and Stealing and was formally convicted. Defence Counsel mitigated on his behalf and the matter was adjourned to 5th November 2012 for sentence.

- [11] On 5th November 2012 the Record from the Magistrates Court states that the Magistrate sentenced the Appellant in connection with case files numbers 577/11 **and** 578/11. The Reasons for Sentence records that the Appellant had also pleaded guilty to charges of Housebreaking and Stealing in connection with case file 577/11. The Reasons for Sentence sets out the brief facts in *both* cases.
- [12] The facts in case number 577/11 were that on 27th April 2011 the Appellant with another person broke and entered the dwelling house of Eddie Horeau and stole a 50 inch flat screen television valued at RS60,000.
- [13] In case file 578/11 the facts were that again, but later, on 9th August 2011, the Appellant broke into the house of Eddie Horeau and stole the items as set out in the particulars of offence aforementioned. In this case only one television was recovered and returned to its owner.
- [14] Following conviction the Magistrate dealt with all offences together. He considered the earlier mitigation, the pleas of guilty, the fact that the accused was a first offender, was 26 years of age and that his wife was expecting a baby.
- [15] In case number 577/11 the Magistrate sentenced the Appellant to 9 months imprisonment in respect of each of the charges of Housebreaking and Stealing. . The sentences were to be consecutive and hence the total period of imprisonment was 18 months.
- [16] There is no appeal against the sentences imposed in this case 577/11. I confirm the cumulative sentence of 18 months imprisonment. In my view any lesser sentence would be unduly lenient.
- [17] In respect of the case number 578/11 the Magistrate sentenced the Appellant to 8 years imprisonment in respect of the charge of Housebreaking and 18 months imprisonment in respect of the charge of Stealing. Again the sentences were consecutive and hence the total term was 9 years 6 months imprisonment.
- [18] I look now to the sentences imposed in case no. 578/11. In considering this matter I take into account the nature of the charges, the particulars of the offences, the pleas of Guilty, the plea in mitigation, the fact that prior to 5th November 2012 the Appellant had been a

man of clear record, and the written submissions of Counsel. On a minor point, contrary to what is suggested by Defence Counsel, only one television, not all stolen items, was recorded as having been recovered. The sentences imposed in respect of both case files were imposed on the same day, namely 5th November 2012.

[19] These matters were being dealt with by a magistrate other than a senior magistrate. This is within my judicial knowledge. Accordingly, his sentencing powers at the material time were restricted; he was not entitled to impose a sentence in excess of 8 years imprisonment under the provisions of section 6[2] of the Criminal Procedure Code. Section 6[2] of the Code is to be read along with section 9[2] of the Code which reads as follows: “[2] For the purposes of appeal the aggregate of consecutive sentences imposed *under this section* in case of convictions for several offences at one trial shall be deemed to be a single sentence.” In my view the charges of Housebreaking and Stealing in case file no. 578/11 fall within the category of “convictions for several offences [in this case 2 convictions] at one trial”. For the purposes of appeal the cumulative sentence of 9 years 6 months imprisonment is to be considered as one sentence. The magistrate may have had the minimum mandatory sentencing provisions in mind, but he did allow himself to stray over his prescribed sentencing limit of 8 years. In my view it follows that this cumulative sentence of 9 years 6 months imprisonment cannot stand.

[20] Consequently I look again at the offences in case file no. 578/11. The offences of Housebreaking and Stealing are always considered serious by a court. Four items of high value were taken and only one, a television, was recovered. The total value of these items is given as RS38,000/-. There was an invasion of the privacy of the individual by the Appellant’s entry into the residential dwelling house of Mr Horeau. This was also the second time within 4 months that the Appellant had broken in to the dwelling house of Mr Horeau. The only mitigating factors are the pleas of guilty and the fact that the Appellant had no convictions prior to his conviction for all these offences.

[21] In respect of the offence of Housebreaking, in my judgment, the appropriate starting point for sentence is 7 years imprisonment. I give credit for the plea of guilty and reduce this sentence by 12 months and impose a sentence of 6 years imprisonment in respect of the First Charge. I also impose a sentence of 6 years imprisonment in respect of the

charge of Stealing. These 2 offences were part of the same incident or transaction and concurrent sentences are appropriate. The total term of imprisonment imposed for the two offences in case file no. 578/11 is 6 years imprisonment.

[22] I now look again at case file no. 577/11 where there is a cumulative sentence of 18 months imprisonment. This remains unchanged. It is also entirely correct that this sentence should be consecutive to the sentence of 6 years imprisonment imposed in case file no. 578/11. The 2 sets of offences are distinct and separate albeit that they occurred at the same residence.

[23] In the result I allow the appeal against sentence in respect of the 2 charges in case file 578/11. I quash the sentences of 8 years and 18 months imprisonment and substitute sentences of 6 years imprisonment in respect of each charge, these sentences to be concurrent. Accordingly the total sentence of imprisonment imposed in case file 578/11 is 6 years imprisonment.

[24] This sentence of 6 years imprisonment shall be served consecutively with the sentence of 18 months imprisonment imposed in respect of case file no. 577/11. Accordingly the total sentence of imprisonment imposed in respect of case files nos. 577/11 and 578/11 is 7 years 6 months imprisonment.

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

C McKee
Judge of the Supreme Court