

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 14/2016

[2016] SCSC

ACHILLE THELERMONT

versus

THE REPUBLIC

Heard: 4th December 2015
Counsel: Ms. Ste. Ange for the Republic

Delivered: 3rd February 2016

JUDGMENT

Akiiki-Kiiza J

[1] This is an appeal against the sentence imposed by the learned Trial Magistrate upon the appellant for two offences. The first count is for the offence of House Breaking Contra Section 289 (a) of the Penal Code where he was sentenced to 8 years imprisonment and in the second count he was charged and convicted on a charge of Stealing Contra Section 260 and 264 (b) of the Penal Code.

He was sentenced to a term of 5 years imprisonment. The two sentences were ordered to run consecutively. This means that the appellant was to serve a total term of 13 years imprisonment.

[2] There was no clear memorandum of Appeal filed by the appellant, but what I could gather from the sum total of the reasons given for appealing to this Court, the grounds are basically two:

(a) That in count 1, the Magistrate erred in law by applying the mandatory minimum sentence of 8 years which would normally be reserved for a previous offender as per Section 27A (1) (b) of the Penal Code.

(b) That the sentences of 5 years for stealing and 8 years for house breaking to run consequently was manifestly harsh and excessive.

[3] The Lower Court record indicates that the case first proceeded with the calling of witnesses but later on the appellant changed his plea from that of not guilty to guilty.

[4] In her Ruling on sentence, the learned Magistrate considered the sentencing principles and relied on Section 27 of the Penal Code as amended by the Act 5/12 on mandatory minimum sentencing. She also considered the seriousness of the two offences.

She was also noted that the items stolen were never recovered and that there was a need to impose exemplary sentences to discourage the would be future thieves. Hence she imposed the mandatory minimum sentenced of 8 years on the first count and 5 years imprisonment which run consecutively. This would make a total of 13 years imprisonment. Although not raised by the appellant ,this would be beyond the learned Senior Magistrates jurisdiction as per Section 6 (2) of the Criminal Procedure Code. (Before the amendment in April 2014 which raised the jurisdiction of the Magistrates.)

[5] In the recent case of **Roddy Lenclume v/s The Republic , SCA number 32/2013** it was held , inter alia, that under both Section 27 A and 36 of the Penal Code the total years imposed by the Trial Court must conform with the provision sub section 6 (2) of the

Criminal Procedure Code. On this ground alone I have to strike down the total sentence of 13 years consecutive sentence imposed by the learned Trial Magistrate as illegal.

[6] Now turning to the grounds of appeal which were argued in this appeal, and given that the appellant eventually pleaded guilty though belatedly, he is entitled to some rebate in his eventual sentence. As *PONOO* principles also apply to both Section 27 (A) as well as Section 36 of the Penal Code (See Roddy Lenclume case Supra) the learned trial Magistrate should not have felt bound by the mandatory nature of Section 27 (a) and 36 of the Penal Code.

[7] Given the fact that the money stolen was a substantial amount (as 100,000) and the ceiling appears to have been spoilt during the commission of the offence, it is my considered view that the appellant also deserved an appropriate punishment to reflect the gravity of the offences he committed.

[8] Putting everything into consideration, I make the following orders:

(1) The consecutive sentence of 13 years is quashed and is set aside.

(2) A term of 5 years imprisonment is substituted on the 1st count.

(3) The sentence of 5 years imprisonment imposed by the learned trial Magistrate in respect by the 2nd count is maintained.

(4) Further, both sentence to run concurrently.

Order accordingly.

Signed, dated and delivered at Ile du Port on 3rd February 2016

Akiiki-Kiiza J
Judge of the Supreme Court