

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 38/2014

Appeal from Magistrates Court decision 03/2014 and 06/2014

[2016] SCSC 197

JOEL FIGARO
Appellant

versus

THE REPUBLIC
Respondent

Heard: 28 January 2016 and 22 February 2016
Counsel: Mr. Nichol Gabriel Attorney at Law for Appellant
Mr. Kalyaan Karunakaran, State Counsel for the Republic
Delivered: 24 March 2016

JUDGMENT

Burhan J

- [1] This is an appeal in respect of two cases from the Magistrates' Court bearing nos: 3 of 2014 and 6 of 2014.
- [2] The Appellant was charged in the Magistrates' Court case no: 3 of 2014 as follows:

Count 1

Entering a Dwelling House with intent to commit a felony therein contrary to Section 290 of the Penal Code.

The particulars of offence are that Joel Figaro of Le Nirole, on the 28th November 2013 at Pointe Larue, entered into the dwelling house of Sheila Volcere with intent to commit a felony therein namely stealing.

Count 2

Stealing from dwelling house contrary to Section 260 of the Penal Code,

The particulars of offence are that Joel Figaro of Le Nirole, on the 28th November 2013 at Pointe Larue Mahe, stole from the dwelling house of Sheila Volcere one flat screen 26 inch value Sr 10,000, 1 hair dryer make black n decker value Sr 450, 1 hair presser value Sr 450, three silver bracelets and one necklace value Sr 2500, one men pair of shoes value Sr 400, one Xbox and Kinect connection value Sr 2500, several pipe fittings value Sr 500, 2 mens cap value Sr 300, 1 mens bag value Sr 450, 1 pendrive 8 GB value Sr 300, 1 travelling bag Americano value Sr 1500, two Americano value Sr 1500, one back pack make Cable and Wireless value Sr 200, one back pack make football value Sr 200, one pencil case and some coins to the value Sr 50 and several Business card value Sr 500 being properties of Sheila Volcere.

- [3] On the 7th of May 2014, Count 1 was withdrawn and the statement of offence in Count 2 was amended to section 264 of the Penal Code. The Appellant pleaded guilty to Count 2 as amended and was sentenced on the 22nd of May 2014, to a term of 4 years imprisonment.
- [4] In Magistrates' Court case no: 6 of 2014, the Appellant was charged for the following offence:

Count 1

Housebreaking contrary to and punishable under Section 289 (a) of the Penal Code.

The particulars of the offence are that Joel Figaro residing at Le Nirole, Mahe on the 27th October 2013, at Pointe Larue, Mahe, broke and entered into the dwelling house of Verdette Figaro with intent to commit a felony therein namely stealing.

[5] The Appellant was convicted on his own plea of guilt and sentenced on the 22nd day of May 2014 to a term of 8 years imprisonment.

[6] The Appellant seeks to appeal against the conviction and sentence imposed in each of the aforementioned cases. As the sentences in both cases were given in the same order dated 22 May 2014 and for the purpose of considering the total sentence being served, both appeals from the Magistrates' Court were considered together.

[7] Section 309 (1) of the Criminal Procedure Code (CPC) reads as follows:

No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by the Magistrates' Court, except as to the extent or legality of the sentence.

[8] The Appellant has been convicted under this section, therefore in accordance with the law contained in section 309 (1) of the CPC, no appeal should be allowed in respect of the said conviction.

[9] Further section 310 (1) of the Criminal Procedure Code reads as follows:

Every appeal shall be brought by notice in writing which shall be lodged with the Registrar within 14 days after the date of the order or sentence appealed against.

[10] While section 310 (3) of the Criminal Procedure Code states:

Within 14 days after the filing of his notice of appeal, the appellant shall lodge with the Registrar a memorandum of appeal.

[11] It would be pertinent to mention that the proviso contained within section 310 of the CPC, provides that nothing in this subsection shall restrict the power of the Supreme Court to make such order as the justice of the case may require.

- [12] When one peruses the case file, it is apparent that learned counsel for the Appellant has first filed notice of appeal dated 27th May 2014, only against sentence which notice was within the prescribed time. However, he has sought to appeal against conviction as late as the 16th of December 2015.
- [13] The delay in filing his notice of appeal in respect of conviction is over a period of 18 months and no explanation has been tendered to explain the delay in filing the belated notice of appeal. Therefore, considering the aforementioned provisions as contained within section 310 (1) and (3) of the Criminal Procedure Code and the failure of the Appellant to explain his laches, the appeal against conviction stands dismissed.
- [14] On considering the sentencing order of the learned Magistrate dated 22nd May 2014, it is apparent that the term of 8 years imprisonment in case no: 6 of 2014 and the term of 4 years imprisonment, imposed in case no: 3 of 2014 were to run consecutively in the light of section 36 of the Penal Code. Therefore the Appellant would serve in total a term of 12 years imprisonment.
- [15] When one considers the sentence imposed in case no: 6 of 2014 i.e. 8 years imprisonment, it is apparent that although the charge is one of breaking and entering there is no Count for stealing, indicating that the Appellant though entering the premises had not been able to steal anything. Therefore for the Appellant to serve a term of 8 years imprisonment and in totality a term of 12 years imprisonment as mentioned in para 14 herein, in my view is harsh and excessive.
- [16] I therefore proceed to reduce the sentence of 8 years imprisonment imposed in case no: 6 of 2014 to 4 (four) years imprisonment and make further order that the said sentence run consecutively to the sentence of 4 years imprisonment in case no: 3 of 2014.
- [17] The Appellant would therefore serve in total a term of 8 (eight) years imprisonment which would be a just and appropriate term even considering his lengthy antecedents. Time spent in remand to count towards sentence.

[18] The appeal against sentence is allowed accordingly while the appeal against conviction stands dismissed.

Signed, dated and delivered at Ile du Port on 24 March 2016



M Burhan
Judge of the Supreme Court