

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 70/2014

Appeal from Magistrates Court decision 27/2013

[2016] SCSC 701

RODDY JEAN
Appellant

versus

THE REPUBLIC

Heard: 27th July 2016
Counsel: Mr. N. Gabriel for appellant
Mr. H. Kumar, Attorney General for the Republic
Delivered: 15th September 2016

JUDGMENT

Akiiki-Kiiza J

- [1] This is an appeal from the Magistrate Court decision dated the 30th May 2014, whereby the Appellant was found guilty of a charge of House Breaking and Stealing from a dwelling house *Contra Section 289 (a) of the Penal Code* and *Section 260* of the same Code respectively.
- [2] He was sentenced to a total term of 5 years imprisonment. He is now appealing from both conviction and sentence.
- [3] In his memorandum of Appeal he raises the following grounds:

A. Appeal Against Conviction

That the learned Magistrate erred in law in having admitted the facts pertaining to the plea of guilty of the Appellant when in actual fact, it was the Appellant's Attorney who had admitted the facts contrary to law.

B. Appeal against Sentence

That the sentence of five years imprisonment by the learned Magistrate is manifestly harsh, excessive and wrong in principle.

He prayed for quashing the Conviction and setting aside the sentence.

[4] Since the decision of the Court of Appeal in the case of TARNECKI V/S THE REPUBLIC SCA 4/96. It is the accused person himself and not any third party, his counsel inclusive, who can accept the facts narrated by the prosecution soon after he has pleaded guilty to the charge.

[5] In this case, the Lower Court Record on page 15 of the proceedings shows as follows:-

"Defence: I am freshly instructed by my client that he is willing to change his plea. May the charge be read to him.

Charge read

Accused: I am guilty.

Court: A guilty plea is entered on record against the accused person in respect of count 1.

Accused: Guilty

Court: A guilty plea is entered on record against the accused person in respect of Count 2. Would the prosecution narrate the facts.

Republic: As per the charge sheet.

Court: Does the defence admits the facts.

Defence: Facts admitted.

Court: The accused person is convicted on his own plea to one count of house breaking and one count of stealing from a dwelling house.

Republic: According to my file he is a first time offender"

After that the learned Magistrate called for mitigation before passing the sentence of 5 years imprisonment on the first count and 3 years imprisonment on the second count. He ordered both sentence to run concurrently.

- [6] It is clear for the above extract that , the learned Magistrate requested the defence counsel to react to the facts as narrated by the prosecutor instead of calling upon the accused person himself to do so. This is so because, in the proceeding, the appellant was being referred to as the accused and not as the defence , the defence connoted the counsel for the appellant; when he informed Court that :-

"Defence: I am freshly instructed by my client that he is willing to change his plea. May th4e charge be read to him."

- [7] After this it was the accused who had responded to the two counts after they had been read by pleading guilty to both counts. Thereafter, the "defence" is the one which admitted the narrated facts instead of the accused person himself. This clearly offended both the statutory and case law as laid down by *Section 181 (2) of Criminal Procedure Code* and by the Court of Appeal in **TARNECKI VS**

THE REPUBLIC case cited above (See also the case of **QUATRE V/S R [2014] SLR 291.**


Section 181 (2) of the Criminal Procedure Code provides as follows:-

" If the accused person admits the truth of the charge his admission shall be recorded as near as possible in the words used by him (see the case of R VS ESTICO [2014] SCSC 402.

- [8] Another anomaly in the proceedings though not raised by the appellant, is the failure of the prosecutor to read out the facts constituting the offense to the accused person. It does not suffice for him simply to state that the facts are as per charge sheet. The facts in the charges sheet are usually too brief and tend to exclude the circumstances under which an offense has been committed, which could include possible defences for the accused person.
- [9] All in all this appeal succeeds on the first ground. The conviction is quashed and the sentence is set aside. It appears the appellant has already served more than half of the sentence imposed on him by the Lower Court, hence it would not be in the interest of justice to order a retrial. The end result is that the accused is to be set free forthwith.

Order accordingly

Signed, dated and delivered at Ile du Port on, 15 September 2016



D Akiiki-Kiiza

Judge of the Supreme Court