

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 27/2012

Appeal from Magistrates Court decision 177/2011

[2016] SCSC 784

ERIC ARRISOL
Appellant

versus

THE REPUBLIC

Heard: 27th July 2016
Counsel: Mr. N. Gabriel for appellant
Mr. H. Kumar , Principal State Counsel for the Republic
Delivered: 21st September 2016

JUDGMENT

Akiiki-Kiiza J

- [1] Mr. Eric Arrissol, appeals to this Court following his trial and conviction on a charge of breaking into a building to commit a felony *Contra Section 291 (a) of the Penal Code*. He was sentenced to served 10 years imprisonment.
- [2] Being dissatisfied with the sentence he has now appealed to this Court on the following grounds;-
- a) That the sentence of 10 years imprisonment imposed on the appellant by the learned Magistrate was in excess of jurisdiction.

- b) That the sentence of 10 years imprisonment was manifestly excessive and wrong in principle.
- c) That the learned Magistrate erred in imposing a harsh and excessive sentence on the appellant in total disregard to the principle of totality and proportionality of sentences.

[3] The offense the appellant was convicted of carried a mandatory minimum sentence of 10 years imprisonment. (see Act 20/2010)

By the time of the sentence of 10 years was being imposed on the appellant, the sentencing powers of a Magistrate could not exceed the limit of 8 years imprisonment (See Section 6 (2) of Criminal Procedure Code). In that regard the second ground of appeal succeeds and the sentence of 10 years imprisonment imposed on the appellant by the learned trial Magistrate is bad in law as against *Section 6 (2) of the Criminal Procedure Code*. It is quashed and set aside accordingly.

[4] As regards the sentence being harsh and excessive, the maximum sentence which could be possibly imposed by the learned Magistrate on a charge under *Section 192 (a) of the Penal Code* is 14 years imprisonment. The learned Magistrate imposed a sentence of 10 years imprisonment, which was also the minimum mandatory sentence (*as per Act 20/2010*).

[5] Though the learned trial Magistrate considered the principle in **PONOO** that the Court has power to exercise its discretion in determining an appropriate sentence in accordance with the circumstance of a particular case and to consider the particular attributes of an accused person as an individual, he never the less opined that circumstances of the case before him warranted the imposition of the mandatory minimum sentence of 10 years on the appellant.

[6] The appellant had nothing to say in this mitigation when he was asked by the court. It appears the value of the stolen property amount to more than SR 17, 000/-.\

[7] At the hearing of this appeal, Mr. Nichol Gabriel appeared for the appellant and Mr. Kumar for the Respondent.

[8] It was Mr. Gabriel's contention that as the appellant was a first offender and the building was empty with no people at the time of the breaking, hence no danger to life of it's occupants and that no privacy was infringed and no physical damage was caused on the building, his client deserved a much lenient sentence than that imposed by the learned trial Magistrate . He also alluded to the fact that, afterwards the accused had been sentenced to a term of 5 years subsequent to the 10 years imprisonment imposed in the case and that according to him the appellant is now facing a total of 15 years imprisonment which was harsh and excessive.

[9] It is my considered view that, it is unlawful for the appellant to serve a cumulative sentence in 2 different files, unless the sentencing Court expressly orders so. It cannot be merely assumed by the Prison Authorities.

To my knowledge there is no express and distinct order in the subsequent file ordering the sentence of 5 years to run consecutive to the 10 years the appellant was ordered to serve in this case. Hence, the Prison Authorities has no lawful authority to make these sentences to run consecutively.

[10] Putting everything into consideration, and given the circumstances of this case, the appeal is allowed and I reduce the sentence from 10 years to 6 years imprisonment.

Order Accordingly.

Signed, dated and delivered at Ile du Port on , 21 September 2016.



D Akiiki-Kiiza
Judge of the Supreme Court