IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 60/2014

Appeal from Magistrates Court decision 638-635/2013

[2016] SCSC 888

RONNY DOMINGUE
Appellant

versus

THE REPUBLIC

Heard:	29th September 2016
Counsel:	Mr. N. Gabriel for appellant
	Mr. Kumar, State Counselfor the Republic
Delivered:	12 October 2016

JUDGMENT

Akiiki-Kiiza J

[1] This is an appeal against sentence on the following grounds:-

a. *That the total sentence imposed by the learned Magistrate is manifestly harsh, excessive and wrong in principle.*

b. *That the learned Magistrate failed to consider the fact that the appellant had pleaded guilty and expected a further credit on sentencing.*

c. *That the learned Magistrate did not take into account the principle of totality of sentences.*

d. *That the learned Magistrate erred in imposing a harsh and excessive sentence on the appellant in total disregard to the principles of totality and proportionality of sentences especially in a view that the appellant was earlier sentenced to 10 years imprisonment or an offence that was committed just two weeks after the date of the present case.*

He prayed for the quashing of the sentences.

[2] When the matter came up for hearing, the appellant was represented by Mr. Nichol Gabriel and Mr. Khalyaan Karunakaran was for the Respondent.

[3] The appellant had been charged on two counts. The first count is House Breaking *Contra Section 289 (a) of the Penal Code* and in the second count, he was charged with Stealing *Contra Section 260 and 264 (b) of the same code*. He was sentenced to a term of 8 years imprisonment on the first count and to 3 years imprisonment for the second count. The trial Magistrate ordered the 2 sentence to run concurrently.
He further ordered that this sentence should run consecutive to an earlier sentence of 10 years in case No 635/2013, which had been before the same Magistrate.
The time the accused person had spent on remand was ordered to be deducted from the sentence. The learned Magistrate's order meant that the appellant was to serve a total of 18 years imprisonment for both files (635/13 and file 638/13).
It is against this sentence that the appellant has appealed to this Court.

[4] I am aware that before the case of **Frederick Ponoo**, the Courts used to implement the mandatory minimum sentences as per the *27 (1) (c) of the Penal Code, Section 36 of the Penal Code and Section 9 of the Criminal Procedure Code.*

[5] However, the Court of Appeal in the case of **Roddy Lenculume Vs The Republic SCA No 32/2013** held that, the total number of years imposed by a trial Court under *Section 9 of the Criminal Procedure Code* must not exceed the jurisdiction of the Magistrate in accordance with *Section 6 (2) of the Criminal Procedure Code*. This means that the

learned trial Magistrate order in the instant case for the appellant to serve a consecutive sentence of 18 years imprisonment, (for file number 635 and 638/13) is unatable and it is Contrary to *Section 6 (2) of the Criminal Procedure Code*, which limits the jurisdiction of trial Magistrate to the maximum of only 8 year.
In the circumstances therefore I quash the cumulative sentence of 18 years for both files, and set it aside.

[6] In the **Lenculume case** cited above, the Court of Appeal also held to the effect that, the **Principles of Ponoo** case applied to *Section 36 as it did to Section 27 of the Penal Code*. That is to say, the sentence imposed by the Court must be proportionate to the circumstances of each particular case, so as to avoid subjecting an accused to an otherwise cruel and inhuman treatment/punishment contrary to Article 16 of the Constitution.

[7] Before the Court orders a consecutive or concurrent sentence it must ask itself whether such sentence would meet the interest of Justice (See the Case of **Neddy Onezime Vs Republic SCA Cr App 6/2013**).

[8] In this particular case, the appellant had pleaded guilty to the charge hence saving the Court's time and resources. The plea of guilty also shows repentance/remorse on his part. This goes in his favour and merits a reduction of about 20% on the sentence to be imposed on him. (See **Archbold 2014 Edition, Paragraph 5-112-113 and 117**).
He was also a first offender.

[9] The appellant had also undertaken to be of good behaviour in his mitigation. From the charge sheet, the offences took place within 2 weeks and in the same month. The value of the property stolen was relatively low and was recovered.

[10] Given the above circumstances, I agree that the appellant deserved a better deal that he had got from the learned trial Magistrate. I accordingly quash the cumulative sentence of 18 years imposed on him and I substitute a sentence of 5 years in 635/2013 instead of 10

years imprisonment in file 638/13 and I substitute a sentence of 5 years on 1st count and 3 years on 2nd count. Both sentences in file 638/13 to run concurrently.

[11] Further, the sentences in both files to run concurrently. Lastly as ordered by the trial Magistrate, the time the appellant spent on remand, to be deducted from the sentence.

Order Accordingly.

R/A explained.

Signed, dated and delivered at Ile du Port on, 12 October 2016

D Akiiki-Kiiza
Judge of the Supreme Court