IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 36/2014

Appeal from Magistrates Court decision 713/2011

[2016] SCSC 889

DEAN WILLIAM
Appellant

versus

THE REPUBLIC

Heard:	29th September 2016
Counsel:	Mr. N. Gabriel for appellant
	Mr. H. Kumar , State Counselfor the Republic
Delivered:	20th October 2016

JUDGMENT

Akiiki-Kiiza J

[1] This is an appeal against conviction and sentence against the appellant by the Magistrate Court dated the 30/04/14. The appellant was tried and convicted on 2 counts. The first count was House Breaking *Contra Section 289 (b) of the Penal Code* and in the second account, he was charged and convicted of Stealing from Dwelling House *Contra Section 260 and 264 (b)* of the same code.

[2] He was sentenced to a term of 5 years imprisonment on the 1st count and 3 years on the 2nd count. Both sentences were ordered by the learned trial Magistrate to run consecutively.

The appellant being aggrieved by the above orders, has now appealed to this Court on the following grounds;

A. Against Conviction.

a. That the learned Senior Magistrate erred in fact and law in convicting the appellant on the charge of House Breaking and Stealing from Dwelling House on insufficient and uncorroborated evidence.

b. That the learned Senior Magistrate erred in relying on the oral confession of the appellant which was challenged by the appellant.

c. That in all circumstances, the conviction of the appellant was unsafe and unsatisfactory.

B. Appeal against Sentence.

a. That the consecutive sentence of 8 years imprisonment was manifestly harsh, excessive and wrong in principle.

b. That the sentences should have been made to run concurrently.

He, therefore, prayed for quashing the conviction and setting the sentence aside.

[3] At the hearing, Mr. Gabriel appeared for the appellant, and Mr. Kumar appeared for the Respondent.
The main contention of Mr. Gabriel regarding the conviction is that, the learned Magistrate relied on appellant's Co- accused's oral "confession" to convict him, which is unattainable in law.

[4] On the other hand, Mr. Kumar submitted to the effect that, the appellant had led the Police to the place where he and his Co-accused had hidden the property and was not convicted upon any oral confession at all.

[5] It is the law that were 2 or more accused persons are charged together the confession of one of them cannot be used as a basis for a conviction of his colleagues. Especially so

when the others do not admit their involvement in the crime complained of. The admission can only be proved against the maker and not against the others. (See **The Republic Vs Marengo & Ors [2004] SLR 116.**

[6] In the instant case, the learned trial Magistrate relied upon what PW1 had told the Court that, she was present when the appellant confessed to participating in the crime. This is what PW1 stated in the Lower Court:-

> *"I know Dean William (appellant) a long time. I saw that Dean confessed and in front of me he took Police Officers to where him and his brother had taken things"*

The above information is from PW1, and not from the appellant's Co-accused. She said she was present when the appellant was telling the Police Officers where to find the stolen property.

[7] Secondly, there is evidence on the record, that the appellant voluntarily offered to lead the Police Officers to where they had hidden PW1's stolen property. This evidence is from the testimony of PW1, PW4 and PW7. He took, both PW4 and PW7 to Le Noile from where they had recovered the stolen property. PW1 identified the recovered property as hers and the Officers handed it back to her.
One wonders, how the appellant would have known the whereabouts of PW1's stolen property if he did not participate in the crime?

[8] It is my considered view that the evidence of PW1, PW4 and PW7, corroborated each other and shows that the appellant was involved in the crimes he was convicted of.
They had impressed the learned trial Magistrate as credible, and she believed them. She was entitled to that conclusion as she had the chance to see them testify, which I do not have here as an appellate Judge.

[9] There was clear evidence of House Breaking and theft as can be seen from the evidence of PW1 and other prosecution witnesses. Consequently, all the grounds of appeal on conviction are dismissed and the conviction is upheld.

[10] As for sentence, Mr. Gabriel submitted to the effect that the sentences of 5 years on 1st count and 3 years on the 2nd count were harsh and manifestly excessive.
Secondly that they should have been made to run concurrently instead of consecutively.

[11] Of recent this Court and the Court of Appeal have held that while passing sentence, the trial Court should be fair and must treat each case according to its own merits. The Courts must consider the principles of proportionality and totality of sentences within the meaning of *Article 16 of the Constitution* and must treat the convicts with a dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment. The court of Appeal has held that a fair trial envisaged by *Article 19 (1) of the Constitution* includes a fair sentence (See **Roddy Lenculume Vs The Republic SCA 32/13 and Neddy Onezime Vs The Republic SCA 6/2013.**

[12] The learned trial Magistrate considered the previous record of the appellant and the prosecutor's list shows that the accused has the previous record of 7 days imprisonment imposed on him in 2010, and 3 months imprisonment imposed in 2011. These sentences were light in nature. She also acknowledged that the property stolen had been recovered and given back to the victims and that the appellant was a young man. She also noted that the appellant had cooperated with the Police and had taken them to recover the property . She applied **Ponoo** and reduced the sentences to 5 and 3 years. It is my considered view that, these sentences were reasonable given the circumstances of the case and the appellant deserved them and I do not disturb them.

[13] However, given the current trend in sentencing, it is my considered view that, the learned Senior Magistrate should have ordered these two sentences to run concurrently instead of running consecutively.

[14] In the premises therefore, I quash the order making the two sentences of 5 and 3 years running consecutively and substitute it with an order making them run concurrently.

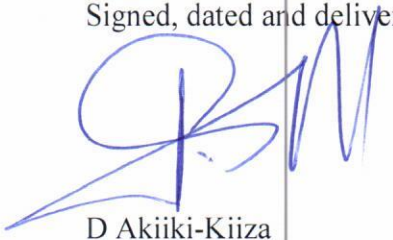
This means that the appellant will serve a total of 5 years imprisonment instead of 8 years.

The appeal on sentence succeeds to the above extent.

Order Accordingly.

R/A explained.

Signed, dated and delivered at Ile du Port on 20 October 2016



D Akiiki-Kiiza

Judge of the Supreme Court