

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 18/2015

Appeal from Magistrates Court decision 803/2011

[2017] SCSC 165

DARREN ARRISOL
Appellant

versus

THE REPUBLIC

Heard: 31st October 2016
Counsel: Mr. Nichol Gabriel Attorney at Law for Appellant
Mr. Khalyaan Karunakaran, State Counsel for the Republic
Delivered: 23 February 2017

JUDGMENT

Burhan J

- [1] This is an appeal against conviction and sentence.
- [2] The Appellant was charged in the Magistrates' Court with the following offence:

Breaking and Entering into Building and Committing a Felony Therein Contrary to Section 291(a) read with Section 23 of the Penal Code.

The particulars of offence are that, Joel Adonis, Darren Arrisol, Danley Nasim and Rafman Moustache, all residing at Port Glaud, Mahe, during the night of the 22nd day of

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[1] This is an appeal against conviction and sentence.

[2] The Appellant was charged in the Magistrates' Court with the following offence:

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The particulars of offence are that, Joel Adonis, Darren Arrisol, Danley Nasim and Rafman Moustache, all residing at Port Glaud, Mahe, during the night of the 22nd day of

November 2011 leading to the early hours of 23rd day of November 2011, at RTK Trading Shop, Port Launay, Mahe, broke and entered the shop and stole therein one (1) carton of red Label whisky valued at Rs3000, one (1) television valued at Rs800, six (6) rice cookers make Philips valued at Rs2200, twenty (20) cartons of diapers valued at Rs5400, four (4) cartons of chicken meat valued at Rs2400, one (1) carton of goat meat valued at Rs1200, ten (10) cartons of twisties valued at Rs2400, twenty cartons of juice valued at Rs5300, one carton black label whisky valued at Rs8000, sixteen (16) cartons of Eat-some-more biscuits valued at Rs8400, 20 cartons of chitato chips valued at Rs5700, one (1) mobile phone make nokia valued at Rs400, two (2) cartons of flip-flops valued at Rs1700, two(2) of milk mark Celia valued at R1000, two (2) cartons of cheddar chips valued at R2500, twenty cartons of chilli sauce value at Rs4800, two (2) cartons of Heineken valued at Rs1600, four (4) cartons of super-rings valued at rs900, and two (2) cartons of oatmeals valued at Rs1100, all amounting to the total value of SR 67,000/- , being the properties of V J Veerapandiyar being the owner of RTK Trading.

[3] The Appellant was found guilty after trial and sentenced to a term of 10 years imprisonment.

[4] The Appellant seeks to appeal against the conviction on the ground that the conviction of the Appellant was unsafe and unsatisfactory as the learned trial Judge failed to ensure that sanction of the Attorney General had been granted, before prosecuting the Appellant who was a child at the time the offence was committed.

[5] Learned Counsel relied on the following grounds in regard to his appeal against sentence:

a) *The sentence of 10 years imposed by the learned Magistrate was manifestly harsh and excessive and wrong in principle.*

b) *The sentence of ten years imposed by the learned Magistrate was in excess of jurisdiction.*

c) *The sentence of ten years imposed on the Appellant was manifestly harsh and excessive and wrong in law as the Appellant was a child at the time of the*

commission of the offence and other sentencing option were available to him under the Children's Act.

d) The learned Magistrate failed to apply correctly the principle of proportionality of sentences.

e) The learned Magistrate failed to consider the young age of the Appellant and the small value of the items stolen from the building.

[6] I will first proceed to deal with the ground of appeal in respect of conviction. Learned counsel submitted that the learned Magistrate had failed to ensure that the sanction of the Attorney General had been granted before prosecuting the Appellant who he stated was a child at the time the offence was committed and in support of his contention, learned counsel tendered the birth certificate of the Appellant.

[7] It is apparent from the record and the documents filed in appeal that according to the charge sheet, the offence was committed on the 23rd of November 2011. The birth certificate of the Appellant filed by learned counsel indicates that he was born on the 8th day of June 1994. This is proof of the fact that the Appellant was below 18 years at the time he committed the offence. It is not disputed by the learned counsel for the Respondent State Counsel Mr. Khalyaan that the Juvenile was tried with 3 other adult offenders in the trial before the learned Magistrate. He does not seek to challenge the fact that a formal written sanction to prosecute the child was not tendered to court when the charge sheet was filed. Further the proceedings do not indicate that such a sanction was given either by writing or even orally by the Hon Attorney General.

[8] I proceed to draw reference to the cases of *Sayid v R SCA 2/2011* where it was held by Twomey JA (as she was then) that the provisions of section 92 (1) (b) of the Children Act, relating to the sanction of the Attorney General for the prosecution of a child was a special provision in law concerning the rights of the child that could not be interfered with, by the enactment of any subsequent general provisions and therefore, the authorisation written or oral was essential, to indicate that the Attorney General was

aware that a child had been indicted and his instructions have been sought for such prosecution and granted after due consideration.

[9] In the cases of *R v Angel* 52 Cr.App.R.280 and *R v Pearce*, 72 Cr.App.R.295, it was held where some consent is required to the institution of proceedings is not obtained, the whole of any trial that takes place is a nullity and a conviction that occurs in such circumstances will be quashed. On similar reasoning and under similar circumstances, Mckee J too proceeded to quash the conviction imposed on a child in the case of *William v R* [2013] SCSC 86 and discharge the Appellant.

[10] The aforementioned facts apply to this instant case as there exists no written or oral sanction of the Attorney General before the learned Magistrate. I would add that such sanction is necessary especially when children are being prosecuted with adults, to ensure that the Court is constantly kept aware and is mindful that the particular accused is a child and should be treated and has the rights of a child as preserved under the Children Act. The proceedings indicate, the fact that the Appellant was a Juvenile at the time he committed the offence was never considered by the learned Magistrate at the time of sentencing, indicating he was not mindful of this vital issue at the crucial time of sentencing, resulting in him proceeding to sentence the Juvenile offender to a term of 10 years imprisonment.

[11] I proceed to quash the conviction and the ensuing sentence and discharge the Appellant.

Signed, dated and delivered at Ile du Port on 23 February 2017


M Burhan
Judge of the Supreme Court