IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CN 39/2016

Appeal from Magistrates Court decision CR333/2015

[2017] SCSC 635

FLARILLE BIBI
Appellant

versus

THE REPUBLIC

Heard:

Counsel: Mr. Gabrielfor appellant

Mrs. St. Ange-Ebrahim, Principal State Counselfor the Republic

Delivered: 13 July 2017

JUDGMENT

Robinson J

[1] The Appellant (then accused) has lodged an appeal against his sentence.

[2] The Appellant was prosecuted before the Magistrates' Court in CR No. 333 of 2015 for the offence of housebreaking contrary to section 289 (a) of the Penal Code on count 1 and the offence of stealing from dwelling house contrary to section 260 of the Penal Code and punishable under section 264 (b) of the said Code on count 2. The Appellant was convicted on his own plea of guilty on count 1 and count 2. The trial magistrate sentenced the Appellant to 1 ½ years' imprisonment on count 1 and 9 months imprisonment on count 2.

[3] It is to be noted from the Appellant's notice of appeal dated 17 August, 2016, that he intended to appeal the sentence imposed in CR No. 333/15. The Appellant did not appeal the sentence imposed in CR No. 67/16.

[4] *"Ground (a) The sentence of 2 years and six months in case number 67 of 16 should have been made to run concurrently with the sentence of one year and six months in case number 333 of 15 and any other sentence the Appellant was serving"*

[5] In his Memorandum of Appeal the Appellant contends that the sentence imposed in CR No. 333/15 should have been made to run concurrently with the sentence imposed in CR No. 67/16. Having considered that contention the court accepts the submission of learned counsel for the Republic that it cannot be said that the offences of housebreaking and stealing from dwelling house in CR No. 333/15, which are the subject of the present appeal, were committed in the course of a single transaction with the offence of robbery in CR No. 67/16, which would warrant the two sentences to run concurrently. It is to be noted that the Appellant committed the offences in CR No. 333/15 on 27 April, 2014, at Union Vale, Mahe. He committed the offence of robbery in CR No. 67/16 on 26 January, 2016, at Castor Road, Mahe. As held in *John Vinda v The Republic CA6/1995*, the offences were —

> *"related in nature only but unrelated in space and time … and different victims were involved"*.

In *Davis Volcere v The Republic [2016] SCSC*, Burhan J., stated at paragraph 10 that —

> *"[c]onsidering the fact that the offence of housebreaking were committed on three different dates, namely the 4th of June, 9 of September and 11th September 2014, on three different households, it cannot be said that the offences were committed in the course of the same transaction."*.

In *R V White [2002] WASCA 112, [26]*, applied in *Folette v R (2013) SLR 237*, it was held —

> *"[t]here is no hard and fast rule. In the end a judgment must be made to balance the principle that one transaction generally attracts concurrent sentences with the principle that the overall conduct must be appropriately recognized and that distinct acts may in the circumstances attract penalties. Proper weight must therefore be given to the exercise of the sentencing Judge's discretion.".*

Moreover, as rightly pointed out by learned counsel for the Republic, the fact that the sentences were delivered on the same date does not mean that the offences were committed during the course of the same transaction, thus warranting concurrent sentencing.

[6] For the reasons stated above, the court dismisses this ground of appeal.

[7] "*Ground (b) The learned magistrate failed to apply correctly the principle of totality and proportionality of sentence"*

[8] In the present case, the items stolen from the victim in CR No. 333/15 included one gold chain valued at Seychelles rupees 500.00/-, some heart shaped pendants valued at Seychelles rupees 1500.00/-, some coins valued at Seychelles rupees 500.00/-, several perfumes valued at Seychelles rupees 5000.00/-, one watch valued at Seychelles rupees 3000.00/- and one flash light valued at Seychelles rupees 500.00/-, all amounting to Seychelles rupees 11,000.00/-. The record of proceedings of 30 June, 2016, reads as follows —

> *"*Facts
>
> *On the 27th April 2014 at Union Vale, Mahe, the accused broke and entered the house by forcing the burglar bars from one window of the bedroom and got access inside and stole the items listed in count 2. Fingerprint expert attended scene. Prints were lifted and were confirmed to be that of accused. None of the items stolen were recovered.".*

[9] The offence on count 1 renders convicted persons liable to imprisonment for a term of 10 years. The Appellant was sentenced following conviction to a term of 1 ½ years' imprisonment. The offence on count 2 renders convicted persons liable to imprisonment

for a term of 10 years. The Appellant was sentenced following conviction, for the said offence, to a term of 9 months imprisonment. Pursuant to section 27 of the Penal Code, the Appellant should have been convicted for each offence for a term of 8 years. It is to be noted that the trial magistrate in his sentencing order, applying the totality principle, made further order that the sentences for both offences in CR No. 333/15 be made to run concurrently, but consecutively to the sentence imposed in CR No. 67/16, wherein the Appellant was sentenced to 2 ½ years' imprisonment for having committed the offence of robbery on a 14 year old boy. The Appellant would, therefore, serve an aggregate term of 4 years.

[10] The position is that the sentences imposed must be proportionate to the gravity of the offences committed and the degree of responsibility of the offender. Having considered the above mentioned offences, the court is of the opinion that the terms of imprisonment imposed by the trial magistrate are just and appropriate sentences which are proportionate to the nature of the offences committed (see *Gustave Barra versus the Republic [2016] SCSC 398* delivered on 10 June, 2016). Further, having considered the circumstances and the nature of the offences committed, the court is of the opinion that the aggregate sentence imposed by the trial magistrate is just and appropriate (see *Davis Volcere v The Republic [2016] SCSC 17).*

[11] For the reasons stated above, the court dismisses this ground of appeal.

[12] *Ground (c) The learned magistrate failed to consider the fact that the Appellant had pleaded guilty and expected a further credit on sentencing*

[13] The position of the Appellant is that the trial Magistrate did not consider his guilty plea before passing sentence. The record of proceedings shows that the trial magistrate considered the guilty plea of the Appellant before passing sentence. The trial magistrate expressly mentioned, in the sentence, that the Appellant had *"pleaded guilty"* and must have considered among others, the guilty plea of the Appellant, in light of the sentences imposed on the Appellant.

[14] For the reasons stated above, the court dismisses this ground of appeal.

[15] In light of the above, the appeal against sentence is dismissed. Time spent on remand to count towards sentence.

Signed, dated and delivered at Ile du Port on 13 July 2017

F Robinson
Judge of the Supreme Court