

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 46/2014**

**Appeal from Magistrates Court decision 298/2013**

**[2017] SCSC 871**

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**RODDY JEAN**

Appellant

versus

**THE REPUBLIC**

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Heard:

Counsel: Mr Nichol Gabriel for the appellant

Ms Amanda Faure for the Republic

Delivered: 28<sup>th</sup> of September 2017

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JUDGMENT

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Nunkoo J

**[1]** The Appellant was charged with the following offences:

1. Housebreaking contrary to Section 289 (a) as amended by Act 16 of 1995 and read with Section 23 of the Penal code.
2. Stealing contrary to Section 260 read with Section 23 and punishable under Section 264(b) as amended by Act 16 of 1995 of the Penal Code.

- [2] Appellant was convicted and sentenced on 1<sup>st</sup> August 2014 to 5 year's imprisonment on Count One and to two years on Count Two.
- [3] The Learned Magistrate ruled that both sentences were to run concurrently so that Appellant was in fact ordered to serve a term of five years.
- [4] In mitigation Learned Counsel for Defence urged the court to take into account the change of plea, and also submitted that since the two offences were committed as one transaction the sentences in both counts should run concurrently.
- [5] Whilst passing sentence the Learned magistrate took into consideration the fact that Appellant was serving a term of eight years of imprisonment.
- [6] The sentence for the offence under Section 289 (a) above is a mandatory term of eight years imprisonment. The Learned Magistrate based himself on the case of ***Jean Frederic Ponoo vs AG SCA (2011) SLR 423***, which gives the court the discretion to impose a lower sentence. He accordingly sentenced the Appellant to five years imprisonment for house breaking and to two years in respect of the stealing. He decided that both sentences should run concurrently resulting in a total of five years. He also ordered that the sentence shall take effect when the convict completes his current term of imprisonment. Appellant has appealed against sentence on the following grounds.
1. The total sentence of five years imprisonment imposed on the Appellant by the Learned Magistrate was manifestly harsh, excessive and wrong in principle.
  2. The total sentence of five years imprisonment imposed on the Appellant by the Learned Magistrate should have been made to run concurrently with the previous sentence of eight years imprisonment he was serving.
  3. The Learned Magistrate failed to apply correctly the principle of totality of sentences.
- [7] The Learned Magistrate failed to consider the young age of the Appellant and the small value of the items stolen from the building.

[8] It is now one of the grounds of appeal that the sentence is harsh and excessive; it is also being submitted that the sentence should have run concurrently with the sentence of eight years being served on the principle of totality.

[9] The Learned Counsel for the Republic has referred this Court to section 36 of the Penal Code:

*“Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death or of a corporal punishment, which is passed upon him and under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former or of any part thereof.”*

[10] Learned Counsel for the Appellant invoked the principle of the totality of sentence and proportionality. He has referred the Court to the following: **John Vinda vs Republic (1995) S.C.A.** (unreported) *the Appellant was charged before the Magistrates’ Court with several offences of housebreaking and stealing. The charges were filed in three different cases, as different complainants were involved. He was sentenced to terms totalling 7 years, but as they were ordered to run concurrently, he would in effect serve only two years. The Attorney General sought revision of the sentences. The Supreme Court reversed the order for concurrent execution and ordered that the conviction would serve a total of years and months instead of years. In doing so, the Supreme Court took into consideration that the offences were serious, and that the maximum sentences prescribed were 7 years for housebreaking and 5 years for stealing. Further, it was considered that although the offences were committed by the Appellant within a radius of 2 miles from one another, they were committed separate days and occasions. Upon an appeal being filed before the Court of Appeal, the variation of sentence was maintained. The Court held that under Section 36 of the Penal Code, consecutive execution of sentences was the Rule and concurrent execution was the exception. That Court, observed that the Magistrate had applied the principle of totality of sentence on humanitarian grounds, and that was not a valid reason to exercise the discretion when imposing a concurrent sentence. The Court of Appeal ( Ayoola JA) stated : -*

*“Circumstances for such directive should be manifest from the order or demonstrated by the Trial Court in its Ruling. One such circumstances which may justify the application of the exception would be the disproportionality of consecutive sentences to the totality of the behaviour of the convicted person or the gravity of the offence”.*

[11] It is recognised by both counsel that there are cases where the principle of totality and the concept of proportionality may be applied by the court. This leads me to consider the totality of sentences and proportionality. The sentences when added up comes to thirteen years. It would be against common sense to think that such a long sentence in respect of two offences for house breaking serves the ends of justice. In my view the sentence of eight years being served would be fair and reasonable and adequately meet the ends of justice.

[12] I therefore order the sentence of five years imposed by the Learned Magistrate should run concurrently with the eight year sentence.

[13] In the light of the above there is no practical need for me to consider the other grounds of the appeal.

[14] The appeal is therefore allowed.

Signed, dated and delivered at Ile du Port on 28<sup>th</sup> of September 2017.

S Nunkoo  
**Judge of the Supreme Court**