

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 40/2015

Appeal from Magistrates Court decision 731/2012

[2017] SCSC

BERNARD DUPRES

Appellant

versus

THE REPUBLIC

Heard: 23 January 2017 and 27 March 2017

Counsel: Mr. Clifford Andre Attorney at Law for Appellant

Mr. Khalyaan Karunakaran, Senior State Counsel for the Respondent

Delivered: 22 May 2017

RULING

Burhan J

[1] This is an appeal against sentence. The appeal against the conviction was withdrawn by learned counsel for the Appellant.

[2] The Appellant was charged before the Magistrate's Court for the following offence as per amended charge dated 12th August 2015.

Count 1

Burglary Contrary to Section 289 (a) of the Penal Code

Particulars of offence are that, Bernard Dupres, 34 years of old, residing at Le Niole, Mahe, during the night of the 6th day of September 2012, at St Louis, Mahe, broke and entered into the dwelling house of Bella Figaro, with intention to commit a felony therein

Count 2

Stealing from dwelling house contrary to Section 260 and punishable under Section 264 (b) of the Penal Code.

Particulars of offence are that, Bernard Dupres, 34 years old, residing at Le Niole, Mahe, during the night of the 6th day of September, 2012 at St. Louis, Mahe, stole from the dwelling house of Bella Figaro, one bag containing Rs. 11,500/- cash, two passports, three ID cards, three bank cards, one black purse containing Rs.100/- cash, one beach bag containing ten bottles of perfume, being the property of Bella Figaro.

[3] The Appellant was convicted on his own plea of guilt on Count1 on the 2nd of September 2015.

[4] He was sentenced to a term of 3 years imprisonment in respect of Count 1 on the 5th of October 2015. However inadvertently it appears, the learned Magistrates also sentenced him to 2 years on Count 2, though there is no record of him pleading guilty or being convicted on Count 2. He further made order that terms of imprisonment run concurrently but consecutive to the sentence he was serving at present.

[5] Since it appears the sentence of 2 years imprisonment in Count 2, is not based on a plea of guilt or a conviction entered in respect of the said Count, the sentence of two years imprisonment imposed in respect of Count 2 is quashed.

[6] Learned counsel for the Appellant submitted that the Appellant was serving a total term of 16 years, at the time he was sentenced in this case. Learned counsel for the Respondent admitted this fact and with the consent of both parties in order to verify same, the warrant of commitments in respect of the Appellants previous convictions was called. The

warrant of commitments received, affirm the fact that the convict is serving 10 years imprisonment in MC 531/14 and 6 years imprisonment in MC 492/2014 both terms to run consecutively, totalling 16 years imprisonment. As there is no appeal before this Court in respect of cases MC 531/14 and 492/14, no relief can be given in respect of the terms of imprisonment imposed in the said cases.

[7] As the term of imprisonment of 3 years has been ordered to run consecutively to this 16 year term, this Court is of the view that despite the offences being of similar nature, the total term of 19 years imprisonment would be harsh and excessive. I therefore make order that the term of 3 years imprisonment imposed on Count 1 in this case, run concurrently to the total term of 16 years imprisonment imposed in both these cases. Time spent in remand to be reduced from total term of imprisonment.

[8] The sentence is accordingly varied.

Signed, dated and delivered at Ile du Port on 22 May 2017

M Burhan
Judge of the Supreme Court