

IN THE SUPREME COURT OF SEYCHELLES

**Criminal Appeal Side: CN 09/2017, CN12/2017, CN13/2017, CN14/2017,
CN15/2017, CN16/2017**

**Appeal from Magistrates Court decision MC523/2016, MC524/2016, MC525/2016,
MC526/2016, MC527/2016, MC528/2016**

[2018] SCSC 759

JEAN-PAUL EUGENIE
Appellant

versus

THE REPUBLIC
Respondent

Heard: 7 May and 24 May 2018
Counsel: Mr. John Renaud Attorney at Law for the Appellant
Mr. Joshua Revera, State Counsel for the Respondent
Delivered: 9 August 2018

JUDGMENT

Burhan J

[1] The Appellant was charged before the Magistrates' Court in MC 523/16 as follows:

Count 1

Housebreaking contrary to and punishable under Section 289 (a) of the Penal Code.

The particulars of offence are that, Jean-Paul Eugenie of Baie Lazare, on the 06th October 2016, at Roche Caiman, Mahe, broke and entered into the dwelling house of Jerina Naiken.

Count 2

Stealing contrary to and punishable under Section 260 of the Penal Code.

The particulars of offence are that Jean-Paul Eugenie of Baie Lazare, Mahe, on the 06th October 2016, at Roche Caiman, Mahe, stole from the dwelling house of Jerina Naiken 1 box of hair relaxer, 1 silver bracelet, 1 pair of earphones, 1 tablet, 2 silver necklaces, 3 sunglasses and food stuff valued at RS2975, all being the property of Jerina Naiken.

[2] The Appellant was convicted of the said offences on his own plea of guilt and sentenced on the 2nd of June 2017, to a term of three years imprisonment on Count 1 and 2 years imprisonment on Count 2. It was ordered the sentences run concurrently. It was further ordered that the sentence in this case (three years in total) run consecutively to the sentences imposed in cases MC 524/16, 525/16, 526/16, 527/16 and 528/16.

[3] In MC 524/16, the Appellant was charged as follows:

Count 1

Criminal Trespass Contrary to and punishable under Section 294 (i) of the Penal Code.

The particulars of offence are that Jean-Paul Eugenie of Baie Lazare, Mahe, on the 07th day of October 2016, at Roche Caiman, Mahe entered onto the property of Karen Faure contrary to her will.

[4] The Appellant was convicted of the said offence on his own plea of guilt and sentenced on the 2nd of June 2017, to a term of 6 months imprisonment and in another sentence imposed on the same day, sentenced to 3 months imprisonment. It was further ordered that the sentences imposed run consecutively to the sentences imposed in the other cases.

[5] In MC 525/16, the Appellant was charged as follows:

Count 1

Housebreaking contrary to and punishable under Section 289 (a) of the Penal Code.

The particulars of offence are that Jean-Paul Eugenie of Baie Lazare, Mahe, on the 07th day of October 2016, at Roche Caiman, Mahe, broke and entered into the dwelling house of Marie-May Sultan.

[6] The Appellant was convicted of the said offence on his own plea of guilt and sentenced on the 2nd of June 2017, to a term of three years imprisonment. It was further ordered that the sentence run consecutively to the sentences imposed in cases MC 523/16, 524/16, 526/16, 527/16 and 528/16.

[7] In MC 526/16, the Appellant was charged as follows:

Count 1

Stealing contrary to and punishable under section 260 of the Penal Code.

The particulars of offence are that, Jean-Paul Eugenie of Baie Lazare, Mahe, on the 09th September 2016, at Les Rocher, at the Seychelles brewing company, stole one packet of lemonade valued at Rs 204, being the property of Guy Agripinne.

[8] The Appellant was convicted of the said offence on his own plea of guilt and sentenced on the 2nd of June 2017, to a term of 6 months imprisonment. It was further ordered that the sentence run consecutively to the sentences imposed in case MC 523/16, 524/16, 525/16, 527/16 and 528/16.

[9] In MC 527/16, the Appellant was charged as follows:

Count 1

Stealing contrary to and punishable under section 260 of the Penal Code.

The particulars of offence are that, Jean-Paul Eugenie of Baie Lazare, Mahe, on the 26th September 2016, at Plaisance, Mahe, stole from the Home shop one electrical screw drivers and some cutting disks all valued at Rs 2300, being the property of the Quing Fang Kong.

[10] The Appellant was convicted of the said offence on his own plea of guilt and sentenced on the 2nd of June 2017, to a term of 6 months imprisonment. It was further ordered that the sentence run consecutively to the sentences imposed in case MC 523/16, 524/16, 525/16, 526/16 and 528/16.

[11] In MC 528/16, the Appellant was charged as follows:

Count 1

Stealing contrary to section 260 (c) and punishable under section 264 of the Penal Code.

Jean-Paul Eugenie of Baie Lazare, Mahe, on the 05th October 2016, at Roche Caiman, Mahe, stole from vessel of Jean Paul D'unienville namely Bad Bull one music equalizer valued at RS 6800 and a base bin valued at Rs3000 all being the property of the aforementioned complainant.

[12] The Appellant was convicted of the said offence on his own plea of guilt and sentenced on the 2nd of June 2017, to a term of 6 months imprisonment. It was further ordered that the sentence run consecutively to the sentences imposed in case MC 524/16, 523/16, 526/16 and 527/16.

[13] With the consent of parties all the aforementioned cases were consolidated.

[14] Firstly, I would deal with MC 524/16 bearing appeal number CN 12/17. In this case inadvertently as the sentencing in several cases were done on the same date, the Learned Magistrate had passed two sentences of 6 months imprisonment and three months imprisonment for the same offence. I proceed to quash both sentences and impose a sentence of 6 months imprisonment. I further order that the sentence of 6 months run concurrently to the sentence in MC 525/16, as the offences in both cases were committed on the same day and could be considered as part of the same transaction, ***Stephane Hypolite [2016] SCSC 364 and Christopher Dorizo v The Republic in Supreme Court Cr App 15 of 2008***. This would result in the Appellant serving a total term of three years imprisonment in CN 12/17 (MC 524/16) and CN 13/17 (MC 525/16).

- [15] Having taken into consideration the aforementioned sentences imposed, the Appellant would serve in total, a term of seven years six months imprisonment in all the six cases referred to above.
- [16] It is the contention of Learned Counsel for the Appellant that the said sentence is harsh and excessive and as the Appellant was an addict, he should have been sent for rehabilitation, rather than be incarcerated for such a long period.
- [17] It is the contention of Learned Counsel for the Respondent that the Appellant has been found guilty of serious offences and is a habitual offender. Despite the charges being of serious nature and carrying minimum mandatory terms of imprisonment, the Learned Magistrate has imposed lesser terms of imprisonment which cannot be said to be harsh and excessive, considering the nature of the offences committed.
- [18] I am inclined to agree with Learned Counsel for the Respondent that the Learned Magistrate has considered the fact that the Appellant was being sentenced for several cases and decided to impose sentences well below the minimum mandatory in order to arrive at an appropriate total sentence in all six cases. It is the view of this Court that a total sentence of seven years six months, cannot be said to be harsh and excessive when considering the fact that the Appellant was being convicted in six different cases, of offences including housebreaking and stealing which are of serious nature.
- [19] It is admitted that the Appellant is a drug addict which has resulted in him being a habitual offender. It appears from the submissions of the Respondent that attempts at keeping him on probation and community service in order to reform his ways have failed. It has also been brought to the notice of Court that he will be undergoing drug rehabilitation at Coetivy Island whilst serving his term which program has proved to be a success for many.

[20] It is apparent therefore that this extended stay in prison will benefit the Appellant and society as well. The appeal stands dismissed.

Signed, dated and delivered at Ile du Port on 8 August 2018

M Burhan
Judge of the Supreme Court