

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 02/2018 AND CN 05/2018

Appeal from Magistrates Court decision 495/2017 AND 496/2017

[2018] SCSC

970

CHRISTOPHER JOUBERT

Appellant

versus

THE REPUBLIC

Respondent

Heard: 7 September 2018

Counsel: Mr. S. Rajasundaram Attorney at Law for the Appellant

Mrs. Monthly, State Counsel for the Respondent

Delivered: 29 October 2018

JUDGMENT

Burhan J

[1] In case CN 02/2018 (Magistrates' Court 495/2017), the Appellant was charged before the Magistrates' Court as follows:

Count 1

Stealing contrary to Section 260 of the Penal Code Cap 158

Particulars of offence are that, Christopher Joubert of Belonie Mahe, on the 09th day of November 2017 at Victoria, Independence Avenue Mahe, stole from the Shop of Claudine Savy (03) three Golden plated rings with Swarovski crystal, each valued at Rs.1100/- amounted to Rs3300/- all being the property of Claudine Savy.

- [2] The Appellant was convicted on his own plea of guilt and sentenced on the 28th of February 2017, to a term of three years imprisonment and it was further ordered that the convict pay a sum of SR 3,300/= as compensation within 6 months of completing his sentence failing which the convict was to undergo three months imprisonment. It was further ordered that the sentence run consecutive to the sentence in MC 496/2017.

- [3] In case CN 05/2018 (Magistrates' Court 496/2017) the Appellant was charged as follows:

Count 1

Stealing Contrary to Section 260 of the Penal Code Cap 158

Christopher Joubert of Belonie Mahe, on the 02nd day of September 2017 at Victoria, Orian mall Mahe, stole from the Shop of Jean-Luc Etheve namely Leo Electronics shop (01) black berry Mobile phone valued Rs.10.000/- being the property of the said Jean-Luc Etheve.

- [4] The Appellant pleaded guilty to the said charge and was sentenced to a term of 3 years imprisonment and ordered to pay a sum of SR10,000/= to the complainant within 6 months after he had completely served his sentence failing which the convict would undergo three months imprisonment. It was further ordered that the sentence run consecutively to the sentence in MC 495/2017.
- [5] Being aggrieved by the sentences imposed, the Appellant on the 1st of March 2018, filed his notice of appeal in respect of the sentences imposed in both cases.
- [6] It appears that Mr. Rajasunderam who appeared for the Appellant, had received legal aid in respect of case CN 02/2018 and not CN 05/2018. However on the 11th of June 2018 when he brought this to the notice of Court, he had been granted legal aid in case CN

05/2018 and he was informed both cases CN 02/2018 and CN 05/2018 were being consolidated.

- [7] On the 2nd of July 2018, Learned Counsel for the Appellant filed his memorandum of appeal in respect of CN 02/2018 and informed Court that inadvertently two copies of proceedings in the same case CN 05/2018 (MC 496/2017) had been served on him. He had not received a copy of proceedings in case CN 02/2018 (MC 495/2017). Thereafter Court had made an order that the proceedings in MC 495/2018, be served on Learned Counsel for the Appellant.
- [8] However even though both cases were consolidated and an order given for Mr. Rajasunderam to obtain proceedings in both appeals, only submissions in respect of case CN 02/2018 (MC 495/2017) had been filed by Mr. Rajasunderam on the 7th of September 2018 and Learned Counsel for the respondent filed her reply submission to the said case on the 24th of September 2018.
- [9] When this matter was called on the 26th of October 2018 for judgment, it was brought to the notice of Learned Counsel for the Appellant that a Memorandum of Appeal and submissions had not been filed by him in respect of CN 05/2018. Learned Counsel for the Appellant moved Court that the Memorandum of Appeal bearing number CN 02/2018 be accepted for case CN 05/2018 as it was the very same grounds urged in both cases.
- [10] As both cases were consolidated on the 11th of June 2018 and the Memorandum of Appeal filed thereafter on the 2nd of July 2018, this Court could accept that the said Memorandum of Appeal was in respect of both cases and the failure of Learned Counsel to include the other case number i.e. CN 05/2018 was an oversight.
- [11] Learned Counsel for the Appellant also moved that the grounds of appeal and submissions filed in CN 02/2018 be accepted for the case CN 05/2018. Learned Counsel for the respondent informed Court that her submissions in CN 05/2018 would be similar in nature to CN 02/2018 and moved Court that the submissions in CN 02/2018 be considered for both cases. Court accordingly granted their request.
- [12] I have considered the submissions tendered by the Appellant and the Respondent.


- [13] The Appellant's main contention as borne out in his submissions is that the Learned Magistrate failed to apply the principles of sentencing i.e. plea of guilt by the offender, previous convictions, position of trust held by the offender, trivial nature of property stolen, effect of sentence on career and pension rights of offender, consistency and complacency attitude from higher authority as set out in the case of *Simon vs Republic (1980 SCAR 557)*. It is his contention that had the Learned Magistrate given consideration to these principles, she would not have sentenced the Appellant to 3 years imprisonment in each case.
- [14] Having taken into consideration the submissions, I observe the Learned Magistrate in her sentencing has given very careful consideration to all the relevant facts namely the fact that the Appellant had pleaded guilty, his previous antecedents, and the fact that he had committed the offence while he was under the influence of controlled drugs and also the fact he was a habitual offender. She has also referred to the details and value of the items stolen. A perusal of the previous conviction report indicates the convict has a long list of previous convictions totalling 30. The Appellant in open Court has referred to the fact that he has learnt his lesson but it appears that since far back as 1997, the moment he serves his term and comes out of prison, he continues to offend as borne out in his list of previous convictions. I also note that a large majority of his previous convictions are in respect of the offence of stealing.
- [15] It is also apparent that the Learned Magistrate has not sought to impose any minimum mandatory term of imprisonment as provided for in section 27 of the Penal Code even though she had the power to do so.
- [16] I observe that both offences were committed in shopping areas frequented by the public and the items stolen were of value. I also observe the long antecedents of the Appellant and therefore am of the view that the sentence of three years and the compensation orders in both cases cannot be said to be harsh and excessive considering the circumstances of this case.

[17] I proceed to uphold the sentences imposed in both cases and dismiss the appeals. The Learned Magistrate may observe the provisions of section 297 to 300 of the Criminal Procedure Code in the event of the Appellant failing to pay the compensation ordered by her.

[18] I make further order that during his term of imprisonment, the Appellant be subject to a drug rehabilitation program.

[19] The appeals against sentence are dismissed,

Signed, dated and delivered at Ile du Port on 29 October 2018


29.10.2018

M Burhan
Judge of the Supreme Court

