

**SUPREME COURT OF SEYCHELLES**

---

**Reportable**

CN 05/2023

(Arising in CO 416/2022)

In the matter between:

**KURTIS JOHNNY SINON**

*(rep. by Valery Freminot)*

**Appellant**

and

**THE REPUBLIC**

*(rep. by Hashini Naidu)*

**Respondent**

---

**Neutral Citation:** *Sinon v Rep* (CN05/2023) (20 June 2024)

**Before:** Burhan J

**Summary:** Appeal from Magistrates Court in respect of sentence - Concurrent and Consecutive sentences.

**Heard:** 29<sup>th</sup> September and 13<sup>th</sup> November 2023

**Delivered:** 20 June 2024

---

**ORDER**

---

I proceed to alter the sentence imposed by the learned Magistrate to read as follows:

Count 1 a term of eight years imprisonment

Count 2 a term of eight years imprisonment

Both sentences to run concurrently.

I make order that the time spent in remand count towards sentence.

---

---

## JUDGMENT

---

### BURHAN J

[1] The Appellant Kurtis Johnny Sinon was charged in the Magistrates' Court of Seychelles together with four other accused. The charges relating to the Appellant are set down below:

#### **Count 1**

*House Breaking Contrary to and Punishable under Section 289 (a) and (b) of the Penal Code, Cap 158.*

*Kurtis Johnny Marc SINON, on Wednesday 13<sup>th</sup> July 2022, at North East Point, Mahe, broke and entered into the dwelling house of Ms. Larah Michaud and Mr. Franco Govinden with intent to commit a felony therein namely stealing.*

#### **Count 2**

*Stealing from Dwelling House Contrary to and punishable under Section 260 as read with Section 264 (b) of the Penal Code, Cap 158.*

*Kurtis Johnny Marc SINON, on Wednesday 13<sup>th</sup> July 2022, at North East Point, Mahe, stole from the dwelling house of Ms. Larah Michaud and Mr. Franco Govinden, one tropical pendent Kreolor with a value of SCR 4080, one pair of tropical hook earring with a value of SCR 15,940, a Kreolor fish bone pendent with a value of SCR 6850, one Kreolor gold chain with a value of SCR 6940, one plain gold stud earrings with a value of SCR 10,000, one pair of Kreolor earrings with flowers with a value SCR 7110, a pair of Joule diamond earrings with a value of SCR 14,550, a white gold chain with a value of SCR 3810, a diamond pendent with a value of SCR 48,750, one engagement ring with yellow gold with a value of SCR30,000, one eternity ring yellow gold with value SCR 9000, one set of Kreolor including stud earring with value of SCR 3530, a bracelet with*

value of SCR 6190, a necklace with value of SCR 11590, one Pandora bracelet with a value of SCR 15,000, five silver rings with a total value of USD 235, one pair of fake pearl earrings with value of SCR300, one pair black stud with value of SCR50, one silver ring with value of SCR 1000, two silver necklace with value of SCR1000, one silver pendent with value of SCR 525, one silver pendent with value of SCR 1500, one silver pendent with value of SCR750, one yellow gold plated ring with value of SCR 16,000, three pairs of local earrings with value of SCR 500 each, one Emperio Armani Watch with value of USD 245, one MacBook Air laptop with value of SCR 25,000 with black casing with value of USD 65, one USB C-adapter with value of USD 65, one Guess watch with value of USD 500, a collection of 4 branded whisky and an apple gift with value of Dirham 150, all being the property of Ms. Larah Michaud and Mr. Franco Govinden.

- [2] The Appellant was convicted on his own plea of guilt and was sentenced to a term of five years imprisonment on Count 1 and to three years imprisonment on Count 2. The learned Magistrate further ordered that both sentences run consecutively, therefore the total sentence to be served by the Appellant would be eight years. It was further ordered that the time spent in remand be deducted from the sentence.
- [3] Being aggrieved by the said sentence, the Appellant seeks to appeal on the following ground that the learned Magistrate erred in ordering that the sentences be made to run consecutively given that the offences were committed in the course of the same transaction.
- [4] It is the contention of the learned Counsel for the Appellant that in terms of section 9 of the Criminal Procedure Code, when a person is convicted at one trial of two or more distinct offences the Court may direct that the sentences run consecutively or concurrently. Learned Counsel for the Appellant relies on the following cases.: Confait v R (SCAR)481, Laporte v R (1980) SCAR 518, Alcindor v R (2007) SLR 32 R v Freminot and Anor (CO47 of 2018 SCSC67 and R v Cadeau (CO 70 of 2020) [2020] SCSC 959.
- [5] Learned Counsel for the Appellant relying on the aforementioned cases submitted that when offences are committed in the course of the same transaction, Court ought to direct that the sentence imposed for each offence run concurrently. She submits further that the

*Confait case* held that “consecutive sentences were not normally appropriate when a series of offences were essentially the product of a single criminal act.”

### **The Law**

- [6] Learned Counsel for the Respondent set out the law in her submissions. She submitted that the offence of House Breaking under section 289(a) of the Penal Code carries a maximum sentence of 10 years’ imprisonment and falls under Chapter XXIX of the Penal Code. It is also noted that the offence of theft under section 260 of the Penal Code carries a maximum sentence of 7 years.

Section 260 of the Penal Code reads as follows:

*A person who steals anything capable of being stolen is guilty of the felony termed theft, and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for seven years.*

- [7] It is the contention of the learned Counsel for the Respondent that recognising the fact that a number of the items stolen by the convict were never recovered, thereby causing great loss to the complainant, as per section 264(b) of the Penal Code, “*if the thing is stolen in a dwelling house, and its value exceeds Rs.60 or...the offender is liable to imprisonment for ten years*” the Court was within its power to have imposed a sentence of 10 years.

- [8] Learned Counsel also referred to Section 27(1) (b) of the Penal Code which reads as follows:

*(1) Notwithstanding Section 26 and any other written law and subject to subsection (2), a person who is convicted of an offence in Chapter XXVI, Chapter XXVIII or Chapter XXIX shall –*

*(b) Where the offence is punishable with imprisonment for more than 8 years but not more than 10 years and –*

*(i) it is the first conviction of the person for such offence, be sentenced to imprisonment for a period of not less than 8 years or*

*(ii) the person had within 5 years prior to the date of conviction, been convicted of the same or a similar offence, be sentenced to imprisonment for a period of not less than 12 years.*

[9] Learned Counsel for the Respondent next referred to Section 36 of the Penal Code which reads as follows:

*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, which is passed upon him 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 sentence or of any part thereof:*

*Provided that it shall not be lawful for a court to direct that a sentence under Chapter XXVI, Chapter XXVIII or Chapter XXIX be executed or made to run concurrently with one another or that a sentence of imprisonment in default of a fine be executed concurrently with the former sentence under section 28 (c) (i) of this Code, or any part thereof.*

[10] It is the submission of learned Counsel for the Respondent that the imposition of consecutive terms of imprisonment is in line with section 36. Further the Appellant had several previous convictions and according to the law prevailing at the time the offence was committed, the Appellant was facing a term of 10 years imprisonment which was the minimum mandatory term of imprisonment for a person having previous convictions in respect of the said charge. However, taking due consideration of the convict's plea of guilt and his assistance in recovering some of the items, the learned Magistrate only imposed a term of 8 years imprisonment, which was not harsh or excessive considering the circumstances of the case.

## **Analysis**

[11] Having considered the submissions of both Counsel, I am in agreement that it is trite law as indicated in the case of Godfrey Mathiot v Republic SCA 9/1993 that the Appellate Court should intervene only where the sentence is:

(a) wrong in principle;

(b) harsh, oppressive and manifestly excessive;

(c) far outside the normal discretionary limits;

(d) not justified in law.

(e) and has taken matters into consideration improperly or the sentence has failed to take into consideration matters which should have been considered.

[12] As an interpretation of section 36 is required it would be pertinent to refer to the case of Laurencine v R (SCA CR 01/2022) [2022] SCCA 64 (Arising in CO 08/2021) (Laurencine case) where AFT Fernando PCA, interpreted in detail section 36 of the Penal Code and held that there is no bar for a court to order that sentences passed in respect of different offences committed in the course of the same transaction, charged under one indictment be served consecutively. However consecutive sentences would be appropriate where the gravamen (refers to the material element or significant part of a legal dispute or complaint)<sup>1</sup> of the offences committed during the same transaction are different, and where there are clearly identifiable differences between the offences committed, for instance robbery and sexual assault. Archbold, Criminal Pleading, Evidence and Practice 2008 at paragraph 5-338 states a court may depart from the principle requiring concurrent sentences for offences forming part of one transaction if there are exceptional circumstances. In R v Fletcher [2002] 2 CAR (S) 127 held that consecutive sentences for offences for indecent assault and threats to kill arising from the same incident justified, the gravamen of the offences being different.

[13] I will next proceed to deal with the “same transaction rule” referred to by learned Counsel for the Appellant in her submissions. Archbold (supra) at paragraph 5-588

---

<sup>1</sup> Merriam-Webster Dictionary available at <https://www.merriam-webster.com/dictionary/gravamen>.

states that: “As a general principle, consecutive terms should not be imposed for offences which arise out of the same transaction or incident, whether or not they arise out of precisely the same facts...”. The phrase “same transaction rule” was also discussed in the aforementioned *Laurencine case* which relied on the definition by the Court of Appeal for Eastern Africa in the case of Republic v Saidi Nsabuga S/O Juma & Another [1941] EACA and Nathan v Republic [1965] EA 777 which held as follows: -

“If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.”

[14] In this instant case, I am satisfied that the charges in this instant case are connected by proximity of time, there is continuity of action and purpose and as a result constitute one transaction. I am also satisfied that the gravamen of the offences committed during the same transaction are not different but similar in nature. The offences of Housebreaking and Stealing were both committed during the same act and were continuous in nature. I therefore hold that the imposition of consecutive sentences by the learned Magistrate is wrong in principle.

[15] I will next proceed to deal with whether the total sentence imposed by the learned Magistrate is harsh and excessive. On consideration of the facts before Court and the relevant case law including the *Laurencine case*, sentencing is about achieving the right balance between the crime, the offender and the interests of the community (S v Zinn 1969 (2) SA 537 (A) at 540G-H). A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others (see S v Banda 1991 (2) SA 352 (BG) at 355A). The question to decide when sentencing is essentially whether, on a consideration of the particular facts of the case, the sentence imposed is proportionate to the offence, with reference to the nature of the offence, the interests of society and the circumstances of the offender.

[16] It would be pertinent at this stage to set out the powers of the Supreme Court in appeal as set out in section 316 of the Criminal Procedure Code CAP 54 which held as follows:

*(1) After hearing the appellant or his advocate, if he appears, and the Attorney General, if he appears, the Supreme Court may, if it considers that there is not sufficient ground for interfering, dismiss the appeal, or may—*

*(a) in an appeal from a conviction*

*(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction, or commit him for trial; or*

*(ii) alter the finding, maintaining the sentence, or with or without altering the finding, alter the nature of the sentence;*

*(iii) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence;*

*(b) in an appeal from any other order, alter or reverse such order; and in either case may make any amendment or any consequential or incidental order as to costs or otherwise that may appear just and proper.*

*(2) An appellant whether in custody or not shall be entitled to be present at the hearing of his appeal.*

[17] Therefore, this Court has the power in appeal under section 316 (b) to alter the sentence of the learned Magistrate.

[18] The learned Magistrate in a well-considered and reasoned sentence, decided to impose a total sentence of eight years imprisonment on the Appellant. It is apparent, the learned Magistrate, had considered the previous record of the Appellant and further considered the facts in mitigation, i.e. the fact the Appellant had pleaded guilty at the first instance and the fact that some stolen items were recovered. It is to be observed that the Appellant has several similar previous convictions of offences ranging from Housebreaking and Stealing and it is apparent from the record of his previous convictions or antecedents, that



the Appellant is a repeat offender in respect of these serious offences. Further, it is clear that the Appellant has not made a real effort over a period of years, to reform himself or put behind him his previous pattern of offending despite previously being sentenced to terms of five years and eight years imprisonment, as per his previous conviction report. It appears from his record the moment he serves his term and comes out of prison, he continues to re-offend.

[19] In regard to the imposition of the mandatory sentence it is now virtually trite law, since the cases of Jean Frederick Ponoov v The Attorney General SCA 38/2010, Roddy Lenclume v The Republic Criminal Appeal SCA 32/2012 and Neddy Onezime v The Republic Criminal Appeal SCA 06 / 2013, that it is the duty of the sentencing court, to decide whether the imposition of mandatory terms of imprisonment as prescribed by law and the imposition of consecutive terms of imprisonment as prescribed by law, meet the best interests of justice, in that, the sentence imposed is not disproportionate to what would be appropriate and therefore what matters most is that the sentence, should impose a just and appropriate punishment, proportionate to the offence committed.

[20] It is apparent that on this basis in the aforementioned cases, the Courts in Seychelles proceeded to impose sentences below the minimum mandatory and in deserving cases made orders that consecutive terms are imposed to run concurrently, in order to arrive at a just and appropriate sentence.

[21] It is also apparent in this instant case despite the previous conviction report, 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.

[22] On consideration of the circumstances peculiar and specific to this case, I am of the view that the learned Magistrate has been very considerate in imposing a total term of eight years imprisonment instead of the minimum mandatory term of imprisonment. I also observe as pointed out by learned Counsel for the Respondent that both offences attract a maximum of ten years imprisonment and hence the seriousness of the two offences are similar in nature. For all the aforementioned reasons, I proceed to maintain the total

sentence of eight years imposed by the learned Magistrate but alter the sentence imposed by the learned Magistrate to read as follows:

Count 1 a term of eight years imprisonment

Count 2 a term of eight years imprisonment

Both sentences to run concurrently.

[23] I make order that the time spent in remand count towards sentence.

Signed, dated and delivered at Ile du Port on 20 June 2024

---

M Burhan J