IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CN 20/2015

Appeal from Magistrates Court decision 188/2011

[201] SCSC

HENRY BRISTOL

Appellant

versus

THE REPUBLIC

Heard: 21 July, 2017

Counsel: N Gabriel for appellant

K Karunakaran, State Counsel for the Republic

Delivered: 4 August 2017

JUDGMENT

Dodin J

[1] The Appellant Henry Bristol was convicted of one count of Burglary contrary to section 289(a) and punishable under section 289 of the Penal Code and one count of stealing from a dwelling house contrary to section 260 as read with section 264(b) and punishable under section 264 of the Penal Code.

[2] Both charges arose from one incident whereby during the night of the 26th February, 2011, at Pointe Larue, Mahe, the Appellant broke and entered the dwelling house of one Jeanot Patti and stole one electric drill, a set of master keys, one hair trimmer, SCR1,000

in cash. The total value of the loss suffered by Jeanot Patti amounted to around SCR 12,000/-.

[3] The case went to trial and the Appellant was convicted of both counts and sentenced to 15 years on the charge of burglary and 2 years for the theft to run consecutively. It appears that at the time of the sentencing the Appellant was serving a prison sentence for a separate offence but there is no record on file as to whether any previous conviction and sentence had any impact on the determination of the sentences to impose in this case. In any event, the Republic conceded the appeal against the sentences and moved the Court to impose any lesser sentence the Court deems more appropriate in the circumstances of this case.

[4] The grounds of appeal against sentence are that

1. The totality of the sentences, 17 years is harsh and excessive and wrong in principle;

2. The learned Magistrate was in excess of jurisdiction when he imposed the total sentence of 17 years of imprisonment; and

3. The learned Magistrate failed to apply the properly the principle of totality and proportionality of sentence.

[5] Learned counsel for the Appellant referred the Court to Part 2 section 6 of the Criminal Procedure Code in support of the law governing the maximum sentence a Magistrate can impose. Learned counsel also referred the Court to the cases of *Neddy Onezime v Republic SCA 6/2013*, *Mervin Rath v Republic SCA 26/2014*, *Roddy Lenclume v Republic SCA 32/2012*, *J F Ponoo v Attorney General SCA 38/2010* and *John Vinda v Republic SCA 1995 (unreported).*

[6] Sentences which Magistrates' Court may pass under Section 6 of the Criminal Procedure Code were amended by Act 4 of 2014 with effect from 14 April 2014. Hence section as from 14 April 2014 reads:

> *6. (1) The Magistrates' Court when presided over by a Senior Magistrate may pass any sentence authorised by law:*
>
> *Provided that such sentence shall not exceed, in the case of imprisonment, 25 years, and in the case of a fine, Rs. 250,000;*

(2) The Magistrates' Court when presided over by a Magistrate other than a Senior Magistrate may pass any sentence authorised by law:

Provided that such sentence shall not exceed, in the case of imprisonment, 18 years, and in the case of a fine, Rs. 125,000.

[7] The Appellant was sentenced on the 24th August, 2012. At the time of sentencing, section 6 of the Criminal Procedure Code read thus:

6. (1) The Magistrates' Court when presided over by a Senior Magistrate may pass any sentence authorised by law:

Provided that such sentence shall not exceed, in the case of imprisonment, 10 years, and in the case of a fine, Rs. 100,000;

(2) The Magistrates' Court when presided over by a Magistrate other than a Senior Magistrate may pass any sentence authorised by law:

Provided that such sentence shall not exceed, in the case of imprisonment, 8 years, and in the case of a fine, Rs. 75,000.

[8] Section 7 has provisions as to how the Magistrate's Court deals with sentences above the limit that it can impose.

7. (1) When a Magistrate has convicted a person and he is of opinion that a higher sentence should be passed in respect of the offence than he has power to pass he may commit the offender for sentence to the Supreme Court in accordance with the following provisions of this section.

(2) The Magistrate may either admit the offender to bail or remand him in custody until he appears or is brought before the Supreme Court.

(3) When an offender is committed as aforesaid the Supreme Court may-

(a) exercise any of its powers of revision under section 329(1); and

(b) whether any such powers have been exercised or not deal with the offender in any manner in which he could be dealt with if he had been convicted by the Supreme Court.

[9] Obviously the learned Magistrate erred in imposing the sentence of 15 years on the Appellant as the learned Magistrate could at the time only impose a maximum sentence of 8 years or refer the case to the Supreme Court for sentencing if it was deemed necessary.

[10] On the submission that the sentence should have been made to run concurrently section 9 of the Criminal Procedure Code states with respect to sentences in cases of conviction of several offences at one trial.

> *9. (1) When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefore which such court is competent to impose, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.*
>
> *(2) For the purpose of appeal the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.*

[11] Although the Learned Magistrate could have imposed consecutive sentences, the cumulative sentence should not be more than the total sentence which the Learned could impose since under section 9(2) the sentences are deemed to be a single sentence upon appeal. It is also clear that the learned Magistrate erred in imposing a cumulative sentence of 17 years by making the sentences run consecutively.

[12] With respect to the principle of totality. I am satisfied that not only are the sentences imposed outside the mandate of the Learned Magistrate at the time but in particular the sentence of 15 years was far outside the normal ranges of sentences that were being imposed by the Courts for similar offences by a very long stretch as pointed by learned counsel for the Appellant through the case submitted in his submission.

[13] The relevant sections under which the Appellant was charged and tried are Section 260, 264(b) and 289 of the Penal Code.

> *260. 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.*
>
> *264. If a theft is committed under any of the circumstances following, that is to say-*
>
> *(a) ...*
>
> *(b) if the thing is stolen in a dwelling-house, and its value exceeds Rs.60,*

or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;

(c) ....

(d) ...

(e)...;

(f) ...

the offender is liable to imprisonment for ten years.

289. Any person who-

(a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or

(b) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent, or vessel, breaks out thereof,

is guilty of a felony termed "housebreaking" and is liable to imprisonment for ten years.

If the offence is committed in the light, it is termed "burglary" and the offender is liable to imprisonment for fourteen years.

[14] Whilst section 27 in respect of mandatory sentences were applicable in this case, the learned Magistrate was constrained to apply a sentence that was not more than the maximum that section 6(2) of the CPC allowed, that is 8 years at the time or made use of the provisions of section 7 of the CPC which he did not. Consequently the two sentences imposed by the learned Magistrate should not have been more than 8 years in total in accordance with law.

[15] Therefore with an eye on the principle of totality and proportionality of sentences, the sentences were not only illegal but harsh and excessive in all circumstances of the case, hence I allow the appeal against both sentences in accordance with paragraph 16 below.

[16] I enter judgment as follows:

i. I quash the sentence of 15 years imposed by the Learned Magistrate for count 1, burglary, and I impose a sentence of 7 years imprisonment instead.

ii. On count 2, stealing from a dwelling house, I retain the sentence of 2 years imprisonment but order that it runs concurrently with the sentence of 7 years as it was out of one single transaction.

[17] For the sake of clarity I add the following orders;

iii. The sentences shall start to run from the 24th August, 2012;

iv. Any time spent on remand shall form part of the sentence;

v. The Appellant is entitled to remission.

Signed, dated and delivered at Ile du Port on 4 August 2017

G Dodin
Judge of the Supreme Court