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(2)

IN THE SEYCHELLES COURT OF APPEAL

IBRAHIM GILBERT SULEMAN — APPELLANT

V

THE REPUBLIC — RESPONDENT

Criminal Appeal No. 3 of 1995

(Before: Goburdhun, P., Ayoola, Adam , JJ.A)

Mrs. N. Tirant-Gherardi for the Appellant
Mr. S. Fernando for the respondent

Judgment of the Court

The Appellant, Ibrahim Gilbert Suleman, was on 3rd February 1995, convicted by the Supreme Court of the offence of Trafficking in dangerous drugs contrary to section 4A(1)(a) read with section 4A(2) and section 5 and punishable under section 26(1)(b) of the Dangerous Drugs Act and sentenced to 8 years imprisonment. The allegation made against him is that he, on the 8th September 1994 at Victoria, Mahe, did traffic in dangerous drugs, namely cannabis by having in his possession 9 kg. and 660 grammes of cannabis without lawful authority.

The prosecution case was that on 8th September 1994 the appellant who was at the material time a sailor was seen by the second prosecution witness (Bonne), a security guard at the Seychelles Fishing Authority (SFA), sitting in a bus which had arrived at the gate of the SFA and which Bonne had stopped for routine search. The Appellant was sitting in the front passenger seat next to the driver. After searching the back of the bus Bonne went towards the front of the bus where the appellant was seated and saw a travelling bag under the feet of the appellant that he wanted to search.

whose bus the appellant was riding when Bonne wanted to carry out a check on the appellant's bag.

In a carefully written judgment, the learned Chief Justice after reviewing the evidence for the prosecution and for the defence found as follows:

> "I have found the following proved beyond doubt namely that on the 8th September 1994, the accused had in his possession a bag in which there were pockets and plugs containing herbal materials namely cannabis weighing 9 kg. 660 grammes without lawful authority. He was trying to smuggle out the said drugs but unfortunately for him the security guards were vigilant and insisted upon searching his bag. Faced with the intransigence of the officers the accused only way out of his predicament was to con them by telling them that they could search his bag in the office. The security guards unfortunately were taken in by the accused's contrivance. The accused waiting for a moment of distraction on the part of the officers seized his chance and bolted. Whilst running he dropped his bag which was picked up by Pascal Bonne and handed over to the police. Samples were taken from all the packages and the plugs. The Pharmacist Georges Lailam confirmed that they were cannabis."

As has been said the learned Chief Justice convicted the Appellant. On this appeal by the Appellant against his conviction and sentence, the grounds of appeal argued by Counsel on behalf of the appellant are as follows:

> (1) That the learned Trial Judge failed to consider the evidence adduced by the Defence in rebuttal of the evidence adduced by the prosecution witnesses.
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> (2) The learned Trial Judge failed to give the consideration to the material discrepancies in the evidence of the main prosecution witnesses concerning the bag that

been recovered when the Appellant dropped it; there were no contradictions. What have been pointed out by counsel on behalf of the appellant as contradictions are not of any significance to the main issue or to the credibility of the witnesses. In regard to the defence of the appellant, the Chief Justice painstakingly considered his defence and rejected it. There was also nothing to support the contention that the reliability of some of the prosecution witnesses has been damaged because they were interviewed by the police or the prosecutor in the course of the proceedings. Jules said that he was advised by the police to tell the truth and Toussaint said that he was invited to the prosecutor's office to go over his evidence. There is no suggestion that in both instances any impropriety took place and it is difficult to see what prejudice has been occasioned to the Appellant by the prosecutor talking to a witness for the prosecution.

The appeal against conviction is all on facts. Where there is evidence which, if believed, is sufficient to support the conviction this court will not interfere with the trial court's conclusion. (See R.v. Cupidon (1974) S.C.A.R. 102). In this case, we see no cause to interfere with the conclusion of the Chief Justice. The appeal against conviction would be dismissed.

In regard to the appeal against sentence the only ground in the memorandum of appeal is that the sentence passed by the Chief Justice was wrong in principle because, it was contended, the Chief Justice took into account a previous conviction said to be similar which had been in fact been quashed on appeal.

It is common ground that the Appellant in 1986 was convicted for trafficking in dangerous drugs but that that conviction had been quashed. However, in sentencing the appellant, the Chief Justice had referred to the Appellant's

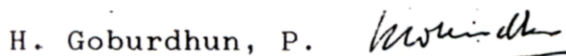
dismissed as was his appeal against conviction.

Much as the court should be guided by pattern of previous sentences in similar cases, it must be acknowledged that time and circumstances do often combine to make cases dissimilar for the purposes of sentence. In this case the learned Chief Justice had referred to "the drug situation in this country." It would be wrong to assume that since 1985 when the Dias case was decided, the drug situation had remained exactly the same as in 1995 when sentence in this case was passed by the Chief Justice. It is reasonable to observe from the sentence passed in the Robert case that the pattern of sentence might have changed from what it was in 1985.

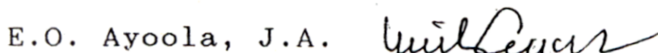
In this case, after taking several factors into consideration the Chief Justice evidently did not think the minimum sentence of 5 years adequate. Dias case should not be interpreted as meaning that in every case of "presumed trafficking" only the minumum sentence should be considered adequate. Much is certainly left to the discretion of the trial judge to be exercised after having regard to several other factors which he is entitled to take into consideration. In the circumstances of the present case, we are not of the view that the Chief Justice applied a wrong principle in sentencing the Appellant and we find no cause to disturb the sentence passed by him.

In the result the appeal of the Appellant against both conviction and sentence is dismissed.

H. Goburdhun, P.



E.O. Ayoola, J.A.



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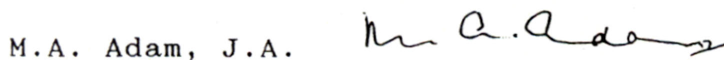

Delivered this 29th day of April 1995.