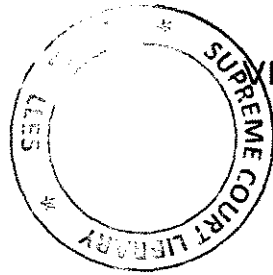


IN THE SEYCHELLES COURT OF APPEAL

SELBY RENE

APPELLANT

THE REPUBLIC



VERSUS

RESPONDENT

Criminal Appeal No. 2 of 1996

.....
Mrs. N. Tirant-Gherardi for the Appellant
Mr. A. Fernando for the Respondent

J U D G M E N T

The appellant was charged on a complaint that on 24th August 1995 he trafficked in a controlled drug, namely Cannabis, by having in his possession 470 grammes 700 miligrammes of the said Cannabis. He pleaded not guilty. He was convicted and sentenced to the minimum mandatory sentence of 8 years imprisonment. He now appeals against his conviction on the following grounds -

1. Upon the facts adduced by the Prosecution, the Appellant should not in law have been convicted of the offence as charged.
2. The Learned Trial Judge erred in law in finding the Appellant to be trafficking in view of the fact that the only evidence of trafficking was the presumption which the Appellant was not in a position to rebut having denied the fact that he was in possession of the same.
3. The Learned Trial Judge failed to give due consideration to the material discrepancies in the evidence of the main prosecution witnesses.

Mrs. Tirant who appeared for the Appellant submitted under the 1st and 2nd grounds of appeal, that it was not averred in the indictment that the Appellant was trafficking and that the trial judge erred in law in that the finding of trafficking rested on a legal presumption. She held the view that the words "thereby trafficking", or words to that effect, should have been included in the statement of particulars of the offence.

Learned counsel submitted, under the third ground of appeal, that in view of the material discrepancies in the evidence adduced by the Prosecution there was the possibility of a mistaken identity it was unsafe to convict the Appellant, the more so as he was not found in physical possession of the controlled drugs at the time of his arrest.

The indictment preferred against the Appellant read as follows -

"That on or about the 24th day of August, 1995 at Pointe Aux Sel Mahe did traffick in controlled drug namely Cannabis by having in your possession 470 grammes 700 miligrammes of the said Cannabis." (the underlining is ours)

It is clear that under that indictment the Appellant had been charged with 'trafficking'. On the other hand, it was also clear from the particulars of the offence that the prosecution was relying on the legal presumption. If it were otherwise, there would have been no necessity for the indictment to make reference to more than 25 grammes - the level at which the legal presumption arises. The prosecution on the other hand, proved facts which were strictly in accordance with those set out in the statement of particulars. We hold that the Appellant was in no way misled and was fully alive to the charge, and the particulars thereof, which he had to meet. We therefore dismiss the first two grounds of appeal.


As regards the third ground of appeal, Learned Counsel drew our attention to what she considered to be material discrepancies. It was however not disputed that a man dropped a bag containing cannabis and ran away on seeing the police.

That man was in physical possession of the bag immediately before he dropped it. It is immaterial whether 3 or five policemen were then present. Three of the policemen gave evidence that they had known the Appellant and they were able to identify him as being the man who dropped the bag as they were at a distance of about 10 metres when they saw him.


Mrs. Lajoie, whom the trial judge found to be a truthful witness, gave evidence that the Appellant was walking normally and did not show signs of having been running. It was urged that her evidence cannot be reconciled with the evidence of the police officers who ran after the man who had dropped the bag and who must have been out of breath when Mrs. Lajoie spoke to him. This submission is not justified as police witness Doudee did give evidence that he saw the Appellant running but afterwards he walked normally down the road. There is thus no inconsistency between the evidence of Mrs. Lajoie and police witness Doudee.

On the evidence before him the trial judge was fully justified to have come to the conclusion that it was the Appellant who dropped containing 470 grammes 700 miligrammes of Cannabis, thereby trafficking in a controlled drug as averred in the statement of offence in the indictment.

The appeal is dismissed with costs.



 H. GOBURDHUN
 President



 E.O. AYoola
 Justice of Appeal



 L.E. VENCHARD
 Justice of Appeal

Delivered on this 30th day of OCTOBER 1996.