(7)

IN THE SEYCHELLES COURT OF APPEAL

RICKY CHANG TY SING APPELLANT

Versus

THE REPUBLIC RESPONDENT

Criminal Appeal No:10 of 1997

[Before: Goburdhun, P., Ayoola & Adam, JJ.A]

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Mr. B. Georges for the Appellant
Mr. A. Fernando for the Respondent

JUDGMENT OF THE COURT

(Delivered by Adam J.A)

The appellant was convicted of being in possession of 220 grammes and 270 miligrams of cannabis resin for purpose of trafficking and trafficking contrary to the Misuse of Drugs Act (Chapter 133). He was sentenced to 15 years imprisonment.

On 16th January 1997 at 8.30 pm four police detectives were sent as a result of information from an informer about the appellant's dealings in controlled drugs to carry out a watch at Anse Claire Lane at a distance of a room occupied by the appellant in Pacquerette Vel's house. They arrived at 8.45 pm and one of he police detectives saw a man coming out of the house on being called. He had a cigarette and was talking with two young men in their 20's. The plan was that if the police found anything suspicious one of them was to fire his pistol a rubber bullet as a signal for the other police officers to surround and proceed to arrest the appellant. After talking for 2 minutes the two young men proceeded behind the house so the police detective cautiously followed him when he saw one of the two young men climb the manhole and pay money through the window to the appellant who gave him something black like cannabis. There was light on in the room. The other young man climb the same manhole when he saw the police detective come he and the other young man ran away. The same police

detective moved with his pistol on to the manhole and looked inside when he saw the appellant who was informed not to move as it was the police, but he did not obey his instruction so he fired his pistol close to the wall of the door into that room. In the room he saw a bed, television and a fan and on the bed there was a chopping board with small brownish pieces or slices and also on the bed a big black wrapped piece wrapped in foil paper. He observed one of the other police detectives apprehend the appellant. The same police detective seize all the items including the knife with black stains, small slices of black substance and a gas burner which was put in a plastic bag with red stars and from the bed he took another plastic bag marked Nido containing SR8400 and foreign currency.

The appellant was arrested with a knife in his hand. The chopping board, the small slices of black substance, the knife, and the big block wrapped in foil paper were analysed by the expert witness called by the prosecution who found them to be cannabis resin. During cross examination it was put to the police detective that he had pushed or threw the plastic bag into the room which he denied. The appellant when arrested denied that the drugs belonged to him but claimed the money as his. He asserted in his evidence as a defence that the plastic bag with all the contents was planted by the police through the window, that he saw the plastic bag for the first time in the police van, that he had been arrested by two police officers in the corridor as he returned from a shop and had just entered into the house, that he was not inside his room and that he did not sell any drugs to the young men. He did not hear a gun shot. He said that this witness told him 5 or 6 days after his arrest when he came to visit him at the police station that he had seen all these malicious things being done by these people. His witness mentioned these people as police officers and told him nothing more than that as there was not enough. His witnesses on the other hand testified that he saw a person holding the bottom of a plastic bag and then empty its contents in the room. He did not recognise the person. He spoke to the appellant for 10 to 15 minutes when he told him that in the night which he was at home he saw somebody empty the contents of a plastic bag ... his room, that it would be bad for him to come and tell the court what he saw, that the appellant told him that it was the police who put it, that the witness told the appellant that the person pulled out a pistol and fired a shot in the air and the noise was loud, that he was seated on the toilet when he heard foot steps and three bangs so he pulled

up his trousers cleaning himself and went to the window and peeped and that he was confused and went to sleep and that he did not use the word "malicious" but had used the word "vicious". The witness testified that there was no light on in the room.

The appellant's counsel submitted to the trial judge that by barging into the appellant's room without warrant violated his right to privacy, liberty and security under the Constitution. He ruled that the provisions of Articles 18 and 20 dealing with the right to liberty and security of the person and the right to privacy were not absolute rights since the Constitution itself provides for derogation of them in certain clear situations for which the law has made provision to Sections 20 and 21 of the Misuse of Drugs Act are therefore consistent with the derogation allowed under Articles 18 and 20 of the Constitution. The trial judge said that as usual all witnesses were subject to the most rigorous scrutiny in order that their credibility was tested and having done so he had come to the conclusion that the defence claim that the cannabis resin and paraphernalia was planted by the police in the appellant's room was without basis. No police officer would plant something in the house in the absence of the owner and then drew attention to himself by firing his gun. The appellant claimed that he was arrested hear the corridor. The door to the corridor was in front of the house and the window in the appellant's room was at the back of the house so no one standing at the window could see the door to the corridor in front of the house. The police detective said that he fired the pistol when he was at the window as a signal. He would not have fired it if he had not seen the arrest of the appellant. The visit of the locus in quo helped to confirm this. The evidence of the appellant and his witness defied belief. The account given by that witness bore the stamp of a fairy tale. He accepted as true and correct the evidence of all the prosecution witnesses. There was no doubt in his hand that they spoke the truth and nothing but the truth and on the whole of the evidence he was satisfied beyond reasonable doubt that the charge had been proved.

In the Memorandum of Appeal the grounds of appeal were: (a) that the search for a seizure from the appellant's room of the drugs and exhibits were unconstitutional in breach of Article 20; (b) that the trial judge erred in his judgment in de fact reversing the burden of proof; (c) that he erred in accepting the evidence of the prosecution in fact of the following facts (I) the

improbability that the appellant should be seen conducting a sale upon the arrival of the police; (ii) the implausibility that the police detective who had seen the drug sale from the appellant would have allowed the two young men without being arrested when he was armed, that when there were other police officers within reach, that when their arrest would have constituted complete proof of trafficking and that when that police detective could easily have asked his colleagues to arrest the appellant while he arrested the two buyers; (c) the evidence of defence witness which supported the defence raised by the appellant in all material particulars.

At the hearing the appellant's counsel relied on the skeleton heads of argument that seizure of drugs without a warrant does not provide category of suppression of crime and the at such seizure is not in the interest of defence, public safety, public order as set out in that Article 20 (2) (a). We are satisfied that Article 20 (2) (a) which provides that anything contained in or done under the authority of any law shall not be held to be inconsistent with the .. Article 20 (1) to the extend that that particular law makes provision that is reasonably required on the interest of defence, public safety, public order, public morality, public health, the administration of Government, town and country Planning, nature conservation and the economic development and wellbeing of the country is very extensive in scope which not only subsumes suppression of crime under it but also goes well beyond it by providing what is reasonably in the interest of the well-being of the country. A law that generally suppresses crime, in our view, is reasonably required in the interest of public order as well as in the interest of the well-being of the country. The Misuse of Drugs Act is certainly reasonably required in the interest of public health and the well-being of the country and may also, depending on the circumstance be required in the interest of defence, public safety, public order and public morality. In most if not all democratic societies the use, possession and dealing in controlled drugs is prohibited by legislation.

There is nothing in the judgment of the trial judge to show that he had defacto reversed the burden of proof. He summarised the evidence presented on behalf of the prosecution and on behalf of the defence. He indicated that all the witnesses had been subjected to the most rigorous scrutiny in order to test their credibility. He rejected the evidence of the defence. Having examined all the evidence he came to the conclusion that

the defence's claim that the cannabis resin and other things was planted by the police was without basis. He gave cogent reasons for his finding. He went further and said that the inspection in locus in quo confirmed this. He also accepted the evidence of all the prosecution witnesses and found that they spoke the truth. This Court will not readily upset findings of credibility by a trial judge unless it can be shown that it was not supported by any evidence at all or that there was such inconsistencies in the evidence before him that the findings of credibility was perverse. The appellant's counsel has not attempted to do this since there is nothing in the record of proceedings to that effect. In fact as pointed out by the counsel for the respondent there were material inconsistencies in the testimonies of the appellant and his witness.

As for the ground of appeal that the sentence of 15 years was manifestly harsh and excessive in all the circumstances, the appellant's counsel was not able to indicate what appropriate sentences for this type of offence (including the quantities of drugs involved) have been imposed by the Supreme Court and the Magistrate Court. This Court has said in Danny Lablache and Another v The Republic, Criminal Appeal No. 364 of 1988 that the length of any term of imprisonment depended on local conditions and would only be distorted on appeal when it can be shown to be wrong in principle or manifestly excessive in the sense that it induces a sense of shock. The minimum sentence for this type of offence was set at 8 years imprisonment and the maximum is 30 years imprisonment and a fine of Sr.500,000/- with 10 years imprisonment in default of payment of the fine. In imposing the sentence of 15 years the trial judge pointed out that drugs are becoming part of the culture in Seychelles, that if drug trafficking is not dealt with properly it will threaten the fabric of society and hold the entire population to ransom. The Supreme Court will have to pass severe sentences so that those who come with drugs to wreck the lives of the youths of Seychelles know what they are in for. He believed that in order to protect future generation of this country, it is imperative that appropriate sentences be imposed on those convicted of trafficking in drugs. He believed 15 years imprisonment was appropriate for the amount of drugs involved. Also the time spent on remand would count towards his sentence.

It is clear from the foregoing that the trial judge emphasized the deterrent aspect of the sentence. It has not been asserted by the appellant's

counsel that there was any error in principle in the sentence imposed. Further, he has not shown that the sentence imposed was so harsh or manifestly excessive that it induced a sense of shock.

Accordingly, the appeal against the conviction and against the sentence are dismissed.

Dated at Victoria, Mahe this 9th day of ***April*** 1998.

H. GOBURDHUN	**E.O. AYOOLA**	**M. A. ADAM**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Handed down
Adam JA