

IN THE SEYCHELLES COURT OF APPEAL

ROBIN FRANCOIS

APPELLANT

versus

THE REPUBLIC

RESPONDENT

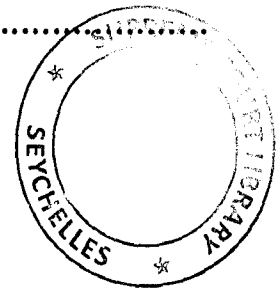
Criminal Appeal No: 9 of 2000

[Before: Ayoola, P., Pillay & De Silva, JJ.A]

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Mr. A. Derjacques for the Appellant

Mr. R. Govinden for the Respondent



JUDGMENT OF THE COURT

(Delivered by Pillay JA)

The appellant was convicted and sentenced to undergo a term of 8 years' imprisonment by the Supreme Court for the offence of trafficking in a controlled drug, namely by virtue of having been found in possession of 166.4 grams of cannabis resin, contrary to Section 5, read with Sections 14 and 26(1)(a) of the Misuse of Drugs Act 1990 (called "the Act"), as amended by Act No. 14 of 1994 and punishable under Section 29 of the Second Schedule referred thereto.

The appellant is appealing against his conviction on four grounds. The first complaint relates to the inconsistencies to be found in the testimony given by P.C. Belle and P.C. Dufrene. Constable Bell stated in substance that when the Police raided the appellant's house at the relevant time, he stood by the front door inside the sitting room of the appellant and saw the appellant coming from a corridor inside the house with a packet "*of black substance in his hand.*" He got hold of the appellant who struggled with him and dragged him near an open window in the sitting room, put his left hand through the window whose louver blades were open and threw the packet outside. He was consistent in his assertion that the appellant had used his left hand to throw away the packet which was subsequently identified as containing 17 slices of cannabis resin wrapped up in cling film and weighed in all 166.4 grams.

The gist of P.C. Dufrene's testimony was to the effect that he saw the appellant from outside moving towards the window, near the entrance door of his house, which was fitted with louver blades and dropping something which turned out to be a brown packet wrapped in cling film. At this point P.C. Bell told him that the appellant had dropped it there.

According to the testimony of the appellant, the Police Officer whose name he did not know had brought to his house slabs of a brown substance and had accused him of having thrown them outside. He denied having done so. He also denied having been in possession of the packet containing 166.4 grams of cannabis resin and having pulled P.C. Belle towards the window to throw the packet outside.

The learned trial Judge who had the advantage of hearing and seeing, on the one hand, the two prosecution witnesses and the appellant, on the other, chose to accept as he was entitled to, the testimony of these two police officers. He was alive to the fact that in their statements the two police officers had witnessed the appellant "*throwing*" the packet containing the cannabis resin whereas in Court they had used in evidence the word "*dropping*". As rightly pointed out by the trial Court, this discrepancy is not material, given that it was established by the two police officers that the appellant had the packet in his possession before throwing or dropping it through the window.

Moreover, as indicated already, P.C. Belle had always in the course of his evidence maintained that the appellant had thrown away the packet of cannabis resin with his left hand. Consequently, his testimony in this regard can hardly be termed contradictory.

The other three complaints of the appellant can be taken together as they question in substance the fact that the appellant had been found to be trafficking in cannabis resin.

Section 5 of the Act provides that:-

“Subject to this Act, a person shall not, whether on his own behalf or on behalf of another person, whether the other person is in Seychelles or not, traffic in a controlled drug.”

“Traffic” is defined in Section 2 of the Act as:-

- “(a) to sell, give, administer, transport, send, deliver or distribute; or ...
- (c) to do or offer to do any act preparatory to or for the purposes mentioned in paragraph (a)” (the underlining is ours)

and “trafficking” has a corresponding meaning.

Moreover, section 14(d) of the Act states that:-

“A person who is proved to have had in his possession more than ... 25 grammes of cannabis or cannabis resin shall, unless he proves to the contrary, be presumed to have had the controlled drug in his possession for the purpose of trafficking in the controlled drug contrary to Section 5” (the emphasis is ours).

Given that the appellant had been found by the trial Court in possession of 166.4 grams of cannabis resin, he was prima facie presumed to have had in his possession the cannabis resin for the purpose of trafficking i.e. for the purpose of selling, giving, administering, transporting, sending, delivering or distributing the drug. Since the appellant gave no explanation at all to account for his being in possession of such a large amount of cannabis resin, he was rightly found to have been trafficking in cannabis resin, as he did not rebut the legal presumption to be found in Section 14(d) of the Act – vide **R Tarnecki v The Republic (Criminal Appeal No. 4 of 1996)**.

Now, the trial Court came to the conclusion on the evidence available before it that the appellant had been doing or offering to do an act preparatory to selling, giving, administering, transporting, sending, delivering or distributing the cannabis resin. We consider, however, that on the evidence available before the trial Court, the appellant had been proved beyond any reasonable doubt to be in possession of the cannabis resin and to have consequently done or offered to do an act for the purposes of trafficking, namely

selling, giving, administering, transporting, sending, delivering or distributing the cannabis resin, the more so as it was made up of 17 slices wrapped up in cling film.

Learned Counsel for the appellant raised a further ground at the hearing questioning the constitutionality of Section 14(d) of the Act. We decline to consider this ground for the simple reason that it does not form part of his grounds of appeal.

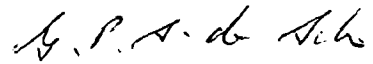
For all the reasons given, we dismiss the appeal and uphold the conviction of the appellant.



E. O. AYoola
PRESIDENT



A. G. PILLAY
JUSTICE OF APPEAL



G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 6th day of **April** 2001.