

IN THE SEYCHELLES COURT OF APPEAL

[Coram: A. Fernando (President), F. Robinson (J.A) , L. Tibatemwa-Ekirikubinza (J.A)]

**Criminal Appeal SCA 05/2019
(Appeal from Supreme Court Decision CO 02/2018)**

Dave Confait	1 st Appellant
Chantal Valery Moustache	2 nd Appellant

Versus

The Republic	Respondent
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Heard: 03 August 2020
Counsel: Mr. C. Andre for the Appellants
Ms. L. Rongmei for the Respondent
Delivered: 21 August 2020

JUDGMENT

A. Fernando (President)

1. The 1st and 2nd Appellants have appealed against the sentences imposed on them on the 15th of September 2018, by the Supreme Court on their pleading guilty to the two separate charges that were levelled against them, namely the charge of trafficking heroin having a total weight of 19.3 grams with a pure heroin content of in 12.35 grams as against the 1st Appellant, and as against the 2nd Appellant, obstruction of Justice, namely, obstructing Anti-Narcotics Bureau officers in the exercise of their powers and functions under the Misuse of Drugs Act.
2. The 1st Appellant had been sentenced to a period of 4 years’ imprisonment with the time he had spent on remand deducted and the 2nd Appellant had been sentenced to a period of 4 months imprisonment suspended for a year and to pay a fine of SR 25,000/- and in

default to 4 months' imprisonment. The fine had been ordered to be paid by the 15th of February 2019. On an application made to the Supreme Court by the Appellant, payment of the fine had been stayed until the disposal of the appeal. There had been no application in respect of the prison sentence that was suspended.

3. The Appellants in their sole ground of appeal had stated that "The learned Judge erred in law in passing sentence on both Appellants as he did not follow previous cases in the Supreme Court where accused had been charged with like offences.", and by way of relief had prayed for a reduction of the sentences and "That the sentence of fine imposed on the 2nd Appellant as well as a suspended sentence is manifestly excessive and harsh given that she has pleaded guilty." Since the suspended sentence of 4 months had now elapsed it will be only of academic interest to look into that matter and there was no request from the Appellant to do so at the hearing of the appeal.

4. Both Appellants, who are husband and wife, were arrested in a bedroom occupied by them and the drugs had been seized from the same bedroom in the possession of the 1st Appellant. According to the evidence that was partly led in this case, where the Appellants had subsequently pleaded guilty to the Amended Charges that were preferred against them, the ANB Officers on visiting the house where the Appellants lived, had with the permission of the owner of the house, who was the father of the 2nd Appellant, gone up to the bedroom that was occupied by the Appellants. When the 2nd Appellant's father at the request of the ANB officers knocked on the bedroom door, the 2nd Appellant had asked who it was. She had not opened the door at the first instance and only when he knocked a second time that she had opened the door. On seeing the ANB officer, the 2nd Appellant had tried to shut the door. The ANB officer had prevented her from shutting the door. She had then called out to the 1st Appellant who had been sleeping and he too had tried to shut the door behind. The 2nd Appellant had then moved away from the door. There is nothing to indicate that the 2nd Appellant knew the ANB officer, who was trying to force open the door, that the ANB officer had disclosed his identity prior to the 2nd Appellant trying to shut the door or that she was expecting anyone to knock on the door at that time.

5. I would first deal with the appeal of the 2nd Appellant. I find that all that she has done as borne out from the proceedings and as stated at paragraph 4 above, tried to shut the door of her bedroom in which her husband was sleeping when a stranger tried to force open the door. In view of that I am of the view that the imposition of a fine was not warranted and I therefore quash the sentence in relation to the payment of the fine.
6. As regards the sentence of 4 years' imprisonment imposed on the 1st Appellant, for trafficking in 12.35 grams of pure heroin, the Appellant has failed to show that the said sentence falls within the well-known criteria for setting aside of a sentence by an appellate court on appeal. The maximum sentence prescribed for trafficking in Class A drugs in the Misuse of Drugs Act 5 of 2016 is, life imprisonment and a fine of SCR 750,000.00 with an indicative minimum of 20 years for aggravated offence. The learned Sentencing Judge at paragraph 6 of his Sentencing Order had given credit of one third of the sentence that the court would have otherwise imposed, because of the guilty plea.
7. The sentence prescribed of 4 years' imprisonment is even less than the recommended sentences under the Misuse of Drugs Act 5 of 2016 for trafficking on the basis of the presumption of Class A Drugs, namely when it is more than 10 grams and up to 50 grams the recommended sentence is, 5 to 8 years imprisonment. I also cannot find a great disparity between the sentences imposed in the other cases cited by Counsel for the Appellant when taking into consideration the facts and circumstances of the said cases, with this case. I therefore dismiss the appeal of the 1st Appellant on sentence.

A. Fernando (President)

I concur:. F. Robinson (J.A)

I concur:. L. Tibatemwa-Ekirikubinza (JA)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 August 2020