IN THE SUPREME COURT OF SEYCHELLES

The Republic

Vs

Perin Gilbert Payet

Defendant

Criminal Case No: 18 of 2007

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==========Mr. Durup for the Republic

Mr. F. Bonte for the Defendant

D. Karunakaran, J

SENTENCE

The defendant stood charged before this court with the offence of "Trafficking in a Controlled Drug" contrary to Section 5 read with Section 14 and 26(1) (a) of the Misuse of Drugs Act 1990 and punishable under Section *29* of the Second Schedule to the said Act, as amended by Act 14 of 1994. The particulars of the offence read thus:

"The defendant on the 2*nd* *of April 2007 at Baie Ste*

Anne, Praslin at around 17: 30 hrs was trafficking in a controlled drug by virtue of having been found in possession of 9. 6 grams of Heroin which give rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking"

In fact, the defendant was first produced in Court on the 5th April 2007. He was remanded in prison custody for a period of 14 days. After the said remand order, the defendant has retained Mr. Bonte as his counsel to defend him in this matter. On the 27th April 2007, when the case was called in (another) Court for the extension of remand, the defence counsel Mr. F. Bonte applied for bail pending trial. As the prosecution had no objection to the application, the Court accordingly, enlarged the defendant on bail with stringent conditions and adjourned the case to be mentioned on 2nd of May 2007, so that prosecution could provide the necessary documents to the defence before the charge is put to the defendant for plea. Subsequently, when

the case was called on the 2nd May, 2007 for plea, Mr. Bonte informed the Court that he received the documents from the prosecution very late and so sought more time to give his expert legal advice to the defendant before his plea is taken. The Court hence, granted further time and adjourned the case to the 11th June 2007. When the case was called on the adjourned date, the defence counsel indicated to the court that there had been a change of circumstances. However, the Court did not take the plea that day. The case was again adjourned to the 25th of June 2007 for plea. The defendant appeared in Court on the adjourned date with his counsel and pleaded “not guilty” to the charge. The Court therefore, adjourned the case to the 2nd May 2008 for trial with the concurrence of the defence counsel.

When the case came up before the Court for trial on the appointed date, the defence counsel requested the Court to put the charge back to the defendant for a fresh plea since there had been a change of circumstances. The Court therefore, put the charge explaining the particulars of it to the defendant, who unequivocally pleaded guilty to the charge.

At this juncture, I remind myself of the recent judgment of the Court of Appeal, delivered on the 25th April 2008 in ***Paul Oreddy Vs. Republic SCA: 9 of 2007,*** wherein *Bwana JA* along with other two Justices having entertained an appeal against a plea of guilty, held the view that there were enough facts that had emerged in that particular case, which showed that the plea of guilty, which the accused (appellant therein) gave, was on a **misapprehension of law and facts.** Further, the said judgment reads thus:

> "If the provisions of section 342 of the Criminal procedure Code are to apply, the said plea should have been given unequivacably (sic)"

In the present case, I have no doubt that Mr. Bonte being an able and efficient defence counsel with a good standing in the Bar, has advised the defendant and has dispelled all **misapprehension of law and facts** from the mind of the defendant, before he advised him to plead guilty to the charge. Indeed, I am loath to assume on guesswork or conjecture that any

defence counsel, who appears before the Court to defend his client in any criminal case, would advise or allow the latter to plead guilty without having explained to him all the consequences of such plea and more so without removing the ***"misapprehension of law"*** if any, from his mind. On the contrary, if I start doubting the ability and integrity of the members of the Bar in this respect, obviously there is no plausible and logical end to it. Despite, all these measures taken by the trial court, one cannot stop any convict for that matter, from claiming latter or elsewhere - genuinely or otherwise - that he pleaded guilty before this Court on ***a misapprehension of law or facts.*** In such situations, this Court is obviously sterile and has no means to detect the ***misapprehension*** if any, latent in the mind of the defendant. Be that as it may, in the case on hand, I conclude that the defendant herein, has rightly apprehended the relevant law and has voluntarily admitted the material facts that are necessary to constitute offence with which the defendant stands charged. Hence, I find that the defendant has on his own pleaded "guilty" to the

charge freely, voluntarily and unequivocally after obtaining the necessary legal advice from his counsel. In the circumstances, the Court safely convicted the defendant of the offence of “trafficking in a controlled drug” as charged in the indictment.

With these background facts, I now proceed to sentence the offender.

I gave diligent thought to all the mitigating factors which are peculiar to the offence as well as to the offender. First of all, I consider the offender’s guilty plea, which indeed has saved the precious time of the Court. I also consider the crucial fact that the offender has a clean record. Besides, the quantity of the drug involved is relatively small. He has shown remorse. Although, I consider all these factors in his favour, the fact remains that the drug involved in this case is “Heroin”, a Class A Drug. The punishment in respect of Class A Drug is prescribed under Section *29* of the Second Schedule to the Misuse of Drugs Act 1990 as amended by Act 14 of 1994, which reads thus:

> “*Maximum 30 years and R500, 000: Minimum 10 years for first offence and 15 years for second or subsequent offences”*

Needless to say, the maximum sentence prescribed by law for a particular offence is reserved for the worst form of that offence.

It is truism that punishments inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. However, it is a mistake to consider - as some do- the object of punishment as being deterrent or reformative or preventive or punitive or nothing else. As Lord Denning once said that the ultimate justification of any punishment is not that it is deterrent but it is an emphatic denunciation by the community of the crime.

It is therefore, the duty of the Court to show the public revulsion at this particular type of crime namely, drug-trafficking by the punishment which is imposed. In other words, the punishment for this crime should relate to the moral conscience of the community on whose behalf they are being inflicted. Unless the aims of the punishment take into account the sensibility of the community, the penal system will not serve one of these primary functions, that is, to maintain “communal stability”.

In the light of all the above, I gave a diligent thought to all the mitigating circumstances surrounding the offence and the offender. Having done so, I hereby sentence the offender to undergo 10 (ten years) Imprisonment, the mandatory minimum term, prescribed by law for any first offender of this category.

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D. Karunakaran

Judge

Dated this 12th day of May 2008