

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

RICKY CHANG-TY-SING (Accused)

Criminal Side No. 53 of 2007

Mr. Esparon for the Republic

Mr. Hoareau for the Accused

JUDGMENT

Gaswaga, J

In this case Ricky Chang-Ty-Sing (accused) of St-Louis, Mahe was arrested by the police on the 12th of September, 2007 at Mont-Buxton, Mahe and arraigned before the Supreme Court on the following counts:

Count 1

Statement of offence

Trafficking in a controlled drug contrary to section 5 of the Misuse of Drugs Act read with the second schedule of the same.

Particulars of offence

Ricky Chang-Ty-Sing, on the 12th day of September, 2007, at Mont-Buxton, Mahe, was trafficking in a controlled drug by virtue of having been found in the

possession of 66.8grams of cannabis resin which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

Count 2

Statement of offence

Trafficking in a controlled drug contrary to section 5 of the Misuse of Drugs Act read with section 26(1) of the same punishable under section 29(1) of the same Misuse of Drugs Act read with the second schedule of the same.

Particulars of offence

Ricky Chang-Ty-Sing, on the 12th day of September, 2007, at Mont-Buxton, Mahe, was trafficking in a controlled drug by virtue of having been found in the possession of 19.4 grams of Heroin(Diamorphin) which gives rise to the rebuttable presumption of having possessed the said controlled drugs for the purpose of trafficking.

Count 3

Statement of offence

Possession of a controlled drug contrary to section 5 of the Misuse of Drugs Act read with section 26(1)(a) of the same punishable under section 29(1) of the same Misuse of Drugs Act read with the second schedule of the same.

Particulars of offence

Ricky Chang-Ty-Sing, on the 12th day of September, 2007, at Mont-Buxton, Mahe, had in his possession 0.2 grams of Heroin (Diamorphine).

The facts as presented by the prosecution and leading to those charges are that on the said day Lance Corporal Francois Mondon (PW2) together with Police Constables Franchette and Aglae went on a foot patrol in the lower Mont-Buxton area. As they walked along a small footpath they cited a white man about twelve (12) meters away from where they were. That man ran away the moment he saw them. He was holding a red plastic bag in his right hand. The police officers ran after the man and PC Franchette grabbed him. He dropped the red plastic bag. LC Francois Mondon who arrived immediately picked the red plastic bag up and opened it in front of him and PC Franchette. Since the contents of the red plastic bag were suspected to be illegal drugs the man was taken and placed in the police cells while the illegal substances were forwarded to Dr. Jakharia (PW1) for analysis.

That in the red plastic bag was an orange plastic bag which further wrapped a white plastic bag with red stars on it. Placed in it was another white plastic bag which contained a piece of cling film wrapping two pieces of dark brown substances, and two other pieces of cling film each containing a light brown powder.

First, a description of all the items was made and followed by a physical examination. The two dark brown substances wrapped in the first cling film weighed 35.7gs and 31.1gs respectively, making a total weight of 66.8gs. After subjecting the two bars to a chemical test, two color tests and one thin layer chromatography examination it was concluded by the analyst that they were cannabis resin. The other two cling films contained some light brown powder which weighed 19.4gs and 0.2gs respectively. Each item were separately subjected to actual analysis which comprised of a color test, an ultra-violet spectrophotometry examination and a thin layer chromatographic test. It was

concluded that the light brown powder was illicit heroin (diamorphine).

All the items of illegal substances were collectively admitted in court as PE3 while the drugs analyst's report was exhibited as PE1.

With this evidence I put the accused on his defence as a *prima facie* case had been established. The accused, in his defence made a statement from the dock and no adverse effect was taken. He called no witnesses to support his case. The gist of his defence case was that on the 12th September, 2007 as the accused was coming back from the shop four men came right up to him. In turn the accused also walked straight towards them. That they conducted a body search and found some money (Sr.1,600/-) on him. After telling him that he was being suspected for his involvement in illegal drugs transactions the men arrested and handcuffed him. They walked him down the footpath into a waiting jeep at English River and drove off to the ADAMS Unit. That he was then taken to the Central Police Station and placed in the cells. An hour later the police officers showed him a plastic bag and asked whether he knew what it was. He denied knowledge of anything having been found on him. It is also his evidence that the police took him out of the cells and forced him to give a statement, which he refused to do. The accused categorically denies the charges.

Looking at the evidence available this Court is satisfied that the substances and powder allegedly found on the accused are illegal drugs as properly analyzed by Dr. Jakharia (See report PE1). I am also fully satisfied with the manner in which the chain of handling the evidence (PE3) was done from the point it was retrieved by the police, all through the analysis stages by Dr. Jakharia to its being tendered as exhibits in court by the prosecution. It is the same items that we now have in

Court as PE3.

Lance Corporal Francois Mondon clearly narrated how he and the other two officers came by the accused person. It is also clear that the accused acted in a suspicious manner thereby attracting the attention of the police. The actions of a person before, during and or after commission of an offence may act as a pointer to their guilt. There is no indication that the police was particularly looking out for the accused. They only went after him because he was running away from the police whom he had recognized. Although this was in a busy and bushy public area I am unable to agree with the defence that the accused was not properly viewed by the police officers as he ran away holding the red plastic bag in the right hand.

However, mere possession is one thing and possession with *mens rea* is another. Possession which incriminates must have certain characteristics. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. Without these characteristics possession raises no presumption of *mens rea*. Without *mens rea* possession cannot be criminal except in certain cases created by statute. **See Rep vs. Rodney Laria Cr. No. 16 of 2008** I believe it is because of the contents of the red plastic bag that he ran away. He was not only in actual, physical and or exclusive possession of the red plastic bag but he also knew the nature of its contents; that they were illicit drugs. He therefore fled the scene to avoid police apprehension. He exercised total control of that bag and even held it in his right hand, moved it from the point he was first seen and dropped it at the final place of his arrest. The purpose was obviously to break any linkage with the drugs and diminish or completely erase any criminal involvement or guilty mind.

I found all the prosecution witness to be credible and coherent and therefore believed them. Further, “*Common law holds that in the absence of some specific rule to the contrary the court may for any purpose act upon the uncorroborated evidence of a single witness...*” **See A Practical Approach to the Law of Evidence by Peter Murphy.**

From the foregoing, and with the greatest respect to the learned defence counsel, I am unable to agree with the defence version of the story and manner in which the events are alleged to have unfolded. It is inconceivable that the police just arrested the accused for no cause at all and showed him the red plastic bag while in the cells. Even the inconsistencies cited were minor and of no consequence at all. **See Marie-Celine Quatre v s. R SCA No. 2 of 1996.** For instance it was explained that whenever there is any suspected heroin powder impounded the police in this country records it as being white powder which they are used to, until the expert analyst certifies. The accused was simply seen running, chased and caught with the red plastic bag. Nobody else carried or put it at the scene.

With regard to the money (PE4) found on the person of the accused during his arrest, no evidence has been led to connect it to the offences at hand. Merely recovering money from a person suspected to be dealing in drugs, however strong the suspicion, is not enough to prove that it was or forms part of the proceeds of that illegal transaction. A concrete and impeccable nexus must be clearly explained and established by the prosecution. This the prosecution has failed to do. Accordingly, I order that the said money (PE4) be returned to the accused immediately.

The requisite *mens rea* together with all the other relevant ingredients of these offences have been proved beyond a reasonable doubt. The accused is found

guilty and convicted on all three counts as charged. It will further be noted that the defence did not adduce any evidence to rebut the presumption of trafficking proffered in counts I and II.

D. GASWAGA

JUDGE

Dated this 3rd day of March, 2009.