

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

NIVEN JUMA MWASI

Criminal side No. 52 of 2009

Ms. Aglae for the Republic

Mrs. Amesbury for the Accused

SENTENCE

Gaswaga, J

[1] Mr. Mwasi was charged with the offence of ‘*Trafficking in a controlled drug contrary to section 5 read with Section 14(c) and Section 26(1)(a) of the same Act as amended by Act 14 of 1994 and Punishable under section 29 of the Misuse of Drugs Act.*’ The particulars thereof allege that the accused on the 1st day of December, 2009, at Victoria, Mahe was trafficking in a controlled drug by virtue of having been found in possession of 49.9grams of Illicit Heroin (Diamorphine), which gives rise to the rebuttable presumption of trafficking in a controlled drug. He has now changed his plea and admitted the charges.

[2] The facts giving rise to the above charge are briefly that the accused on the aforesaid date at Mont Fleuri presented himself to Doctor Haresh Jivan, a private practitioner, with a complaint of severe stomach pain. He revealed to the said Doctor that he had ingested thirty eight (38) bullets containing a controlled drug. Further, that he had managed to expel thirty three (33) of the bullets out of the body thereby leaving five (5) bullets which he suspected to be the cause of a lot of pain to his stomach at that time.

[3] Dr. Haresh contacted the casualty unit of the Victoria hospital for an ambulance. The police too was called in. A body examination and scan conducted by Dr. Verma revealed five (5) objects in the stomach not consistent with food. The accused was handed over to the officers of the National Drugs Enforcement Agency (NDEA) and also warded at the hospital until the five bullets were retrieved. A forensic analysis thereof confirmed the contents to be illicit heroin (Diamorphine) weighing all together 49.9 grams.

[4] The court has considered all the extenuating factors as put across by Mrs. Amesbury on behalf of the accused. In particular it is noted that by tendering a guilty plea the accused has saved a lot of court resources and also demonstrated that he was remorseful. He will be credited for that. In addition, that he is a foreigner in Seychelles and should therefore be incarcerated for the shortest period of time (i.e ten years) prescribed by the law. The maximum sentence is thirty years.

[5] I find it apposite to reiterate what I stated in the case of **The Republic vs. Janet Anyango Ochieng, Criminal side No. 40 of 2008** which has similar

facts to the one at hand:

“There is no doubt that the offence herein is serious and rampant and has caused a public outcry in our society. The plain and apparent object of the relevant laws is to prevent the danger to public health; especially with regard to that of the young and therefore future generation, and to guard Society against the social evils which an uncontrolled use and importation of or trafficking in illegal drugs is bound to generate.”

[6] It will however be noted that had the accused not encountered such a life threatening incident he would never have presented himself to the Doctor nor the relevant authorities. He had stealthy managed to go through the Customs Check points at the airport. Moreover, the biggest part of the consignment (33 bullets) had already entered into the Seychelles market. Bearing in mind all the above factors and sentencing pattern in resent similar cases I feel that the most suitable sentence for the accused shall be **ten and a half (10¹/₂)** years in prison.

[7] **The period spent on remand shall count towards the said sentence.**

I so order.

Right of appeal explained.

D. GASWAGA

JUDGE

Dated this 28th day of May, 2010