

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 02/2012

[2014] SCSC

THE REPUBLIC

versus

PATRICIA DINE

Accused

Heard: 4 February 2013, 9, 28 May 2013, 25 June 2013 and 3 July 2013
Counsel: Mr. Vipin Benjamin, Assistant Principal State Counsel for the Republic
Mr. Nicol Gabriel Attorney at Law for the accused
Delivered: 23 January 2014

JUDGMENT

Burhan J

[1] The accused Patricia Dine in this case has been charged as follows;

Count 1

The statement of offence

Possession of a controlled drug contrary to Section 6 as read with Section 15 (1) and 26 (1) (a) of the Misuse of Drugs Act as amended by Act 14 of 1994 and punishable under the Second Schedule read with Section 29 of the same Act.

The particulars of the offence are that Patricia Julie Dine of La Louise, on the 28th day of December 2011 at La Louise, was found in possession of a controlled drug weighing 6.4 grams containing 1.6 grams of Heroin (Diacetylmorphine).

Count 2

The statement of offence

Possession of a controlled drug contrary to Section 6 as read with Section 15 (1) and 26 (1) (a) of the Misuse of Drugs Act as amended by Act 14 of 1994 and punishable under the Second Schedule read with Section 29 of the same.

The particulars of the offence are that Patricia Julie Dine of La Louise, on the 28th day of December 2011 at La Louise, was found in possession of a controlled drug weighing 10.7 grams of Cannabis Herbal materials

- [2] The accused denied the charges and the prosecution principal witness Alexander Tony Moumou an agent attached to the NDEA (National Drug Enforcement Agency) testified that he had been on duty on the 28th day of December 2011 and had been on a routine patrol when he had got information that one Patricia Dine was doing drug transactions at the house of Bernadette Dine. He had been accompanied by agents Siguy Marie, Florentine, Sanders at the time the information was received. With the guidance of the informer they were able to find the said house.
- [3] When they arrived, witness Moumou had stationed himself near the open window in the living room and observed through it. Agent Sanders and agent Florentine had knocked on the kitchen door while agent Marie had gone to the back of the house. He had observed through the open window Patricia Dine coming out of the kitchen into the living room with a red plastic bag. She had gone straight to the sofa and placed the plastic bag under a cushion on the sofa. She had thereafter come and opened the kitchen door. Having

identified themselves as agents of the NDEA, they had informed her they were going to conduct a search of the house.

- [4] Witness stated that others namely Bernadette Dine, her two brothers, the boy friend of Patricia Dine, the boy friend of Bernadette Dine and one Tony were also present. They had agreed to the house being searched. Witness had gone straight to the sofa and had recovered the red plastic from under the cushion on the sofa in the same place he had seen it been placed by the accused. He had informed her he had seen her placing it there and she had admitted it was hers and her family had nothing to do with it. Thereafter she had requested she privately speak to agent Florentine and had gone into the kitchen with him spoken and come out.
- [5] Witness had thereafter proceeded to open the red plastic in their presence and noticed inside there were two rolled up cigarettes one partially smoked and one intact. They had suspected it to be Cannabis. Inside there were three pieces of cling film inside of which there was herbal material suspected to be Cannabis. He stated that there was also a white paper with blue squares which had herbal material suspected to be Cannabis. He stated there was another white paper inside which there was herbal material and also a white plastic with herbal material inside. There was also a green and blue purse inside which there was a yellow plastic containing powder which he suspected to be heroin. There was also a white plastic with red and blue writing inside which there was a powder which they suspected to be heroin. They had thereafter cautioned her.
- [6] The accused had started crying and asking for forgiveness. She had informed them she had brought these drugs from a person called Ti Kouto who lived at Belvedere behind the bakery. They had continued the search of the house and taken into custody a mobile phone and agent Florentine had seized a brown purse which contained money. He had also seized money in the room of the accused. They had thereafter informed her of her constitutional rights and arrested her for being in possession of a controlled drug. They had got down agent Lisa Larue as there was no female agent with them and a search was done on the accused and one Bernadette Dine but nothing illegal was found. After the search of premises and person had been concluded, the accused had been brought to the

NDEA office and a case registered and the exhibits sealed in a brown envelope and kept by agent Moumou in his locker.

- [7] He had thereafter taken the exhibits to the Government Analyst with a request letter on the 4th of January 2012 and handed them over for analysis. He had received the exhibits back the same day around 4.15 p.m. which had been sealed in a police evidence bag by the Government Analyst after analysis. He had taken the sealed exhibits and handed the sealed bag to agent Malvina. He had received the exhibits back to be brought to court and he had noted that the seals placed by the Government Analyst were intact. Witness thereafter proceeded to identify all the exhibits taken into custody by him that day.
- [8] Under cross examination he stated he had not seen anybody smoking or giving drugs that day. He admitted that they had decided to only arrest Patricia Dine. He also stated that the accused had been searched by agent Lisa Larue privately.
- [9] Agent Terry Florentine gave evidence corroborating the evidence of agent Moumou in respect of the information received and the detection. He too described the exhibits recovered by agent Moumou and identified same in open court. He corroborated the fact that when the drugs had been found the accused had wanted to speak to him in the kitchen. She had said the drugs were steam and even after cautioning her she had continued to state the drugs was just steam and it was for her. He stated he had found SR 2200 in the purse of the accused Patricia Dine and SR 900 from her room. He further stated all the money was subsequently returned to the accused. He admitted he had not seen the accused selling drugs at the time of arrest. He stated she had not mentioned the name of her lawyer Mr. Cesar to him at any time. He further stated a statement was recorded prior to the money being returned to the accused.
- [10] Agent Julien Sanders called by the prosecution further corroborated the evidence of agent Moumou in respect of the detection and arrest of the accused on the 28th of December 2011. He too identified the exhibits taken into custody that day. Under cross examination he admitted he had not seen any one smoking or dealing with drugs. Agent Malvina gave evidence that the exhibits were handed over to him by agent Moumou in a sealed evidence bag and were not tampered with whilst in his custody. Agent Lisa Larue also gave evidence in respect of the detection and the search conducted on Patricia Dine who

she identified as the accused in the case. She also stated she had recorded the statement of the accused which was produced in court after it was declared admissible after a *voire dire* was held.

[11] The Government Analyst testified to the fact that he received the exhibits from agent Moumou on the 4th of January 2012. He further stated he had identified Cannabis in the two hand rolled cigarettes and traces of heroin in cigarette 1 (a) P5 (a) and (b). All three cling films contained herbal material which he identified as Cannabis which was produced as P6 (a) (b) and (c). Inside the white plastic was a beige substance which he identified to be heroin P8 (a) with a purity of 25%. The white substance in the yellow plastic was identified to be heroin P8 (b). He stated the total net weight of the powder was 6.4 grams having a pure heroin content of 1.6 grams. He stated the herbal material wrapped in white paper P9, the herbal material wrapped in square paper P10 and the herbal material in white plastic P11 were identified as Cannabis. The total net weight of Cannabis herbal material was 10.7 grams. He affirmed that the seals placed by him were intact and proceeded to identify all the exhibits in open court again.

[12] The accused in defence made an unsworn statement from the dock. She stated she had done nothing wrong and was under pressure at the time she made her statement. She stated she does not and never used “these things”. Thereafter both parties made submissions.

[13] Having thus analysed the evidence before court, it is clear that agent Moumou had seen the accused Patricia Dine place a red plastic under the cushion of the sofa when the NDEA agents had been knocking at the front door. On going inside he had retrieved the red plastic and opened the red bag and had come across herbal material which the Government Analyst had identified as Cannabis. The other substance and powders found had been identified as containing heroin. Witness identified in open court the exhibits P4 to P11 as that taken into custody by him that day which had been in the red plastic P4 which the accused had placed under the cushion of the sofa.

[14] The evidence of Terry Florentine and agent Sanders too corroborate the finding of the red plastic bag with the controlled drugs inside. It is apparent that in addition to seeing her place the red plastic bag with the controlled drug under the cushion, the accused had

admitted after caution that the controlled drug was hers for her consumption and did not belong to any member of her family. She had also after being cautioned admitted same to agent Florentine.

- [15] In addition when one considers her statement under caution, it is apparent she admits that the controlled drugs were for her consumption. It is trite law that prior to accepting the statement under caution the material facts that point to the guilt of the accused must be corroborated by independence evidence.
- [16] The fact that the accused attempted to hide the red plastic bag as set out in her statement is corroborated by the evidence of agent Moumou of the NDEA. She states that the controlled drugs namely Heroin and Cannabis herbal in the red plastic were for her consumption. The fact that what was found in the plastic bag was in fact Heroin and Cannabis as mentioned by the accused in her statement, is corroborated by the analyst who analysed and identified the contents of the red plastic bag. Further the evidence of agents Moumou and Florentine also affirm the fact that the accused admitted that the drug was hers even after being cautioned from the time of arrest.
- [17] The chain of custody of the exhibits is clearly established from the evidence of agent Moumou and the Government Analyst. Mr. Bouzin identifies the exhibits as that analysed by him and brought to him for analysis by agent Moumou, while agent Moumou too identifies all the exhibits in open court as that taken into custody by him after the accused had attempted to hide it under a cushion on the sofa. It is also evident from the evidence of the analyst that the seal placed by him after analysis on the evidence bag containing the exhibit was still intact showing that the exhibit had not been tampered with after analysis. This court is satisfied that the chain of custody in respect of the detection, taking into custody, analysis and production in court of the exhibit has been established beyond reasonable doubt by the prosecution. Further the evidence of the analyst and his report affirm the fact that the red plastic contained in total 10.7 grams of Cannabis herbal and 1.6 grams of pure heroin.
- [18] When one considers the corroborated evidence of the prosecution, it is apparent though the prosecution witnesses were subject to lengthy cross examination no material

contradictions of any nature were observed. For all the aforementioned reasons this court proceeds to accept the corroborated and uncontradictory evidence of the prosecution.

[19] The evidence of the accused namely her unsworn statement from the dock where she stated she had done nothing and stated she does not and never used “these things” is completely contradictory to her statement under caution which has been accepted as evidence in this case. Further although she states she was pressurised to give a statement, after the *voire dire* it was held that the statement had been given voluntarily by her. Learned counsel has sought to revisit the *voire dire* and urge court that the statement under caution was not given voluntarily, however for reasons contained in its ruling, this court is satisfied beyond reasonable doubt that it was given voluntarily by the accused. Further though released on bail and having the assistance of counsel she has not sought to make any contemporaneous complaint against any of the agents to the higher officers that she had been framed falsely by these officers. I therefore proceed to reject the defence.

[20] The concept of possession connotes two elements, the element of custody or mere possession and the element of knowledge as held in the case of *DPP v Brooks (1974) A.C. 862*. With regard to the element of knowledge it is evident that the accused had attempted to conceal the controlled drugs under the cushion of the sofa when the NDEA officers had knocked on the door. This clearly establishes the fact that the accused had knowledge of the fact she was in possession of controlled drugs.

[21] For all the aforementioned reasons this court is satisfied that the prosecution has proved all the elements of the charges in both counts against the accused beyond reasonable doubt. Therefore this court will proceed to find the accused guilty of the charges contained in counts 1 and 2 and convict her on both counts.

Signed, dated and delivered at Ile du Port on 23 January 2014

M Burhan
Judge of the Supreme Court