

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 33/2013

Appeal from Magistrates Court decision 333/2012

[2014] SCSC

ANDY CHARLES

Appellant

versus

THE REPUBLIC

Heard: 25th June 2014, 24th July 2014, 31st July 2014

Counsel: Mr. Nicole Gabriel Attorney at Law for the Appellant

Mr. Ananth, Assistant Principal State Counsel for the Respondent

Delivered: 25 September 2014

JUDGMENT

Burhan J

[1] The Appellant was charged in the Magistrates' Court as follows;

Count 1

Possession of a Controlled Drug contrary to Section 6 (a) as read with Section 26 (1) (a) and Punishable under Section 29 (1) of the Misuse of Drugs Act Cap 133.

The particulars of offence are that Andy Charles, on the 2nd day of July 2010, at Chetty's Flat compound, at Anse Aux Pins, Mahe, was in his possession 9 milligrams heroin "diamorphine", a controlled drug.

[2] The Appellant was found guilty after trial, convicted and sentenced to a term of 6 years imprisonment by the learned Senior Magistrate Mrs. S. Govinden.

[3] The Appellant seeks to appeal from the said conviction and sentence on the following grounds;

"The conviction is unsafe and unsatisfactory in that the learned Senior Magistrate failed to evaluate fully the circumstances by which the drugs were said to have been found in the possession of the Appellant.

The sentence of six years imposed by the learned Senior Magistrate is manifestly harsh and excessive given that the drugs in question weighed a mere 8 milligrams. The sentence does not reflect recent patterns of sentencing for similar offences involving similar quantities of heroin before the courts in this jurisdiction.

The learned Senior Magistrate failed to consider the fact that the Appellant had spent eight months on remand prior to his conviction and had proceeded to impose a manifestly harsh sentence of six years.

The learned Senior Magistrate before passing sentence should have looked into the special circumstances as provided in law as to why the minimum mandatory sentence should not be imposed."

[4] The background facts of the case are that the Appellant had been observed by agent Roderick Raminoson of the NDEA (National Drug Enforcement Agency) while conducting a raid on the 2nd of July 2010 around 9 p.m at the Chetty Flats Anse Aux Pins, dropping a piece of paper. He had done so on noticing the NDEA agents. Agent Raminoson had picked up the piece of paper and found it to contain a powder which the agent suspected to be heroin.

- [5] The Appellant was thereafter arrested and charged in court for being in possession of 9 milligrams of heroin ‘diamorphine’ a controlled drug.
- [6] It is clear on a reading of the judgment in her reasoning the learned Senior Magistrate has considered the issue of identity of the Appellant. She has considered the fact that there was sufficient light for the Appellant to be identified as the lights in the Chetty flats were on and the agents possessed torches. She has come to a finding therefore the agents could clearly see what the Appellant was doing. I see no reason to disturb her findings on these issues.
- [7] The learned Senior Magistrate has carefully analysed the evidence in respect of the chain of custody of the exhibit namely the controlled drug taken into custody. It is apparent that the learned Senior Magistrate, after careful consideration of the evidence before her has satisfied herself that the controlled drug taken into custody from the Appellant was the same that was analysed by the Government Analyst Mr. Bouzin and found to be heroin ‘diamorphine’ and produced in court as an exhibit. I am satisfied with her reasoning which has not been seriously challenged by the defence.
- [8] The learned Senior Magistrate has further looked for corroboration and has been satisfied that the evidence of the detecting officer Raminoson has been corroborated by the evidence of the other officers. Further the evidence of the Government Analyst clearly establishes the fact that the said controlled drug taken into custody from the Appellant was confirmed to be heroin “diamorphine’ after he analysed same.
- [9] I see no reason as to why the learned Senior Magistrate’s findings in respect of same should be set aside. This court will not seek to interfere with the findings of the trial judge in respect of the truthfulness of the witnesses as it is not apparent that the testimonies of these witnesses in this instant case are so improbable that no reasonable tribunal would believe it ***Eddison Alcindor v The Republic SC. Cr. App, Side No. 20 of 2008.***
- [10] Having thus considered the judgment of the learned Senior Magistrate and for the aforementioned reasons, the submission of learned counsel that the conviction is unsafe

and unsatisfactory as the learned Senior Magistrate failed to evaluate fully the circumstances by which the drugs were said to have been found in the possession of the Appellant bears no merit.

- [11] I will next proceed to deal with the question of sentence.
- [12] The law as it stood at the commission of the offence prescribed a minimum mandatory term of imprisonment of 5 years for the charge for which the Appellant was found guilty and convicted. The learned Senior Magistrate has addressed her mind to the fact that no exceptional circumstances exist for a lesser term to be given.
- [13] It is apparent that the learned Senior Magistrate has not felt constrained in that she could not give a lesser sentence as the law prescribed a minimum mandatory term of 5 years imprisonment. She has correctly addressed her mind to the fact that the offence for which the Appellant was convicted was a serious offence which in the view of this court is correct as the controlled drug set out in the charge is a Class A drug heroin 'diamorphine'. She has also addressed her mind to the need for a deterrent punishment as the offence is "rampant" in the country. I see no ground to interfere with her findings in this respect.
- [14] The fact that recent patterns of sentencing for similar offences is different has no bearing as sentencing should be decided depending on the facts of each case and based on the prevailing law at the time the offence was committed. In the case of **Aaron Simeon v The Republic SCA 23 /09** a sentence of 7 years imprisonment was imposed by the Seychelles Court of Appeal having found the Appellant guilty of the lesser charge of Possession of 0.0976 grammes of heroin 'diamorphine'.
- [15] Learned counsel for the Appellant also referred to Article 19(4) of the Constitution of Seychelles and Article 15 of the International Covenant on Civil and Political Rights which reads as follows-

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the

commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”

[16] Although a part of this Article is enacted in Article 19 (4) of our Constitution, “*If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby*” has not been.

[17] Learned Counsel also contended that Article 48 of our Constitution sets out that, when interpreting a provision of this Chapter, a Court shall take judicial notice of the international obligations containing these obligations. However as there is no such provision referring to offenders benefiting from lighter penalties coming into force subsequent to the commission of the offence in our Constitution, it is the view of this court that Article 48 of our Constitution cannot be applied as no such provision exists within our Constitution to be interpreted in accordance with Article 48.

[18] For the aforementioned reasons the appeal against conviction and sentence is dismissed. The conviction and sentence imposed by the learned Senior Magistrate is affirmed.

Signed, dated and delivered at Ile du Port on 25 September 2014

M Burhan
Judge of the Supreme Court