IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 43/2013

Appeal from Magistrates Court decision 752/2011

[2014] SCSC

DAVIS NANCY
Appellant

versus

THE REPUBLIC
Respondent

Heard: 23rd May 2014 and 22nd of July 2014

Counsel: Mr. Nicole Gabriel Attorney at Law for appellant

Ms. Brigitte Confait, State Counsel for the Republic

Delivered: 28 October 2014

JUDGMENT

Burhan J

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

Count 1

Possession of Controlled drugs 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 the offence are that Davis Nancy, on the 20th of August 2010, at Les Mamelles, Mahe, had in his possession 15 milligrams of heroin (diamorphine) a controlled drug.

[2] The Appellant was found guilty after trial, convicted and sentenced to a term of 5 years imprisonment by the learned Senior Magistrate Mrs. S. Govinden.

[3] Learned Counsel for the Appellant although he initially sought to appeal from the said conviction and sentence subsequently on the 12th of April 2013 amended the notice of appeal to that of sentence only. The main grounds set out by him are-

a) *The sentence of five years imposed by the learned Senior Magistrate is manifestly harsh and excessive given that the drugs in question weighed a mere 15 milligrams. The sentence does not reflect recent patterns of sentencing for similar offences involving similar quantities of heroin before the courts in this jurisdiction.*

b) *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 law as it stood at the commission of the offence prescribed a minimum mandatory term of 5 years imprisonment for the charge for which the Appellant was found guilty and convicted.

[5] The learned Senior Magistrate has correctly addressed her mind to the fact that no exceptional reasons existed for a lesser term to be given. As submitted by learned counsel for the Respondent exceptional reasons are reasons attached to the offence and not to the offender ***Peter Lucas v The Republic SCA 12 of 2005.*** It is apparent that the learned Senior Magistrate having considered the plea in mitigation 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. It is apparent that she has decided that no circumstances existed for her to act on the principles laid down in the case of ***Jean Frederick Ponoo v The Attorney General SCA 38/2010*** and impose a term lesser than the minimum mandatory

term of imprisonment. Considering the facts stated in the plea in mitigation, I see no reason to interfere with her finding.

[6] The learned Senior Magistrate has 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" and the dangers of controlled drugs on society especially the young and future generation of this country.

[7] 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'.

[8] 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."

[9] 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.

[10] 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.

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

Signed, dated and delivered at Ile du Port on 28 October 2014

M Burhan
Judge of the Supreme Court