IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 77/2013

Appeal from Magistrates Court decision 01/2013

[2015] SCSC 179

JULES LABROSSE
Appellant

versus

THE REPUBLIC
Respondent

Heard: 10 November 2014

Counsel: Mr. Antony Derjacques Attorney at Law for Appellant

Mr. Chinasamy Jayaraj, Assistant Principal State Counsel for the Respondent

Delivered: 12 June 2015

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 Jules Michel Labrosse, residing at Roche Caiman, Mahe, on the 22nd of December 2012, at Montagne Posee Prison, had in his possession 1.43 grams of heroin diamorphine, a controlled drug.

Count 2

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 Jules Michel Labrosse, residing at Roche Caiman, Mahe, on the 22nd December 2012, at Montagne Posee Prison, had in his possession 20.3 grams of cannabis resin, a controlled drug.

[2] After trial the Appellant was found guilty on both the aforementioned Counts and on conviction was sentenced to a term of 6 years imprisonment on Count 1 and to a term of 2 years imprisonment on Count 2. The learned Magistrate made further order that both terms of imprisonment run concurrently.

[3] Learned counsel for the Appellant has appealed from the said conviction and sentence on the following grounds as set out in his amended Memorandum of Appeal dated 13th January 2014.

a) *"Material contradictions exist in the evidence as deponed by the prosecution witnesses.*

b) *Material evidence was not produced in relation to the said trousers as deponed and in particular to the said waist band of the trousers.*

c) *The witnesses in their testimony showed doubt as to the evidence and testimony of other witnesses in their questions as to whether or not the drugs was indeed found on the Appellant.*

d) *The learned Magistrate erred in principle in sentencing the Appellant to six years of imprisonment in that he was a first offender and the law provides a minimum mandatory sentence of 5 years of imprisonment for a second offender. The*

sentence in all the circumstances was therefore harsh and excessive and wrong in principle.

e) *the sentence was manifestly harsh and excessive in all circumstances of the case".*

[4] The background facts of the case are that the Appellant who was a warden at the prison at the time of his arrest had reported for duty on the 22nd of December 2012 and as was the usual procedure was subject to a search prior to assuming duties. During the search which was conducted by warden Daniel Octobre in the office of the officer in charge of the prison at that time, namely Chief Inspector (CI) Dogley and in the presence of CI Dogley himself, 2 dark substances wrapped in cling film and 3 small pieces in yellow plastic were detected in the waist band of the trouser the accused (Appellant) was wearing. The said substances were sent for analysis and identified as Cannabis Resin and Heroin (Diamorphine) respectively by the Government Analyst Mr. Jemmy Bouzin.

[5] It is apparent the learned Magistrate had come to his finding that the charges had been proved beyond reasonable doubt against the Appellant by relying on the evidence of witnesses Daniel Octobre a warden attached to the prison, Chief Inspector Dogley the officer in charge of the prison at the time of the detection and Nabaraj Dahal a prison supervisor and the admissions in the statement under caution made by the Appellant which was produced unchallenged as exhibit PE1.

[6] It is the contention of learned counsel for the Appellant that material contradictions existed in the evidence of the prosecution witnesses, in that Daniel Octobre a prison warden, first stated the controlled drug was found on the waist of the trouser of the Appellant and thereafter stated it was in the waist band when he seized it. On a reading of the entirety of the evidence, it is apparent that witness Ocotbre on carefully checking the trouser which had been removed had come across the controlled drug on the waist band and thereafter in his evidence further clarifies the fact that it was found inside the waistband. The evidence of Chief Inspector Dogley corroborates this fact as he gives further details that the controlled drug was found inside a slit in the waistband of the

trousers of the Appellant. Therefore in the view of this court this amounts to a clarification of his own evidence by witness Daniel Octobre rather than a contradiction.

[7] Further it is the contention of learned counsel that the witnesses "showed doubt" under cross examination and "literally questioned each other in their evidence". Learned counsel for the Appellant submitted this was apparent when the Chief Inspector Mr. Dogley who was present at the time the Appellant was being searched, asked Daniel Octobre who had searched the Appellant and detected the controlled drug twice "is it true you have seen the substance in the accused's trouser".

[8] Even though these questions were admitted by witness Daniel Octobre, it does not in any way indicate that the evidence of witness Daniel Octobre is of a contradictory nature and should be therefore totally disregarded. His evidence on all material matters regarding the detection has not been of a contradictory nature. In fact a large material part of his evidence leading to the detection stands corroborated by the evidence of Chief Inspector Dogley and Supervisor Nabaraj Dahal and it is to be observed that very material facts stated by all the prosecution witnesses which the defence states are contradictory and doubtful have been admitted by the Appellant in his own statement under caution.

[9] When one considers the statement under caution made by the Appellant which was admitted as evidence without being challenged, the Appellant categorically admits he was given something that was round and about the length of his finger and was wrapped in cling film and yellow plastic to be given to a prisoner. He admits he had put it inside the waist of his trouser in an effort to hide it. He admits the search was done on him by the officers who gave evidence and admits witness Octobre found the small packet hidden in the waist of his trouser. The Appellant further admits he saw the contents as described by the prosecution witnesses after the detection was made.

[10] In the light of all these admissions, one cannot say the failure of the prosecution to produce the trouser in which the controlled drug was hidden is fatal to the case of the prosecution or that the evidence given by witness Daniel Octobre was of a doubtful

nature or "showed doubt" and therefore should be disbelieved, when most of the material facts are admitted by the Appellant himself.

[11] When one considers all the aforementioned evidence, admissions made by the Appellant and the evidence of the Government Analyst Mr. Bouzin positively identifying the substances taken into custody from the Appellant as Cannabis Resin and Heroin (Diamorphine), the learned Magistrate (Mr. Labonte) cannot be faulted for coming to a finding that the elements of both charges have been proved beyond reasonable doubt.

[12] I also observe the learned Magistrate has addressed his mind to the chain of evidence in respect of the custody of the exhibit from the time of detection till it was produced in court and come to a finding that no tampering could have been caused to the said exhibit. I see no reason to disturb his findings in respect of same.

[13] This court, will not seek to interfere with the findings of the learned Magistrate in accepting the evidence of the prosecution as on considering the evidence of the prosecution, it is not apparent that the witnesses' testimonies in this instant case are so improbable that no reasonable tribunal would believe it. ***Eddison Alcindor vs The Republic SC. Cr. App, Side No. 20 of 2008 and Akbar v R (SCA 5/1998).***

[14] For the aforementioned reasons the appeal against conviction stands dismissed.

[15] The learned Magistrate having convicted the Appellant has proceeded to sentence the Appellant to a term of 6 years imprisonment on Count 1 and to a term of 2 years imprisonment on Count 2. He further made order that both terms of imprisonment run concurrently. In his reasoning in passing the sentence, the learned Magistrate has addressed his mind to the fact that the Appellant was a prison warden who had been in breach of his duty in attempting to smuggle into the prison controlled drugs.

[16] I am inclined to agree with the learned Magistrate and the fact that the Appellant was a prison warden attempting to take into the prison controlled drugs (both class A and B drugs) is a strong aggravating factor which warrants suitable deterrent punishment to

prevent repetition of such offences by persons who are entrusted to such office and as pointed out by learned counsel for the Respondent the term of imprisonment imposed is very much less than the maximum term that could have been imposed.

[17] Considering these facts I am of the view that the sentence of the learned Magistrate is not harsh and excessive but just and appropriate and proportionate to the seriousness of the offence. The medical certificate produced by learned counsel for the Appellant dated 23rd June 2014 does not disclose any serious ailment but indicates he has had an infection in his urinary tract and prostrate which has improved significantly after treatment with antibiotics.

[18] For the aforementioned reasons the appeal against sentence is dismissed and both the conviction and sentence of the learned Magistrate is upheld.

Signed, dated and delivered at Ile du Port on 12 June 2015

M Burhan
Judge of the Supreme Court