

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO15/2015


[2016] SCSC 501

THE REPUBLIC

versus

MONICA RIGIRI BRIOCHE

Accused

Heard: 27 June 2016
Counsel: Mr. Vipin Benjamin, Assistant Principal State Counsel for the Republic
Mr. Clifford Andre Attorney at Law for the accused
Delivered: 12 June 2016 

SENTENCE

Burhan J

- [1] The convict Monica Rigiri Brioché pleaded guilty to the offence of possession of a quantity of 15.65 (purity 6.75) grams of controlled drug namely Heroin a charge framed under the Misuse of Drugs Act (MODA) CAP 133. The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016 (hereinafter referred to as the new Act) with saving clauses as contained in section 55 (1) of the new Act.
- [2] In the case of *Cousin v R SCA 21 of 2013* and in the case of *Kelson Alcindor v R [2015] SCCA 7*, it was held that the Appellant should benefit from the change of law in his

favour, along the principle of “*la peine la plus douce.*” – See *Aubeeluck Gangasing v The State of Mauritius [2010] UKPC 13*. The Appellants’ sentence in both cases were reduced to be in conformity with the amended law which was beneficial to the Appellants. Further Section 51 (2) of the new Act states outstanding sentences under the earlier Act, must be reviewed in accordance with the new MODA.

- [3] Therefore, based on the aforementioned case law and law as contained in the new Act, this court will take into consideration the benefits applicable to the convict brought about by the change of law. Under the old law the convict was liable on Count 3 to a maximum penalty of 15 years imprisonment and a fine of SCR 300,000.
- [4] Under the old MODA and the new Act there is no minimum mandatory term of imprisonment for Count 3 for a 1st offender. I further note from the facts before me that no aggravating circumstances, as set out in section 48 of the new Act exist in this case. Further as the quantity is below 250 grams, the offence cannot be considered to be aggravated in nature. Therefore, as the offence is not aggravated in nature on consideration of the amendment to the Prisons Act brought about by Act 6 of 2016, the convict will benefit from the new amendment to the said Act, in that she will be entitled to remission.
- [5] I have considered the plea in mitigation made by learned counsel for the convict. The quantity of controlled drug concerned in this case is 15.65 grams in total, containing 6.75 grams of pure Heroin. The convict has pleaded guilty to the lesser charge of possession without proceeding to trial, thereby saving the time of court and by doing so expressed remorse. The convict is a first offender. Having considered the plea in mitigation made on behalf of the convict, I observe the convict in this case is 59 years of age and has expressed remorse and regret by pleading guilty at the first instance. She has a few medical conditions which she is undergoing treatment for as set out in the medical certificate dated 9th June 2016.
- [6] I also note that the charge is one of possession of a Class A drug Heroin and there are no facts before court to indicate that the convict is a drug dependent person who needs rehabilitation. The pure quantity of Heroin concerned is 6.75 grams. Although the charge

is one of possession, I am satisfied that a non- custodial term would be inappropriate, considering the background facts of this case as mentioned by learned counsel for the prosecution, at the time of taking the plea which were accepted by the convict.

- [7] On consideration of all the aforementioned factors, I proceed to sentence the convict to a term of 3 ½ (three and a half) years imprisonment and a fine of SR 20,000/ (twenty thousand). In default of payment of the fine of SR 20,000, the convict is sentenced to a further term of 6 months imprisonment which would run consecutive to the term of 3 ½ years imposed herein.
- [8] Time spent in remand by the convict to count towards sentence. Further the convict will be entitled to remission as the offence is not aggravated in nature.

Signed, dated and delivered at Ile du Port on 12 June 2016


M Burhan
Judge of the Supreme Court