

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 83/2014

[2016] SCSC 586

THE REPUBLIC

versus

CHARLES FABIEN

First Accused

GERARD MARDAY

Second Accused

SYLVESTER BARREAU

Third Accused

ALEJANDRO GARRAZAN

Fourth Accused

ANDRE NANCY

Fifth Accused

Heard: 9 August 2016
Counsel: Ms. Brigitte Confait, State Counsel for the Republic
Mr. Leslie Boniface Attorney at Law for the first accused
Mr. Danny Lucas Attorney at Law for the second accused
Mr. Nichol Gabriel Attorney at Law for the third and fifth accused
Mr. Divino Sabino Attorney at Law for the fourth accused
Delivered: 10 August 2016

SENTENCE

Burhan J

- [1] The convict Charles Mervin Fabian, pleaded guilty and was convicted on the following charges namely trafficking in a quantity of 481.1 grams of a controlled drug Cannabis, trafficking in a quantity of 6,388.9 grams of a controlled drug namely Cannabis and conspiracy to commit the offence of trafficking in a quantity of 6,388.9 grams of Cannabis, all three charges 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 The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016 (hereinafter referred to as the new Act) with saving clauses as contained in section 55 (1) of the new Act.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, it is the duty of this court in passing sentence to ensure the benefits applicable to the convict brought about by the change of law are considered.
- [4] Under the old law, the penalty for such an offence was a mandatory term of life imprisonment. Under the new Act however there is no mandatory term of life imprisonment for the said offence and the convict is liable to a maximum of 50 years imprisonment and a fine of SR 500,000.
- [5] I further note however that the quantity of controlled drug is over 1.5 Kg and hence the offence is aggravated in nature. Therefore the benefit of remission as brought about by the change in law will not benefit the convict.
- [6] I have considered the plea in mitigation made by learned counsel for the convict. The quantity of controlled drug concerned in this case is 6,388.9 grams. The convict has pleaded guilty, thereby saving the time of court and by doing so expressed remorse. The convict is

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a 1st offender. Having considered the plea in mitigation made on behalf of the convict, I note he is 40 years of age and the father of 3 children. Learned counsel also drew the attention of court to the case of *The Republic v Jimmy Luc Waye-Hive* where the convict who was in possession a quantity of 7 Kg 751.4 grams was sentenced to a term of 5 years imprisonment. However it is to be observed the charge in the Waye-Hive case, referred to by learned Counsel was in respect of the lesser offence of possession and not conspiracy to traffic or traffic as in this instant case.

- [7] Considering the above mentioned mitigating factors and the fact that the controlled drug is a Class B drug while at the same time considering the large quantity of controlled drug taken into custody 6,388.9 grams and the seriousness of the charges, I proceed to sentence the convict to a term of 6 (six) years and 6(six) months imprisonment and a fine of SR 10,000/ (ten thousand) on each of the three counts. I make further order that the terms of 6 years 6 months imprisonment imposed on all three counts run concurrently. In default of payment of the total fine of SR 30,000/ (thirty thousand), the convict is to serve a term of 6 (six) months imprisonment to run consecutive to the term of 6 years 6 months imprisonment imposed herein.
- [8] Time spent in remand to count towards sentence. I make further order that the convict is NOT entitled to remission as the offence is aggravated in nature.
- [9] Copy of this order to be attached to the warrant of commitment.

Signed, dated and delivered at Ile du Port on 10 August 2016


10-08-2016

M Burhan
Judge of the Supreme Court