

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 83/2014**

[2016] SCSC 587

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**THE REPUBLIC**

versus

**CHARLES FABIEN**

First Accused

**GERARD MARDAY**

Second Accused

**SYLVESTER BARREAU**

Third Accused

**ALEJANDRO GARRAZAN**

Fourth Accused

**ANDRE NANCY**

Fifth Accused

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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

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**SENTENCE**

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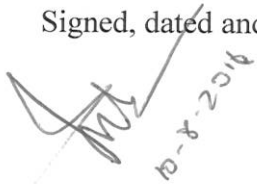
## Burhan J

- [1] The convict Andre Wilton Nancy pleaded guilty to the offences of trafficking and conspiracy to traffic in a quantity of 6,388.9 grams of a controlled drug namely Cannabis, 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 The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016 (hereinafter referred to as the new Act) with saving clauses as contained in section 55 (1) of the new Act.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 therefore 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 a 1<sup>st</sup> offender. Having considered the plea in mitigation made on behalf of the convict, I note he is 62 years of age and the father of 3 children. Most importantly, I note that the

convict has co-operated with the NDEA officers resulting in the arrest and successful conviction of one of the principal offenders in the case, the 1<sup>st</sup> accused.

- [7] Considering the above mentioned strong mitigating factors which are present in regard to this particular convict and the fact that the controlled drug concerned is a Class B drug, I proceed to sentence the convict to a term of 5 (five) years imprisonment and a fine of SR 10,000/ (ten thousand) on each of the two Counts 3 and 4. I make further order the terms of 5 years imprisonment run concurrently. In default of payment of the total fine of SR 20,000 (twenty thousand), the convict is to serve a term of 6 months imprisonment to run consecutive to the total term of 5 years 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

A handwritten signature in black ink, appearing to be 'M Burhan', is written over a diagonal line. To the right of the signature, the date '10-8-2016' is written vertically.

M Burhan  
**Judge of the Supreme Court**