

# SUPREME COURT OF SEYCHELLES

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## **Reportable**

[2020] SCSC 329

Cr. S. 05/2019

In the matter between

### **THE REPUBLIC**

*(rep. by Ananth Supramanian)*

and

### **1. FRANCISCA SAMEJA**

*(rep. by Nichol Gabriel)*

### **2. DOMINIC DUGASSE**

*(rep. by Clifford André)*

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**Neutral Citation:** *R v Sameja & Anor* Cr S 05/20 [2020] SCSC 329 June 2020

**Before:** Twomey CJ

**Summary:** Second Convict- aiding and abetting another to traffic in a controlled drug namely 156.86 grams of pure heroin - plea of guilty-sentence

**Heard:** 15 June 2020

**Delivered:** 22 June 2020

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## **SENTENCE**

The Second Convict is sentenced to eight years' imprisonment. Time spent on remand will be taken into account for the reduction of the terms of sentences to be served. The Second Convict is also entitled to remission if he is of good behaviour whilst serving his term of imprisonment.

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### **TWOMEY CJ**

[1] The two accused were originally charged together on 20 January 2020 on different counts of trafficking, conspiracy and aiding and abetting in the trafficking of controlled drugs.

[2] The Second Convict subsequently pleaded guilty to aiding and abetting the First Accused on or around 6 January 2020 to traffic in a controlled drug by intending to transport from

Mahé to Praslin, a substance having the total weight of 447.45 grams and which contained a controlled drug namely heroin with the average purity of 37.5% and having a total heroin content of 156.85 grams contrary to section 15 (1) (a) and punishable under Section 7 as read with section 48 (1) (a) of the Misuse of Drugs Act 2016 (MODA).

- [3] The facts of this case as summarised by Learned State Counsel, Mr. Soopramanian, are that on 8 January 2020 the Anti-Narcotics Bureau (ANB) received credible information that the First Accused was in possession of a large quantity of drugs and that she was transporting the same to Praslin. She was observed by the ANB at the inter-island quay on Mahe and her handbag searched wherein two packets of a substance wrapped in cling film was found and seized. The First Accused informed the ANB that the drugs belonged to the Second Accused. The drugs were analysed and the analysis revealed the weight of the substance as being 447.45 grams with a purity of heroin of 156.85 grams. During the investigation whilst the First Accused was held he received phone calls from the Second Accused and at around 8 pm that evening the Second Accused was arrested whilst seated in the front passenger seat of a car. He dropped some cling film in which 60 notes of SR100 and 36 notes of SR 500 was recovered and the notes seized. His mobile phone was seized and analysis of this phone's records revealed that he had in fact communicated with the First Accused.
- [4] The First Accused accepted the facts as stated by Counsel for the prosecution but added that the drugs seized from the First Accused were not his.
- [5] Mr. André, Counsel for the Second Accused requested that a probation report be obtained in respect of the Second Accused.
- [6] The report states that the Second Accused is 41 years old and prior to his arrest was working as a stevedore on a casual basis with his uncle.
- [7] He has two children aged 18 and 12 with a previous partner and is now in a relationship with his girlfriend who is 2 months pregnant. He admits the offence and explained that he committed the offence as a favour for a friend. He has expressed his apology and remorse for the crime and has pleaded for mercy and leniency and prays for a lenient sentence

especially given the pregnant state of his partner. His partner has also asked for clemency on his part.

- [8] In a mitigation address, learned Counsel for the Second Convict submitted that his plea of guilty is perhaps the biggest mitigating factor in the sense that he is showing remorse and has not wasted the court's time.
- [9] He was convicted on 2 December 2010 to twelve years' imprisonment for aiding and abetting the trafficking of a controlled drug and conspiracy to commit the offence of trafficking in a controlled drug and served the prison sentence and was released on 14 May 2018 after a review of his sentence by the Misuse of Drugs Act (MODA) Review Tribunal (the Tribunal).
- [10] Section 3 (1) (a) of the Rehabilitation of Offenders Act provides that certain previous sentences may be regarded as spent unless the sentence is one that is excluded under the Schedule to the Act. The Schedule provides, inter alia, that sentences over 60 months are to be deemed excluded for the purposes of rehabilitation and their consideration as spent.
- [11] Further, section 51(9) of MODA 2016 provides that the Tribunal established under the Act may confirm a current sentence or vary it by reducing the time to be served in prison. I am of the view that the terminology "vary" would result in the substitution of the original sentence with the one imposed by the Tribunal. In this regard, the sentence for the first conviction in the instant case is therefore 48 months, not an excluded sentence and is considered a spent sentence after the term of imprisonment has been served.
- [12] I therefore consider the present conviction as a first conviction and there is no aggravating factor in that respect. However, the presence of a commercial element in this case, that is the amount of drugs found and the money recovered from the Second Accused would amount to an aggravating factor under section 48(a) of MODA and is significant enough to be taken into account by the Court under section 48 (2) of MODA.
- [13] The provisions of section 15 of MODA with which the accused has been convicted makes it clear that the penalty for the offence of aiding and abetting the trafficking of a drug by another person is the punishment for the offence of trafficking. In this regard, the

Second Schedule of MODA prescribes the maximum penalty for the offence with which the Second Accused has been charged as life imprisonment and/ or a fine of SCR750,000.

[14] I take into consideration the mitigation speech by learned counsel on behalf of the Second Accused. I note that at the very outset of the case that he has pleaded guilty, thereby expressing remorse and regret and has not wasted the court's precious time. He expects the mercy and leniency of the Court.

[15] I also note that the amount of pure drug content was 156.85 grams and the agreed and adopted sentence guidelines for a quantity of more than 50 grams up to 200 grams of Class A drugs is a sentence of 8 to 12 years' imprisonment. The amount of drugs recovered is therefore at the higher level of the scale.

[16] In *R v Jules* (CO51/2017) [2018] SCSC 319 (03 April 2018), the accused was convicted on a guilty plea for the importation of a substance containing 67.72 grams of pure heroin, and received a sentence of seven years' imprisonment. In *R v Lenclume* (CO58/2017) [2019] SCSC 307 (11 April 2019) after a conviction for the importation of 126.3 grams of heroin, the accused was sentenced to a term of 8 years' imprisonment; in *R v Casime & Casime* (CO72/2017) [2019] SCSC 137 (22 February 2019), a sentence of five years; imprisonment was imposed for the offence of aiding and abetting the importation of 69.19 grams of pure heroin.

[17] In keeping with the authorities above and bearing in mind both the mitigating and aggravating factors, I sentence the Second Convict to 8 years' imprisonment.

[18] I further order that the time spent in remand count towards sentence. The convict is entitled to remission if he is of good behaviour whilst serving his term.

[19] The Second Convict has the right of appeal against both conviction and sentence within thirty working days of this order.

Signed, dated and delivered at Ile du Port on 22 June 2020.

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Twomey CJ