

SUPREME COURT OF SEYCHELLES

Reportable 631
[2020] SCSC
CO18/2019

In the matter between:

THE REPUBLIC
(*rep. Chinnasamy Jayaraj*)

Republic

and

PERCY CHANG-TAVE
(*rep. by Anthony Juliette*)

1st Accused

NATASIA CHANG-TAVE
(*rep. by Joel Camille*)

2nd Accused

Neutral Citation: *Republic v Chang-tave* (CO18/2019) [2020] SCSC 631 (07 September 2020)
Before: Burhan J
Heard: 22nd 23rd and 25th June 2020, 2nd July 2020 and 21st July 2020
Delivered: 07 September 2020

ORDER

Count 1- Sentenced to a term of six years imprisonment. I also impose a fine of SCR 25,000 (Twenty five thousand rupees). In default of payment of fine a term of 6 months imprisonment is imposed which would run consecutively to the six year term of imprisonment.

Count 5- Sentenced to a term of four years imprisonment and a fine of SCR 25,000 (twenty five thousand). In default of payment of fine, a term of 6 months imprisonment is imposed which would run consecutively to the terms of imprisonment imposed in Count 1.

SENTENCE

BURHAN J

- [1] The convict Natasia Chang Tave was convicted on her own plea of guilt on the following Counts:

Count 1

Trafficking in a controlled drug, by virtue of being found in unlawful possession of a controlled drug namely Heroin (Diamorphine), with intent to traffic, contrary to Section 9 (1) read with Section 19 (1) (c) and read with Section 20 (3) of the Misuse of Drugs Act, 2016 and punishable under Section 7 (1) and the Second Schedule of the said Misuse of Drugs Act.

Count 5

Agreeing with another person or persons that a course of conduct shall be pursued and which pursued would necessarily amount to or involve importing a controlled drug by one or more of the parties to the agreement contrary to Section 16(b) read with Section 5 of the Misuse of Drugs Act, 2016, and punishable under Second Schedule of the Misuse of Drugs Act, 2016.

- [2] The controlled drug referred to in Count 1 is a Class A controlled drug namely heroin and having a net weight of 2569 grams with a purity content of 676.24 grams.
- [3] At the request of learned Counsel for the convict Mr. Joel Camille, a probation report was called and thereafter learned Counsel made a plea in mitigation on behalf of the convict. I will proceed to consider the facts contained in the probation report and the plea in mitigation.
- [4] According to the probation report, the convict is 29 years old. The report indicates, the convict has expressed regret at what she has done and showed remorse for her act by

pleading guilty to the charge. She is expecting leniency from the court and moves court for a community based sentence. The convict who is the 2nd accused in the case, is the wife of the first accused Percy Chang Tave. She has twins aged 6 years old. It appears from the report that the convict obtained entry to the School of Advanced Level Studies where she specialised in English and French. She has been a teacher at the Secondary at Point Larue school for a period of 6 months and though intending to study law had changed her mind and applied for a job at Air Seychelles and worked as a Passenger Service Officer for a year and then as a Parliamentary Reporter. She had thereafter re-joined Air Seychelles where she worked as a member of the cabin crew. She was working as a director in Northern Star Car Hire her father's car hire business, at the time she was arrested.

- [5] It appears the mother of the convict blames the husband for involving her daughter the convict in controlled drugs as he had a strong influence on her. When the convict was young her father had gone to prison and her mother went through depression and eventually fell victim to alcohol. It appears from the report that her two elder sisters were involved in controlled drugs as well and one had passed away 11 years ago.
- [6] Learned Counsel Mr. Camille in mitigation moved for leniency. He stated she was a first offender who had pleaded guilty and saved the precious time of court by doing so. He further stated that her remorsefulness is apparent and supported by the facts set out in the probation report. Learned Counsel further submitted that one of the twins of the convict, is suffering from a chronic respiratory ^{problem} ~~order~~ and referred to a medical certificate filed in a bail application heard by this court. He moved that whatever sentence passed that it not exceed five to six years. He referred to sentences given by this court in **Republic v Nurdine Kamba [2020] SCSC24, Republic v Fabio Soopramanian [2016] SCSC 376**, where in similar circumstances sentences of 6 years were imposed by this Court and moved for leniency in this case too.
- [7] Having considered the aforementioned facts, I am of the view her plea of guilt is a clear expression of remorse and regret at what she has done and by doing so the convict has saved the time of Court. I also take into consideration her early childhood issues and the fact that despite these issues, she has been able to educate herself by specialising in English

and French and been well employed until her arrest for the involvement in controlled drugs. These are strong factors in mitigation.

- [8] The convict did not plead guilty at the very outset of the trial but after trial commenced and after learned counsel had discussion with the Attorney General and the charge was amended. At the time the convict pleaded guilty on the 21 July 2020, it was indicated to learned Counsel Mr. Camille with the prosecution Mr. Esparon present in chambers that the convict would be entitled to remission, as it was believed that the provisions of the Prisons Act, section 30 (2) (b) which section prohibits remission for aggravating offences committed under the Misuse of Drugs Act 1990, did not apply to the new Misuse of Drugs Act 2016. However it appears since then after the convict pleaded guilty, the Seychelles Court of Appeal on the 21st of August 2020 has held that the said provision is applicable to the new MODA 2016 in the case of **Casime & Anor v R 2020 [SCCA]**. **Archbold Criminal Pleading, Evidence and Practice 2008 Edition at para 5-79 (b)** sets out that a judge is not bound to give an indication of sentence but where an indication is given by court in respect of sentence, the court is bound by it.
- [9] Based on earlier sentences given by this court in similar circumstances considering the seriousness of the offence had the convict gone to trial and been convicted, she would have faced a sentence of around 10 to 12 years imprisonment. The recommended sentence of imprisonment for the offence contained in Count 1 is 20 years. Considering the large quantity of controlled drug and the fact that the controlled drug in Count 1 is a Class A drug, I am of the view a custodial term of imprisonment must be given, despite the reference to a community service order by learned Counsel for the convict, relying on the probation report. However, having considered the early plea of guilty of the convict and the factors mentioned in her mitigation plea and probation report, her good educational background despite her childhood issues, the health of her mother and child, the fact she is a first offender and she genuinely expresses remorse which is supported by the probation report and considering the sentencing pattern of this court referred to in paragraph 6 herein, I proceed to sentence the convict Natasia Chang Tave as follows:

[10] **Count 1-** to a term of six years imprisonment. I also impose a fine of SCR 25,000 (Twenty five thousand rupees). In default of payment of fine a term of 6 months imprisonment is imposed which would run consecutively to the six year term of imprisonment.

Count 5- to a term of four years imprisonment and a fine of SCR 25,000 (twenty five thousand). In default of payment of fine, a term of 6 months imprisonment is imposed which would run consecutively to the terms of imprisonment imposed in Count 1.

[11] The six year term of imprisonment in Count 1 is to run concurrently with the four year term of imprisonment imposed in Count 2. If the convict fails to pay the fine, she is to serve a total of 7 years imprisonment, inclusive of the default of payment of fine terms of imprisonment.

[12] Time spent in remand to count towards sentence. Considering the facts peculiar to this case as set out in paragraph 8 herein, the convict is entitled to remission at the discretion of the Superintendent of Prisons.

[13] The fine must be paid in monthly instalments of SCR 5000/, after the convict serves her sentence. She is to be produced in court prior to her release to give a review date for the payment of the fine as ordered above.

[14] Copy of this order to be served on Superintendent of Prisons.

Signed, dated and delivered at Ile du Port on 07 September 2020.


M Burhan J

7-9-2020

