

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC ... 999
CR67/2020

REPUBLIC
(rep. by David Esparon)

Prosecution

and

RONNY APPASAMY
(rep. by Clifford Andre)

1st Accused

DOMINIC ADRIENNE
(rep. by Clifford Andre)

2nd Accused

DERICK JOUBERT
(rep by Clifford Andre)

3rd Accused

PATRICK FRANCOIS
(rep. by Clifford Andre)

4th Accused

JIM BONIFACE
(rep. by Clifford Andre)

5th Accused

CHRISTOPHER AZEMIA
(rep by Karen Domingue)

6th Accused

Neutral Citation: *Republic v Ronny Appasamy & Ors* (CS 67/2020) [2018] SCSC 999 (29 December 2020).

Before: Vidot J

Summary: Trafficking in controlled drugs by means of being found in unlawful possession with intent to traffic, Agreeing to pursue a course of conduct that will involve the commission of an offence under MODA, Aiding and abetting in trafficking in a controlled drug and escaping from lawful custody

Heard: 16 November 2020

Delivered: 29 December 2020

ORDER

Count 2 sentence to 8 years imprisonment

Count 4 sentence to 8 years and 6 months imprisonment

Count 6 sentence to 8 years imprisonment

Count 7 sentence to 2 years imprisonment

SENTENCE

VIDOT J

[1] The Accused are charged and pleaded guilty either singularly or severally of the following offences;

Count 2 (alternative to count 1)

Statement of Offence

Trafficking in a controlled drug, by means of being found in unlawful possession of a controlled drug, contrary to section 9(1) of the Misuse of Drugs Act 2016, read with section 19(1)(d)(i) and section 20(3) of said Act and punishable under section 7(1) of the Misuse of Drugs Act read with the second schedule.

Particulars of Offence

Ronny Alex Appasamy being the skipper of the vessel Allegro, Dominic Errol Adrienne, Derick Patrick Joubert, Patrick Michel Francoise and Jim Rodney Boniface of which all of them are citizens of Seychelles, on the 29th July 2020, on board vessel Allegro a vessel flying the Seychelles flag, at position 05°04.411' S 054° 17 482'E (52nm NE of Desrochess island and 74nm WSW of Mahe Island) being on the high seas were trafficking, by virtue of having been found in unlawful possession of a net weight of 180.32 kg of cannabis herbal materials, which gives rise to the rebuttable presumption of having the said controlled drug with intent to traffic.

Count 4 (in alternative to Count 3)

Statement of Offence

Agreeing with other persons that a course of conduct shall be pursued which if pursued will necessarily amount to or involve the commission of an offence under the Misuse of Drugs Act 2016 by one or more of the parties to the agreement, contrary to section 16(a) of the Misuse of Drugs Act 2016 read with section 7(1) of the same Act and punishable under the Second Schedule of the said Misuse of Drugs Act.

Particulars of Offence

Ronny Alex Appasamy being the skipper of the vessel Allegro, Dominic Errol Adrienne, Derick Patrick Joubert, Patrick Michel Francoise, Jim Rodney Boniface and Christopher Paul Azemia, along with a person known to the Republic, namely Percy Charles Samson, being the owner of the vessel Allegro of which all of them are citizens of Seychelles and along with other persons unknown to the Republic, on or around 23rd 2020 to 29th July 2020 agreed with one another that a course of conduct shall be pursued which if pursued will necessarily amount to or involve the commission of an offence under the Misuse of Drugs Act 2016 by one or more of the parties to the agreement, namely the offence of trafficking in a controlled drug namely 180.32 kg of cannabis herbal material.

Count 6 (in alternative to count 5)

Statement of Offence

Aiding and abetting in the offence of trafficking in a controlled drug contrary to section 15(1)(a) of the Misuse of Drugs Act 2016 read with section 7(1) of the Act and punishable under section 7(1) of the Misuse of Drugs Act 2016 read with the Second Schedule of the same Act.

Particulars of Offence

Christopher Paul Azemia on or around the 23rd January 2020 to 29th July 2020 aided and abetted a person known to the Republic as Percy Charles Samson, being the owner of the

vessel Allegro, Ronny Alex Apassamy being the skipper of the vessel Allegro, Dominic Errol Adrienne, Derick Patrick Joubert, Patrick Michel Francois and Jim Rodney Boniface, all of them being citizens of Seychelles, to commit the offence of trafficking in a controlled drug namely 180.32 kg of cannabis herbal materials.

Count 7

Statement of Offence

Escape from lawful custody, contrary to and punishable to section 116(2) of the Penal Code

Particulars of Offence

Dominic Errol Adrienne, on the 14th August 2020, while being under the lawful custody pursuant to an Order made by the Court, escaped from such custody from the English River Clinic Centre

Before passing sentence, the Accused requested that probation reports pertaining to each of them be obtained. The Accused, it is claimed are all first-time offenders.

- [2] The facts of this case are as per charge sheet but a resume of the facts as narrated by the Counsel for the Prosecution is that the Anti-Narcotics Bureau (“ANB”) had intelligence that controlled drugs related illegal transaction was going on at sea. That involved a vessel named Allegro and owned by Percy Samson. Therefore, decision was taken for the naval vessel Topaz to be deployed and amongst the crew were ANB officers. On the 29th July 2020, further to surveillance work being undertaken, the whereabouts of the Allegro was confirmed. So, they navigated towards the location and when they approached the Allegro, they noticed that some packages were being thrown overboard. They intercepted the Allegro and 8 packages that were floating out at sea were recovered. A crew of 5 that included the 1st to the 5th Accused were on board the Allegro. The crew was arrested and taken back to Mahe. The contents of the packages were analysed and confirmed to be cannabis herbal materials. Through investigation, it transpired that the Allegro belonged to Percy Samson and that he had planned and financed the trip and recruited the crew. The

crew admitted to having knowledge that trip was to collect controlled drugs and that nonetheless they took the risk as most of them were experiencing financial hardship.

- [3] It was also established through investigation that Percy Samson travelled to Mozambique to organize the collection of the drugs. He negotiated with drug traffickers over there, and placed drugs in a safe place and came back to Seychelles, recruited the crew to collect the drugs at sea in the Mozambican waters. He agreed with the accused that they shall pursue a course of conduct that would involve importing and trafficking drugs into Seychelles.
- [4] A phone that was handed over to the ANB by the 6th Accused, Christopher Paul Azemia, revealed incriminating evidence that showed different transactions pertaining to the trip. Mr. Azemia admitted to helping Percy Samson to pick up the crew members for the trip. He also on different occasions effected various bank transactions that involved sending money to people abroad. In fact he was aware of the illegal transactions that Percy Samson was masterminding.
- [5] Mr. Andre, Counsel for the first to the fifth Accused pleaded for leniency for his clients. He noted that his clients pleaded guilty to the charges against them, thereby saving the Court's precious time. It showed that his clients have shown remorse for the offences committed. This shows that they regret having been involved in these offences. In submission he also informed Court that his clients have been very co-operative with the ANB and have helped them with their investigation.
- [6] Mr. Andre then proceeded to elucidate the particulars of each of his clients as presented in their respective probation reports. First, he dealt with the first Accused explaining that he was a then a drug dependent person. Since his arrest in this case he has been on the methadone programme. Mr. Appasamy is 37 years old and a father of two young children. He has been with his partner for the past 11 years. He has throughout his working life been a fisherman and throughout the years of working at sea he has acquired the skill of a skipper.
- [7] Mr. Appasamy used to go fishing in the company of the fourth Accused. Mr. Percy Samson approached him for assistance of work as a skipper on his vessel. He was aware that the

trip involved the collection of controlled drugs. In June 2020, nonetheless, he accepted to be involved in the trip. He alleges that the reason he got involved in the transaction was due to his personal circumstances, which is that due to the covid-19 pandemic he was experiencing financial hardship.

- [8] However, though declaring that he was a first-time offender the probation report revealed that he was sentenced to 6 months in case CR 35/15 for the offence of threatening violence on 12th December 2017. He was released from prison in March 2018.
- [9] Mr. Dominic Adrienne is also 37 years old and a father of two. He was working on a casual basis as a mechanic on the vessel Allegro belonging to Percy Samson. He was approached to undertake the work of mechanic for a charter of approximately 14 days on board the vessel. However, he was aware of the illegal activities that were to be carried out on the trip, but being in need for cash he agreed to take the risk without much thought of the consequences. At that time, he had been informed by the Government that he was to be allocated a house, so he thought that the money will allow him to make certain purchases for the house.
- [10] Mr. Andre submitted that the second Accused was too a drug dependent person but despite that he always tried to maintain his family. The report nonetheless quotes the second Accused as stating that no matter how hard life was, he was earning enough to maintain his family. In the report he also expressed how the use of drugs has proven to have had a negative impact on him but that he is now undergoing the methadone treatment.
- [11] As for the offence of escaping from lawful custody, he says that he was not at that time in the right frame of mind and he was facing withdrawals and he could not see his children and his home.
- [12] In respect of the third Accused, Mr. Andre submitted that the he grew up with his grandmother during childhood. He noted that the Accused was a student at the then National Youth Service, but did only 8 months before he was expelled due to an incident. The Accused had been employed in the water sport industry at Plantation Club Hotel and Reef Hotel. Then he was employed with the National Sports Council. He too claims to be

drug dependant and that since he has been remanded, he has gone on the methadone treatment.

- [13] The third Accused noted to the Probation Officer who compiled his report that he did not find out about the drug transaction only after the vessel was out at sea. He feels that he has been used. He was approached by Percy Samson who informed him that he has a boat that will be undertaking a trip to the outer islands and that he wanted the third Accused to inspect the boat and form part of the crew. However, Percy offered him SR500.00 and informed that after the trip he will not have to struggle for a living as he will be suitably rewarded. He said that at that time his life was in a mess because of his drug addiction and that he was struggling financially.
- [14] The report pertaining to the fourth Accused explained that he is living with a sister after his house was burnt down. After that happened, he was damaged and started to use drugs. Since being remanded he has been on the methadone treatment programme. He has had multiple employment. At the age of 25, he became an artisanal fisherman. He was working on a boat belonging to Antoine Ah-Kon but it was having mechanical problems. The Fourth Accused who is 51 years old stated that the covid-19 pandemic impacted on his income and he found himself in financial instability. There was a drop in the market for fish and therefore it was difficult to sell fish and that caused a drop in the income earning. He was having difficulty making contribution for his living expenses to his sister.
- [15] Therefore, when he was approached to be involved in that drug transaction, he concluded that that was a good opportunity to improve his financial situation. He thought he could get some money to reconstruct his house. However, he now knows that his action was wrong and feels frustrated with himself as he should have made a better decision.
- [16] As regards Jim Boniface, the fifth Accused, he is 43 years old. He is single but has a 15 year old daughter. Throughout most of his working life he has been a fisherman. He also expressed that due to the covid-19 pandemic, particularly during the time that the country was on lockdown, he was out of a job and thus encountering financial difficulties. In his search for a job he met with Mr. Percy Samson and at some point the latter offered him a job. He was asked to accompany other persons for a trip at sea and he was informed that

with his vast experience at sea we could serve as a skipper. However, he was informed that the trip involved illegal drug transactions and he was offered some money for the job.

- [17] The fifth Accused accepts full responsibility for the choice he made but names his financial hardship as the reason for that choice. He was aware of the risks involved.
- [18] The sixth Accused was represented by Ms. Domingue. She submitted that the Accused is 39 years old and a father of six. Only three of the 6 children reside with him and his partner. The sixth Accused comes from a broken home where physical abuse was rife that at an early stage he had to be taken away from home and placed with an uncle's care but then moved on to reside with his grandmother. Despite being subjected to abuse by his father, he was until his arrest taking care of his father.
- [19] The sixth Accused has been employed in various position, such as in the tourism industry, as a traffic warden, as a youth worker and more recently as an unlicensed taxi operator (more commonly known as "pirate taxi").
- [20] The sixth Accused had suffered from drug addiction at different stages of his life. He had to undergo drug detox and rehabilitation programme in South Africa on 3 occasions. However, he has always relapsed and is a drug dependant person and is currently on the methadone treatment programme.
- [21] Ms. Domigue submitted that her client became close to Mr. Percy Samson through his partner. She added that Mr. Samson knew of the Accused drug addiction and exploited that weakness in that he would ask him to perform certain jobs which involved his illegal drugs activity for him and would in return pay his client with cash and drugs, thereby feeding into the Accused's addiction. Mr. Samson lured the sixth Accused to be involved in the transactions. She also explained the negative impact that his continuing detention is having on the family and particularly his children one of whom has started manifesting behavioural problem and is being bullied at school.
- [22] Therefore, Ms. Domingue called on the court to show leniency to his client and not to impose a prison term on him.

- [23] In considering the appropriate sentence to meet out I have considered all matters raised in submissions by their counsels. I have also considered each probation report in their entirety. I have equally considered the principle of proportionality and totality of sentence. I also take into account the doctrine of parity of sentence. Mr. Percy Samson was convicted in the same case but he decided at a very early stage, at the second mention of the case before court, even before documents were exchanged, to plead guilty. Nonetheless, I do bear in mind that Mr. Samson was the mastermind behind the operation to import and traffic in controlled drugs into Seychelles. I have equally considered the gravity of the offence especially due to the large quantity of drugs that was seized. These drugs would have had a large commercial value of the market and as a result would have destroyed many families.
- [24] Mr. Andre furnished Court with copies of several sentences dealing with drugs imposed by the Supreme Court as guide as to the nature of sentences that should be imposed against the Accused. Ms. Domingue also relied on the same. There is the case of **R v Percy Chang-Tave and Anor CO 18/2019 [2020] SCSC 631**, whereby the accused pleaded guilty to trafficking in a controlled drug, namely heroin having a net weight 2569 grams with a purity content of 676.24grams. They were sentenced to 6 years imprisonment and SR25,000.00. In **Republic v Emerenthia Holder CR46 /2018 [2019] SCSC 416** a South African national was sentenced to 5 years imprisonment for importing 986.4 grams of heroin containing a purity of 404 grams of pure heroin. He also relied on **Republic v Nurdin Mashed Kamba CO68/2019 [2020] SCSC 29** and **Republic v Marco Da Silva Reis CO37/2019 [2020] 1037**. All these cases concerned Class A controlled drugs.
- [25] Mr. Andre also referred to **Republic v Stephan Mondon & Ors CO44/2017 [2020] SCSC 246**. In that case the 1st Accused pleaded guilty to a charge of importation of 33855.3 grams of cannabis, a drug of the same class as in the present case, and was convicted to 8 years.
- [26] As already stated I have taken all mitigation into consideration and I also bear in mind the probation reports. However, whilst I do appreciate that the Accused have shown remorse in pleading guilty, I am of the opinion that contrary to pleas made in mitigation, that the Accused in this case can only be dealt with by imposing terms of imprisonment. The amount of drugs involved make this offence aggravated in terms with section 7(4) of

MODA. I take note that Mr. Percy Samson was the mastermind behind this illegal operation but the Accused share a level of involvement and culpability as most said that they knew the boat trip was to engage in bringing drugs in Seychelles.

[27] I giving consideration all submission in mitigation, I have balanced the mitigating factors against the aggravating factors. It was said in **Republic v Stephan Mondon & Ors** (supra) that *"though not expressly stated in section 38(1) of MODA, the indicative minimum sentence regime provided for in that section would be more appropriate in cases where the accused is found guilty after a full trial. It would be more challenging to apply it in instances such as this one where the accused pleaded guilty, as this would take away both the initiative and incentive of a guilty plea and the court's discretion in meeting out an appropriate sentence in accordance with the admitted facts which would affect the totality of sentencing principle."*

[28] I shall bear the above in mind when I impose sentence. **Blackstone's Criminal Practice (2012), paragraph E.12 p2148**, argued that a guilty plea would in effect earn an accused a reduction in sentence as it saves time of the court and reduces considerable cost and in case of an early plea, also saves inconvenience of victims and witnesses to give evidence before court, and furthermore that a *"reduction should be a proportion to the total sentence imposed calculated by reference to the circumstances in which the guilty plea was indicated, in particular at what stage in the proceedings"*

[29] Therefore, I proceed to sentence the Accused as follows;

- (i) On Count 2 (alternative to count 1), I sentence the 1st, 2nd, 3rd, 4th and 5th Accused to a term of 8 years imprisonment;
- (ii) On Count 4 (alternative to Count 3) I sentence the 1st, 2nd, 3rd, 4th, 5th and 6th Accused to a term of 8 years and 6 months imprisonment;
- (iii) On Count 6 (alternative to count 6) I sentence the 6th Accused to 8 years imprisonment;

(iv) On Count 7, I convict the 2nd Accused, Dominic Errol Adrienne, to a term of 2 years imprisonment;


(v) All sentences are to run concurrently to one another; and

(vi) Time spent on remand shall be discounted against the sentence.

[30] If unsatisfied with this sentence, the Accused may appeal against the same within 30 working days from today

[31] I will also wish to draw to the attention of the Prison Authorities that some of the Accused have complained that they have received threats from Percy Samson who has already been convicted in this case. So therefore, I strongly recommend that the Accused be kept separate from Mr. Samson and should try to avoid all contact between them and Mr. Samson.

Signed, dated and delivered at Ile du Port on 29 December 2020


Vidot J