

SUPREMECOURT OF SEYCHELLES

Reportable
[2021] SCSC
CO24/2019

In the matter between:

THE REPUBLIC
(rep. by Joshua Revera)

Republic

and

JAPHNA AGRICOLE
(rep. by Nichol Gabriel)

Accused

Neutral Citation: *Republic v Agricole* (CO 24/2019) [2021] SCSC 314 (14 June 2021)

Before: Burhan J

Summary: Importation- Proved as accused was arrested when entering airport and clearing customs with control drug on her person. After the rights of the accused were read out to her and she was formally arrested she is in lawful custody. If accused leaves without any authorized permission, it amounts to escape from lawful custody.

Heard: 4th August 2020, 24th August 2020, 9th November 2020 and 30th November 2020

Delivered: 14 June 2021

ORDER

Accused found guilty on Counts 1 and 2 and convicted of same.

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JUDGMENT

BURHAN J

[1] The accused Japhna Agricole stands charged as follows:

Count 1

Importing a controlled drug contrary to section 5 of the Misuse of Drugs Act 2016 and punishable under the Second Schedule of the said Act.

Particular of offence are that, Japhna Agricole of Anse Aux Pins, Mahe, on the 23rd December 2018, at the International Airport Pointe Larue, Mahe, was found importing into Seychelles a controlled drug namely 20.3 grams of Heroin (Diamorphine) with a purity of 48% amounting to 9.74 grams of Heroin (Diamorphine).

Count 2

Escape from lawful custody contrary to section 116 (1) of the Penal Code Cap 158.

Particulars of offence are that, Japhna Agricole of Anse Aux Pins, Mahe, on the 23rd December 2018, at the International Airport, Pointe Larue, Mahe, whilst being in lawful custody of Police Officer Kathleen Belle, escaped from such custody.

- [2] The accused denied the charges and trial against the accused commenced on the 4th of August 2020.
- [3] The prosecution opened their case by calling witness Egbert Payet attached to the Anti-Narcotics Bureau (ANB) as Exhibit Store Keeper. He stated on the 24th of December 2018, he received a sealed envelopemarked as CB 762/2018 ANB from Officer Kathleen Belle. He signed the chain of custody and kept the exhibit in the store for safekeeping. On the 26th of December 2018, he had taken the exhibit to Ms Manju Chettiar the Government Analyst. He had handed over the exhibit along with the letter of request which was produced as P1. On the 9th of January 2019, he had proceeded to collect the exhibits and the government analyst certificate. He produced the certificate as P2. He stated that according to the certificate the brown substance had been identified as Heroin 20.3grams with a purity content of 9.74 grams. The exhibit bag containing the exhibits was also handed over to him by the government analyst and the said bag had been resealed by the analyst after analysis of the contents. The seals placed by the government analyst were found to be intact in open Court and the envelope was marked as exhibit P3.

- [4] On opening the sealed exhibit envelope in open court, in the presence of the accused and both Counsel, he proceeded to produce the exhibits. Inside the envelope was a white tissue (toilet paper) marked as P3 (a) inside which was a packet wrapped in cling film P3 (b) containing a suspect beige substance P3 (c). Under cross examination, he admitted that the request letter was addressed to Mr. Bouzin but he had handed it over to Ms Chettiar who was the analyst at the time he handed over the exhibits. He stated that the accused was at large at the time. He further stated at the time he received the exhibit from Kathleen Belle it was sealed. The accused was subsequently arrested and brought before the Magistrate and released on bail. He stated he had received the exhibits directly from the government analyst in a sealed state and had kept it in his custody until he produced the exhibits in court with its seals intact.
- [5] Witness Kathleen Belle stated on the 23 December 2018, she was on duty at the airport. She started at 12.00 midday and stated on the said day she had arrested a Seychellois lady arriving from Johannesburg South Africa on Air Seychelles Flight HM060. She further stated the accused had been arrested at the office of the ANB situated at the arrival lounge to the airport. She identified the person arrested as the accused. Witness further stated she had arrested the accused after she had cleared customs. She had approached the accused introduced herself and stated she was from the ANB and there would be a search on her luggage. The accused had three pieces of luggage and one hand bag. She accepted the search of her luggage. Witness further stated her colleague Denis Morel had too been present during the search and nothing illegal was found in the bag.
- [6] Thereafter witness had requested a lady Customs Officer by the name of Mikaela Legaie to assist in the body search of the accused. When she was searching the accused, in her bra she had found a piece of toilet paper and she had cautioned the accused and on opening the toilet paper found a piece of cling film with substance in it which witness suspected to be illegal drugs. She had cautioned her again and read her constitutional rights to her. The accused had stated she had bought the substance from the road in Johannesburg for 200 Rand and it was for her own consumption and that she did not want to go to jail and has two children. She had also stated she was going to use it and not sell it.

- [7] Witness Officer Kathleen Belle had taken possession of the substance and left her with Customs Officer Mikaela and gone out and when she returned the accused had asked her permission to go to the wash room. Thereafter she had taken the accused to the arrival lounge. She had left her there and gone to tell the guard that they were going to use the VIP gate to leave and when she returned to the lounge, she was informed by the Customs Officer Ruth Dine that the accused had already exited from the arrival lounge.
- [8] Witness had called her colleague Morel and informed that the accused had left the airport and had gone outside. As she went out she had seen a car go by very fast and Officer Morel driving after the car. Officer Morel had called her later and stated he was at Copolia and he was following the Vivio but had lost sight of it. She had gone to the office and sealed the exhibit taken into custody in a brown bag and kept it in her locker. The next day the 24th of December 2018, she had handed over the exhibit to Officer Egbert Payet. She identified the exhibits produced in court as those detected by her that day in the bra worn by the accused and taken into custody by her from the accused. Witness identified the exhibits in open court.
- [9] Witness Mikaela Legaie stated she was a Senior Customs Officer in 2018 and gave evidence of the incident referred to by witness Kathleen Belle and stated that she was the Officer on duty that night. She corroborated the fact that the substance was found in the bra of the accused and was detected by Officer Belle during a search of the accused. She confirmed the fact that the accused had come from Johannesburg on flight HM060 and the search was conducted on her by Officer Belle in her presence. She too identified the exhibits as those taken into custody from the accused. Witness further corroborated the fact that the exhibit was found by Officer Belle in the bra cup of the bra worn by the accused that day when doing the body search of the accused. The accused when clearing customs had used the channel with nothing to declare.
- [10] The next witness Officer Denis Morel stated that he was on duty that day at the airport and Japhna Agricole was one of the 108 passengers who came on the flight HM060 from Johannesburg. At the arrival he too had screened her passport and then brought her to the ANB office to search her bags. After the body search Officer Belle had come out and

shown them the substance she had found on the accused. She had given instructions for him to prepare to take the accused through Gate 2 and he had gone and parked the car close to Gate 2. He had seen a red Vivio go past him very fast and seen the accused inside it. He had followed but lost them at Copolia. At Copolia when he lost sight of the Vivio, he had called for backup and blocked the road till the backup arrived and searched the area. They were able to find the red Vivio. He had gone and met the person who was driving the Vivio and had been told by the man that he had dropped the accused at Les Mamelles. The Vivio was found near the house of one madam Stella Sabury. He too identified the exhibits taken into custody from the accused in open court.

[11] The next witness Ryan Durup stated he was working with the Anti-Corruption Unit at present but had been an ANB officer for 7 years. On the said day whilst working for the ANB, on being informed that a suspect had escaped and back up was needed, he had picked up another Officer Laurine Constance and was in touch with Officer Morel who was chasing the vehicle. He had joined in the search of the vehicle and described the steps taken to locate the vehicle. They had found the vehicle parked near a residence but not locked. A man by the name of Leroy Adela had come towards the car and on questioning him he had stated that he had picked the accused from the airport and dropped her off. The man had been informed he was being arrested for aiding and abetting the importation of controlled drugs and they had taken him to the house he had come from. There they had met two ladies one claimed to be the mother of the accused and the other the owner of the house. They had done a search of the house but not found anything nor the accused. Mr. Adela had stated he lived at Anse Aux Pins and they had searched that house too. He stated he was aware that the accused was thereafter arrested after the Christmas and the New Year on the 2nd or 3rd of January 2019.

[12] The next witness Alexander Cherry stated he was attached to the ANB but presently was working at the PSSW. He had information that the accused had to be arrested and while he was patrolling St Anne Jetty they had seen her in a small red car. They had arrested her on the 2nd of January 2019 at 3.00 pm. He described the manner of how the accused was arrested and on arresting the accused she had stated they were lucky to have arrested her that day and that she was going to come to the office the next day. The driver of the

vehicle at the time of arrest of the accused was one Amza the boyfriend of the accused. The vehicle and the accused had been searched but nothing illegal had been found. Thereafter the prosecution closed its case.

[13] The accused chose her right to remain silent. No adverse inference should be drawn against the accused because she exercised her right to silence. Thereafter learned Counsel for both parties tendered their submissions.

[14] I have considered the submissions made by learned Counsel for the accused and the defence arising from the cross examination by the defence. It is learned Counsel for the defence contention that the chain of evidence of the custody of the exhibit had not been established as the accused had not placed her signature on the exhibit envelope prior to the exhibit being sent to the analyst. It is clear from the evidence that the accused after being arrested and her rights being read out to her and on being left alone by Officer Kathleen Belle in the arrival lounge for a few minutes, she had left the lounge, boarded a Vivio driven by a friend and had been driven away from the airport.

[15] It is clear from the evidence that for several days she could not be arrested and it was only on the 2nd of January 2019 that she was eventually arrested near St Anne Jetty. It also should be borne in mind that the escape from custody by the accused not only prevented the ANB Officers from obtaining her signature on the exhibits but also from doing further investigations such as taking the accused to hospital to investigate whether there was any more drugs in her person through medical means. She was thereafter arrested only on the 2nd day of January 2019, nine days later. The inability of Officer Bell to obtain her signature is therefore explained. It is therefore understandable why her signature had not been obtained on the envelope prior to the exhibit being sent to the analyst and the ANB officers cannot be faulted for sending the exhibit for analyst without obtaining her signature as she had escaped from lawful custody. Further even though the request letter to analyse the exhibits P1 had been addressed to analyst Mr. Bouzin, the fact that Ms Chettiar another government analyst did the analysis is not detrimental to the case of the prosecution.

[16] It is clear from the evidence of Kathleen Belle that she had kept the exhibit she had recovered from the accused in her personal custody and handed it over to the exhibit Officer Mr. Egbert Payet in a sealed state. Thereafter according to the evidence of Officer Egbert Payet, the exhibit which was in a sealed state had been taken by him personally for analysis and after analysis he had collected the exhibit personally which had been sealed by the analyst and produced the exhibits in court with the analyst seals intact. It cannot be stated therefore that the exhibits had been tampered with at any time. This Court is satisfied beyond reasonable doubt that the chain of custody of the exhibit has been established.

[17] On consideration of the evidence before Court by the officers of the ANB, it is clear and undisputed that the accused came into the Seychelles from Johannesburg South Africa on Flight HM060 on the 23rd December 2018. She had been searched after clearing customs at the arrival counter and taken to the ANB office situated at the arrival area of the airport. Whilst she was undergoing a body search, inside the cup of her bra worn by her was found a suspicious substance wrapped in cling film and toilet tissue paper. Though subject to cross examination the evidence of Kathleen Belle stood uncontradicted. Her evidence was fully corroborated by the evidence of Customs Officer Mikaela Legaie and Officer Denis Morel. The government analyst report P2 confirmed the fact that the suspicious substance taken into custody from the bra worn by the accused was a controlled drug Heroin bearing net weight 20.3 grams (purity 9.74 grams).

[18] I am satisfied that the corroborated evidence of the prosecution witnesses establishes and proves the fact that the controlled drug was brought into the Seychelles from South Africa by the accused on her person and therefore the element of importation has been established beyond reasonable doubt. It is clear from the corroborated evidence before Court that the controlled drug was concealed in the undergarment of the accused clearly establishing the fact that the accused was aware it was a controlled drug and proves the criminal intention and knowledge of the accused. Further I am satisfied beyond reasonable doubt that after the rights if the accused were read out to her and she was formally arrested after the detection of controlled drug on her and was in the lawful custody of Officer Belle, she had escaped from such custody by leaving the arrival

lounge where she was kept, without any authorised permission being given by any Officer which in my view amounts to escape from lawful custody. I am satisfied on consideration of the evidence of the prosecution that the all the elements of both charges against the accused have been proved beyond reasonable doubt.

[19] In addition to all the aforementioned evidence given, after the accused had been arrested and her rights read out and explained to her she has stated that the quantity of Heroin taken into custody was purchased by her in Johannesburg for her personal use. I am satisfied on the evidence before Court and on consideration of the quantity taken into custody that the amount of Heroin imported by the accused and taken into custody was not for commercial purposes and was for her personal use.

[20] For all the aforementioned reasons, I accept the evidence of the prosecution and am satisfied beyond reasonable that the prosecution has proved all the elements of the charges contained in Counts 1 and 2 against the accused. I proceed to find the accused Japhna Agricole guilty on both Counts and proceed to convict her on both Counts 1 and 2.

Signed, dated and delivered at Ile du Port on 14 June 2021.

M Burhan J