

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
CO 55/2020

736

In the matter between:

THE REPUBLIC
(rep. by Shireen Denys)

Republic

and

NATASIA CHANG-TAVE
PERCY CHANG-TAVE
(rep. by Clifford Andre)

1st Accused (sentenced)
2nd Accused (sentenced)

NICHOL GABRIEL
(rep. by Bernard Georges)

3rd Accused (sentenced)

MICHAEL BASTIENNE
(rep. by Audric Govinden)

4th Accused (convicted)

GARRY ALBERT
(rep. by Evelyn Almeida)

5th Accused (convicted)

Neutral Citation: *Rep v Chang-Tave & Ors* (CO 55/2020) [2023] SCSC 736 (29 September 2023)

Before: Burhan J

Heard: 24 July 2023

Delivered: 29 September 2023

ORDER

I proceed to sentence the convict Garry Albert as follows:

Count 1

A term of 3 months imprisonment which I proceed to suspend for a period of two years. I also impose a fine of SCR 50,000. 00 (fifty thousand) Rupees. In default of payment of fine a term of 6 months imprisonment.

SENTENCE

BURHAN J

- [1] The convict Garry Albert the aforementioned 5th accused, pleaded guilty to the charge contained in the amended charge sheet dated 31 July 2023 and was convicted on the 01 August 2023. The said charge reads as follows:

Count 1

Money laundering contrary to section 3(1) (b) of the Anti-Money Laundering Act and punishable under section 3 (4) (a) of the Anti-Money Laundering Act.

Particulars of offence are that Garry Mervin Albert of Beau-Vallon, Mahe between the period of 1st January 2018 and 28th February 2020, at a place unknown to the Republic on Mahe Seychelles, being reckless as to whether the property, namely; land and partly built dwelling house comprised in Title No. J2850, situated in Port Glaud, Mahe was or represented the benefit of criminal conduct namely; drug trafficking, concealed or disguised the true ownership of the said property or any rights with respect to it without lawful authority or excuse.

- [2] At the request of learned Counsel Ms Almeida a probation report was called prior to sentencing the convict. According to the report the convict is 52 years of age and the father of four children aged between the ages of six and eleven. After his school education till Primary 9, the convict joined the National Youth Service (NYS). Thereafter, he obtained a seat at the Seychelles Polytechnic in the field of agriculture and successfully followed a three-year course. He then obtained a scholarship for a two year course in the field of engineering in Saudi Arabia. After completing his education, his first employment was in the field of printing and he then joined Oceania Fisheries. After three years, he decided to be self-employed in the fishing trade. It appears from the probation report that the convict has expressed regret and remorse at what he has done and stated that he will be more on his guard in the future and had signed the paper, in order to help a family member, his brother the 2nd accused. He has informed the probation that he has already taken steps to ensure he does not fall prey to similar situations. He moves for leniency and assured the probation officer, he will never repeat such a mistake again. It appears

from the statement given by his concubine that he is a dutiful father who likes to help others and devotes his time to his family and business. The probation report has recommended a suspended sentence.

[3] I will next proceed to consider the plea in mitigation of learned Counsel Ms Almeida on behalf of the convict who stated that the convict had pleaded guilty to the amended charge the moment it was amended. She relied on the case of **R v Monfries [2003] EWCA Crim 3348 and [2004] 2 Cr.App.R (S) 3**, where it was held that prior to sentencing in offences of money laundering, the following factors should be considered:

- a) The circumstances of assisting another to retain the benefit of drug trafficking/criminal conduct.
- b) There need not be a direct relationship between the sentence for the laundering offence and the original antecedent (predicate) offence. If the antecedent offence can be identified, some regard may be given to the appropriate sentence for that offence when considering the appropriate sentence for money laundering.
- c) The criminality in laundering is the assistance, support and encouragement it provides to criminal conduct.
- d) Regard should be had to the extent of the launderer's knowledge.

[4] Ms Almeida further submitted that in this case her client Mr Albert was informed that he would receive the property from his brother Steve Chang Tave as a gift and his only involvement was signing the transfer deed in the presence of an Attorney namely Mr Nichol Gabriel and felt safe to do so, as the transfer was conducted in front of the said Attorney who had a position of trust with clients and was expected to be familiar with the laws and conduct due diligence prior to concluding any transaction. Mr Albert had no involvement with the money used to pay for the transfer and no knowledge of its source. Learned Counsel further submitted that Mr Albert was of the view that his brother Mr Chang Tave, had many legitimate businesses and had no suspicion that the funds emanated from criminal conduct. When the said offence of drug trafficking came to light in 2019 against Natasia and Steve Chang Tave, Mr Albert had already signed the transfer deed in 2018, well before any knowledge of the drug trafficking offence. Therefore, the convict had no knowledge of drug trafficking at the time of signing. She

therefore moved court that no consideration should be given to the antecedent offence of drug trafficking when considering the sentence to be imposed on Mr Albert.

- [5] Ms Almeida also submitted that the attorney Mr. Gabriel received a suspended sentence on the basis that he had acted recklessly in respect of charges under the Money Laundering Act. However, the Chang Tave's faced more serious charges including money laundering with the element of knowledge and were imprisoned and fined. She submitted that Mr Albert has been charged under the Anti-Money Laundering Act but based on the element of having been reckless to commit the offence and submitted that recklessness carries less culpability than knowledge and as such moved that Court show more leniency towards Mr Albert when imposing sentence.
- [6] She further submitted that the convict is a first time offender and the father of four minors who depend on him financially and emotionally, Mr Albert is regretful for having been involved in this offence and asks the Court for forgiveness. She moved Court to consider the circumstances set out in the probation report wherein Mr Albert is referred to as a well behaved person in society and that he be given a suspended sentence as recommended.
- [7] I have considered the plea in mitigation and the facts set out in the probation. It is clear to this Court that by pleading guilty to the said offence the convict has expressed remorse and as borne out in the probation report has expressed regret and has given an undertaking that he will be more careful and vigilant and not repeat the said offence. It is his contention that he did not take precautions as the property concerned belonged to his own brother and as the transaction was being dealt with by an Attorney he trusted and relied on. Be that as it may, the prosecution too having considered the circumstances of the case have decided to amend the charge to the effect that the convict did not act deliberately or with knowledge but that he acted recklessly in committing the said offence with which he is charged under the Anti-Money Laundering Act. In similar circumstances in sentencing the 3rd accused Mr Nichol Gabriel in this case, a suspended term of imprisonment was imposed. I am of the view that in sentencing accused in the same case there must be parity in sentencing where the charges and circumstances are of a similar nature.

[8] I also observe that the convict is an educated individual who has educated and qualified himself in the fields of agriculture and engineering. The probation report refers to him as a person who has been leading a happy and exemplary life until he was involved in this case. The probation report has also stated that *“However when passing sentence on the accused it is important that Court takes into consideration the good character of the accused and his devotion towards the well-being of is family, his guilty plea and him expressing remorse for committing the offence.”* The probation report further recommends that Court consider a suspended sentence.

[9] Giving due consideration to all the aforementioned facts, I proceed to sentence the convict Garry Mervyn Albert as follows:

Count 1

A term of 3 months imprisonment which I proceed to suspend for a period of two years. I also impose a fine of SCR 50,000. 00 (fifty thousand) Rupees. In default of payment of fine a term of 6 months imprisonment.

[10] Nature of suspended term of imprisonment and right of appeal explained.

Signed, dated and delivered at Ile du Port on 29 September 2023.

M Burhan J

