

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 83/2014**

[2016] SCSC 718

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**THE REPUBLIC**

versus

**CHARLES FABIEN**

First Accused

**GERARD MARDAY**

Second Accused

**SYLVESTER BARREAU**

Third Accused

**ALEJANDRO GARAZZAN**

Fourth Accused

**ANDRE NANCY**

Fifth Accused

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Heard: 20<sup>th</sup> September 2016  
Counsel: Ms. Brigitte Confait, State Counsel for the Republic  
Mr. Leslie Boniface Attorney at Law for the first accused  
Mr. Danny Lucas Attorney at Law for the second accused  
Mr. Nichol Gabriel Attorney at law for the third and fifth accused  
Mr. Divino Sabino Attorney at Law for the fourth accused  
Delivered: 3 October 2016

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**SENTENCE**

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## Burhan J

- [1] The convict Gerard Marc Salomon Marday was convicted on his own plea of guilt on the following Counts namely, Count 1- trafficking in a quantity of 481.1 grams of a controlled drug cannabis, Count 3- trafficking in a quantity of 6,388.9 grams of a controlled drug namely cannabis and Count 4 - conspiracy to commit the offence of trafficking in a quantity of 6,388.9 grams of cannabis, all three charges framed under the Misuse of Drugs Act (MODA), CAP 133. The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016 (hereinafter referred to as the new Act) with saving clauses as contained in section 55 (1) of the new Act.
- [2] In the case of *Cousin v R SCA 21 of 2013* and in the case of *Kelson Alcindor v R [2015]SCCA 7*, it was held that the Appellant should benefit from the change of law in his favour, along the principle of “*la peine la plus douce.*” – See *AubeeluckGangasing v The State of Mauritius [2010] UKPC 13*. The Appellants’ sentences in both cases were reduced to be in conformity with the amended law which was beneficial to the Appellants. Further Section 51 (2) of the new Act states outstanding sentences under the earlier Act must be reviewed in accordance with the new MODA.
- [3] Therefore, based on the aforementioned case law and the law as contained in the new Act, it is the duty of this court in passing sentence, to ensure the benefits applicable to the convict brought about by the change in law are considered.
- [4] Under the old law, the penalty for such an offence was a mandatory term of life imprisonment. Under the new Act however there is no mandatory term of life imprisonment for the said offence and the convict is liable to a maximum of 50 years imprisonment and a fine of SR 500,000.
- [5] I further note however that the quantity of controlled drug is over 1.5 Kg and hence the offence is aggravated in nature. Therefore the benefit of remission as brought about by the change in law will not benefit the convict.
- [6] I have considered the plea in mitigation made by learned counsel for the convict. The quantity of controlled drug concerned in this case is 6,388.9 grams. The convict has pleaded

guilty, thereby saving the time of court and by doing so expressed remorse. The convict is a 1<sup>st</sup> offender. Having considered the plea in mitigation made on behalf of the convict, I note he is 50 years of age and the father of 3 minor children. I have considered the main mitigatory factor that is that none of the controlled drug recovered by the officers of the NDEA were found on this particular convict. It is the contention of learned counsel for the convict that the benefit to the convict in committing the said crime was minimal and he was used as a pawn by the 1<sup>st</sup> convict.

- [7] Considering the above mentioned mitigating factors and the fact that the controlled drug is a Class B drug while at the same time considering the large quantity of controlled drug taken into custody 6,388.9 grams, I proceed to sentence the convict to a term of 5 years years imprisonment and a fine of SR 10,000/ (ten thousand) on Counts 3 and 4. I further sentence him to a term of 2 years imprisonment on Count 1. I make further order that the terms of 5 and 2 years imprisonment imposed on all three Counts run concurrently. In default of payment of the total fine of SR 20,000/ (twenty thousand), the convict is to serve a term of 6 (six) months imprisonment to run consecutive to the term of 5 years imprisonment imposed herein.
- [8] Time spent in remand to count towards sentence. I make further order that the convict is NOT entitled to remission as the offence is aggravated in nature.
- [9] Copy of this order to be attached to the warrant of commitment.

Signed, dated and delivered at Ile du Port on 3 October 2016

  
M Burhan  
Judge of the Supreme Court

