IN THE SEYCHELLES COURT OF APPEAL

JOSIANNE VITAL APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

Criminal Appeal No. 3 of 1997

(Before Goburdhun, P., Silungwe and Venchard, JJA)

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Mr. B. Georges for the Appellant
Mr. R. Kanakaratne for the Respondent

JUDGMENT
Delivered by Silungwe, J.A.

The appellant pleaded not guilty to, and was tried on the charge of, trafficking in a controlled drug, contrary to section 5, read with section 26(1)(a) of the Misuse of Drugs Act 1990 as amended by Act 14 of 1994 and punishable under section 29 and the Second Schedule referred thereto in the Misuse of Drugs Act aforesaid. The particulars of offence alleged that, on July 17, 1995, at La Louise, Mahe, the appellant was trafficking in a controlled drug, namely, that she was found in possession of 33 grammes and 750 miligrammes of cannabis. The appellant was convicted as charged and sentenced to the mandatory minimum sentence of 8 years imprisonment.

Mr. Georges, learned counsel for the appellant, filed three grounds of appeal against conviction and one against sentence. We need to consider only the second ground of appeal which reads as follows -

> *"The evidence linking the substance produced with that recovered at the home of the appellant is unsatisfactory and*

leads to the conclusion that the substance recovered may not have been that analysed or produced in court."

The case for the prosecution was that the appellant had been found with four packets containing a herbal substance, suspected of being a controlled drug. The police woman who carried out the search at the appellant's residence secured the four packets and brought them back to the police. A "post-it" is described by the police woman as a "kind of paper coloured yellow with glue on it." The envelope was then put in a locker which was kept under lock and key. The "post-it" was apparently used as an identifying mark. However, when the police woman removed the envelope from the locker, she inexplicably peeled off the "post-it" and apparently threw it into a bin. She then took the envelope to the drug analyst who, after examination of the substance contained in the envelope, certified it to be cannabis, put it into a khaki envelope which was sealed and handed to the police woman. The latter admitted in cross examination that she had visited the analyst many times; and in re-examination that, during the material time when she detected similar types of substances which she put into her locker under lock and key. After getting the envelope back from the analyst, the police woman put another "post-it" on the envelope and kept it in the locker until the packets were later produced in court and marked exhibits P1 to P4, and the khaki envelope became exhibit P6.

There is no dispute that the herbal substances that the Drug Analyst analysed and certified to be cannabis was the same substance that she had received from, and was subsequently handed over to the police woman. The dispute, however, is whether that substance was the selfsame substance that the police woman had allegedly been found in the appellant's possession at the

latter's residence. The position taken by the respondent is that the substance was the same. But the appellant's contention is that the police woman's evidence raised the possibility that the substance taken to the drug analyst was not the same substance that had allegedly been taken from her residence. It is therefore, submitted that the respondent failed to establish the issue beyond a reasonable doubt.

Mr. Georges argued that the identifying mark - the "post-it" - was peeled off by the police woman Vidot when she removed from her locker the envelope which contained the substance that she had brought to the police station from the appellant's residence prior to taking the envelope to the Drug analyst and that no satisfactory explanation was advanced regarding the possibility of a confusion as to the packets which were examined by the Drug Analyst and those which were secured at the appellant's residence.

An important feature of her cross examination is that the identifying mark was the "post-it". It was only in re-examination that she mentioned that there was a number also but there is no indication as to when the number was put there. Nor was there any indication that such number was the one found by the Drug Analyst. The police woman conceded that during the material time, she brought in similar substances secured elsewhere which she placed inside the same locker, and that she visited the analyst many times.

In these circumstances, it is doubtful that what was analysed by the drug analyst was the same substance that had allegedly been found in the appellant's possession.

The whole issue here is shrouded in mistry. The onus was upon the respondent to adduce satisfactory evidence to show that the substance that had been brought from the appellant's residence was the same substance that was handed over to the analyst. This they failed to do with the result that there was a break in the chain of evidence to link the drugs analysed by the Drug Analyst to the appellant.

For the above reasons, we are of the view that the conviction was unsafe. We accordingly allow the appeal and quash the conviction and sentence.

Dated this 14th of August, 1997.

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H. GOBURDHUN	A. SILUNGWE	L. E. VENCHARD
PRESDIENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**