

IN THE SEYCHELLES COURT OF APPEAL

[Coram: S. Domah (J.A), A.Fernando (J.A), J. Msoffe (J.A)]

Criminal Appeal SCA33/2013

(Appeal from Supreme Court Decision CR 18/2012)

(Appeal from Magistrates Court Decision C.No713/2005)

Danny Labrosse

Appellant

Versus

The Republic

Respondent

Heard: 19 August 2015

Counsel: Mrs. Alexia Amesbury for the Appellant

Mrs. Lansinglu Rongmei for the Respondent

Delivered: 28 August 2015

JUDGMENT

A.Fernando (J.A)

1. The Appellant has appealed to this Court against the decision of the Supreme Court dismissing his appeal against his conviction by the Magistrates Court for trafficking in drugs, namely 40gms and 600 mg of cannabis on the basis of the presumption in section 14 (d) of the Misuse of Drugs Act and the mandatory sentence of 8 years imposed on him.
2. This being a second appeal the provisions of section 326(1) of the Criminal Procedure Code comes into application. Section 326(1) states as follows:

“Any party to an appeal from the Magistrates’ Court may appeal against the decision of the Supreme Court in its appellate jurisdiction to the Court of Appeal on a matter of law but not on a matter of fact or mixed fact and law or on severity of sentence.” (emphasis added)

It is only when a matter of fact or mixed fact and law or the severity of sentence can be

viewed as ‘a pure question of law’ that a right of appeal exists to the Court of Appeal, in addition to an appeal on matter of law. Otherwise the restriction to the general right of appeal contained in article 19(11) and 120(1) of the Constitution will come into application.

Article 19(11) states: “Every person convicted of an offence shall be entitled to appeal in accordance with law against the conviction, sentence and any order made on the conviction.”

Article 120(2) states: “Except as this Constitution or an Act otherwise provides, there shall be a right of appeal to the Court of Appeal from a judgment, direction, decision, declaration, decree, writ or order of the Supreme Court.”

3. The words “in accordance with law” and “an act otherwise provides” in articles 19(11) and 120(2) of the Constitution is a reference to the Criminal Procedure Code.
4. In the case of Roddy Lenclume VS The Republic, Criminal Appeal SCA 32/2013, we were of the view that section 326(1) cannot be interpreted as a provision which excludes a right of appeal to the Court of Appeal, against the decision of the Supreme Court in its appellate jurisdiction on an appeal from the Magistrates’ Court, where the sentence that has been imposed on the basis of mandatory and consecutive norms offended the rule of proportionality. This in our view was a pure question of law and did not fall within the restriction to the general right of appeal provided for in article 120(2) and 19(11) of the Constitution. This appeal is not one such and rests entirely on factual matters which are shut out in view of the provisions of section 326(1) of the Criminal Procedure Code. The Appellant’s Counsel at the hearing of this appeal rightly conceded on this point and did not pursue the appeal.
5. The prosecution case had been to the effect that while on patrol at Castor Road, English River Sergeant Octobre had conducted a search on the Appellant and found a red plastic containing a substance which was later found to be cannabis in the Appellant’s trouser pocket. Sergeant Octobre had been in the company of police officers Louise and Charles during the patrol. In the Written Submissions filed on behalf of the Appellant before the Magistrates Court the only grounds urged by the defence is the failure of the prosecution to call police officers Louise and Charles to corroborate the version of Sergeant Octobre and the denial of the allegation by the Appellant. These are essentially ‘matters of fact’ which cannot be canvassed before us in view of the provisions of section 326(1) of the Criminal Procedure Code. In the Written Submissions filed on behalf of the Appellant before the Supreme Court the discrepancies as to the weight of the drugs and the colour of the plastic bag in which the drugs were found had been raised. These are also essentially ‘matters of fact’. We are also satisfied that the Learned Magistrate had sufficiently addressed these issues in her judgment.
6. The Learned Magistrate had imposed the minimum mandatory sentence of 8 years on the Appellant. In view of the facts and circumstances of this case the imposition of the minimum mandatory sentence on the Appellant in our view does not in any way offend

the rule of proportionality to warrant us to treat such sentence as a pure question of law and not one of severity of sentence.

7. We therefore dismiss the appeal.

A.Fernando (J.A)

I concur:..

S. Domah (J.A)

I concur:..

J. Msoffe (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 28 August 2015