

IN THE SEYCHELLES COURT OF APPEAL

SCA No: 2 of 2006

MARIE CELINE QUATRE

Appellant

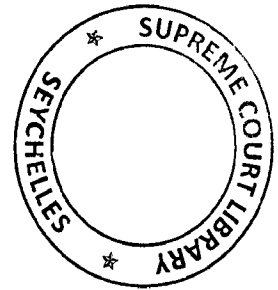
V.S

THE REPUBLIC

Respondent

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Before: Bwana, Hodoul, Domah, JJA
Counsel: Mr. B. Georges for the Appellant
Mr. D. Esparon for the Respondent

Date of Hearing: 14 November 2006
Date of Judgment: 29 November 2006



JUDGMENT OF THE COURT

Bwana, Ag. P

- 1. The Appellant was charged with two counts namely Possession of Controlled Drugs contrary to section 6(a) of the Misuse of Drugs Act read together with section 26(1) (a) of the same Act and punishable under section 29 (1) read together with Second Schedule to the said Act. She was also charged in the second count, under similar provisions. The particulars of offence under the first count show that on 27 July 2005 at Corgate Estate, Mahe, she had in her possession I gram and 149 milligrams of Cannabis Resin. With regard to the second count, it is alleged that the Appellant was found, on the same day and at the same place, in possession of 55 milligrams of heroin.

2. Under the provisions of the said Act, cannabis resin falls under class B drugs whereas heroin falls under class A, as listed in Part 1 of the First Schedule. Possession of cannabis resin does not carry a mandatory minimum sentence if the quantity does not exceed 25 grams. However, heroin, which falls under class A, carries a mandatory statutory prison term of five years, the quantity found in possession, notwithstanding.

3. Three members of the Police Force Drug Squad, while on patrol received information that there were transactions taking place involving controlled drugs. The said transactions were taking place at the Corgate Estate area. The said policemen proceeded to the area. As soon as those people saw the approaching police, they ran away except the Appellant. She was apprehended.

4. The three policemen; PC Lucas, pw2; cpl. Julie, pw3; and sgt. Dogley, pw4; approached the Appellant and searched her. They searched a black jacket that she was holding in her left hand. From its left outer pocket they retrieved a black substance, chocolate like, and a small folded paper inside of which there was some white powder. Both the chocolate like substance and the white powder were later analyzed by Dr. Philip Gobin, a principal biochemist at the Scientific Support Crimes Bureau. He established that the two substances were heroin (with a purity of 81.2%) and cannabis resin.

5. From Corgate Estate area, the Appellant was taken to Mont Fleuri police station where upon further search of her jacket, a

sum of Sr.950/- in the denomination of Sr.100 (8 of them) and Sr.50 (3 in total) was recovered.

- 6.** Subsequently the Appellant was charged, convicted of the two offences and sentenced to two years imprisonment for the offence under the first count and the mandatory minimum sentence of five years imprisonment for the second count. Both sentences are to run concurrently. She has now raised two main grounds of appeal namely:-

6.1 The trial judge erred in believing the two police witnesses for the prosecution as witnesses of truth despite numerous inconsistencies in the evidence of each, discrepancies between the contents of their pre trial statements and their evidence in court; and discrepancies between their respective testimonies.

6.2 The trial judge erred in not alluding to the failure of the prosecution witnesses to have seized as an exhibit the jacket of the Appellant in which the substances were allegedly found and in not holding that it was lightly improbable that they would have returned the jacket to the Appellant after the search if indeed it had been found to contain drugs.

Therefore the Appellant prays to this Court to reverse the judgment and sentences and acquit her on both charges.

- 7.** The appeal is strongly resisted by the Respondent.

8. This appeal may be determined by considering the issues of inconsistencies of evidence on the part of the key prosecution witnesses (pws 2 and 3) and by considering the likelihood of the two police witnesses having "planted" the drugs on to the Appellant (in her jacket) between her arrest at Corgate Estate area and the subsequent search at the police station.
9. As regards the said inconsistencies and contradictions between the evidence of the two police officers, one needs to consider whether they are such that they are material to the substance of the case. We have examined the alleged contradictions and inconsistencies and we are of the considered view that they do not affect the substance of the case. Indeed we would not expect the two witnesses to say the same thing, all the time. What is fundamental to the case is whether there are basic, material contradictions with regard to the main issue before the trial court. The trial judge did not find that such contradictions affected the substance of the case. We see no reason to differ. We are mindful of the long established principle that when there is no question of a misdirection on the part of a trial judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge, by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion (**vide: Govt. of Seychelles v Ernestine SCAR, 374**).
10. The said principle gets further credence when we consider the fact that the trial judge had the opportunity of examining the

demeanor of the witnesses during trial, a chance which an appellate court usually does not have. It has been held (and rightly so) in the case of **Benmax v Austin Motors Co. Ltd** (1955) All ER 326 et seq, that -

"An appellate court, on an appeal from a case tried before a judge alone, should not lightly differ from a finding of the trial judge on a question of fact but a distinction in this respect must be drawn between the perception of facts and the evaluation of facts. Where there is no question of the credibility of witnesses, but the sole question is the proper inference to be drawn from specific facts, an appellate court is in as good a position to evaluate the evidence as the trial judge ..."

11. Before this Court, it is evident that the trial judge was being asked to determine which side to the case was credible with regard to the issues raised as to the credibility of both the prosecution and defence witnesses. The trial judge was better positioned to establish which side to believe and which side not to do so. He did so, having taken into account the demeanour and credibility of those witnesses appearing before him in this case. We are hesitant to differ with him on this fact.
12. As to the issue of the likelihood of the two police officers having "planted" the drugs on to the Appellant we are of the view that there is no evidence to lead us to that conclusion. There is no

evidence that those three police officers were at direct or personal conflict with the Appellant. The fact that she hated police officers (her own perception) cannot be taken to mean that police officers also hated her so as to implicate her in such a serious offence.

13. Therefore, all the above considered, this appeal against conviction fails on both counts.

14. In so far as the sentences imposed are concerned, we do note that the five years imprisonment is the minimum mandatory prescribed by law. The appellate court will alter a sentence imposed by a trial court when - as was stated in the **Dingwall v R** (1966) SLR 205 - it is evident that -

14.1 the trial court acted on a wrong principle;

14.2 the trial court overlooked some material factor; or

14.3 where the sentence is manifestly excessive in view of the circumstances.

15. None of the three (14.1 - 14.3) factors are at issue herein. A wrong principle would happen where a sentence imposed by a trial court is either not provided for under the law, is ultra vires, or is in direct conflict with existing law. This is not the situation herein.

Overlooking material factors would arise where evidence is disregarded or distorted by the trial court or where some fundamental errors have been committed by the said trial court, leading to injustice being caused to the convict. We have not detected such irregularity on the record.

Harsh and excessive are words increasingly used to describe certain sentences. But those words cannot be applied without elaborative specificity. In the appeal before us, the five years prison sentence imposed is, as said earlier, the minimum mandatory. Therefore it cannot be said to be excessive, in the circumstances. Therefore we see no reason to disturb the sentences imposed.

- 16.** In conclusion, this appeal fails in its entirety. Both the conviction and sentences are upheld.

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S. J. BWANA
AG. PRESIDENT

I concur:

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J. M. HODOUL
JUSTICE OF APPEAL

I concur:

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B. DOMAH
JUSTICE OF APPEAL

Delivered 29 November 2006, Victoria, Seychelles