

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 52/2014**

**[2016] SCSC**

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**THE REPUBLIC**

versus

**NOEL LABICHE**

First Accused

**BASIL JOUBERT**

Second Accused

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Heard: 27 June 2016  
Counsel: Mr. Hermanth Kumar, Assistant Principal State Counsel for the Republic  
Mr. Clifford Andre Attorney at Law for the first accused  
Mrs. Alexia Amesbury Attorney at Law for the second accused  
Delivered: 8 July 2016

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**SENTENCE**

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Burhan J

[1] The two convicts Noel Labiche and Basil Joubert, pleaded guilty to the offence of trafficking in a quantity of 49.8 (pure quantity 23.9) grams of controlled drug namely Heroin while the 2<sup>nd</sup> convict in addition pleaded guilty to a 2<sup>nd</sup> Count of possession of 0.4 grams of Cannabis Herbal, 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 The said Act has been repealed by the new Misuse of Drugs Act 5 of 2016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 *Aubeeluck Gangasing v The State of Mauritius [2010] UKPC 13*. The Appellants’ sentence 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, this court will take into consideration the benefits applicable to the two convicts brought about by the change of law. Under the old law both the convicts were liable on Count 1 to a term of 60 years imprisonment and a fine of SR 500,000. The old law also specified a minimum mandatory term of 20 years imprisonment for Count 1.
- [4] Under the new Act there is no minimum mandatory term of imprisonment for Count 1 and therefore in sentencing, it is the duty of this court to ensure that this benefit accrues to the two convicts. I further note from the facts before me that no aggravating circumstances, as set out in section 48 of the new Act exist in this case. Further as the quantity is below 250 grams, the offence cannot be considered to be aggravated in nature. Therefore, as the offences are not aggravated in nature on consideration of the amendment to the Prisons Act brought about by Act 6 of 2016, both convicts will benefit from the new amendment to the said Act in that they will be entitled to remission.
- [5] I have considered the plea in mitigation made by both learned counsel for the convicts. The quantity of controlled drug concerned in this case is 49.8 grams in total, containing 23.9 grams of pure Heroin. Both convicts have pleaded guilty without proceeding to trial, thereby saving the time of court and by doing so expressed remorse. Both convicts are 1<sup>st</sup> offenders. Having considered the plea in mitigation made on behalf of both the convicts, I observe the 1<sup>st</sup> convict in this case is 23 years of age and has expressed remorse and regret by pleading guilty at the 1<sup>st</sup> instance.

- [6] Learned counsel on behalf of the 2<sup>nd</sup> convict in her plea in mitigation, stated that the time of court had been saved and moved for leniency on the 2<sup>nd</sup> accused as he was 49 years of age and was only a 1<sup>st</sup> offender even at that age.
- [7] I observe that the charge of trafficking is not based on the presumption but on the acts committed by the convicts, amounting to trafficking as per definition in section 2 of the Act. I also observe the total quantity of controlled drug is 49.8 grams, containing 23.9 grams of pure Heroin and the trafficking offence is in respect of a Class A drug.
- [8] On consideration of all the aforementioned factors, I proceed to sentence the 2<sup>nd</sup> convict to a term of 5 (five) years imprisonment and a fine of SR 20,000/ (twenty thousand) on Count 1. On Count 2, I proceed to impose only a fine of SR 2500. In default of payment of the total fine of SR 22,500, the 2<sup>nd</sup> convict is sentenced to a further term of 6 months imprisonment which would run consecutive to the term of 5 years imposed herein.
- [9] In regard to the 1<sup>st</sup> convict, in addition to the mitigating factors mentioned which are similar in nature to that of the 2<sup>nd</sup> convict, there exists a strong mitigating factor which warrants special recognition by Court and that is that he co-operated with the NDEA agents in their investigation and assisted them in the arrest of the principal offender, the 2<sup>nd</sup> convict, eventually leading to his successful conviction. I am aware that like offenders should be treated alike and there should be parity in sentencing co – accused, but considering the strong and special mitigating circumstances peculiar to this case in respect of the 1<sup>st</sup> convict, I intend deviating from the norm and sentencing the 1<sup>st</sup> convict to a lesser sentence of 3 ( three) years imprisonment only.
- [10] Time spent in remand by both convicts to count towards sentence. Further both convicts will be entitled to remission as the offences are not aggravated in nature.

Signed, dated and delivered at Ile du Port on 8 July 2016

M Burhan  
**Judge of the Supreme Court**