

SUPREME COURT OF SEYCHELLES

Reportable
CR 82/2023

In the matter between:

THE REPUBLIC
(Represented by Ms Dericka Figaro)

Prosecution

and

ROUGOUITAOU DIALLO
(Represented by Mr William Herminie)

Accused

Neutral Citation: *Rep vs Diallo* (CO 82/2023) (19th March 2024)
Before: Adeline J
Summary: One count of Importation of a controlled Drug – total net weight of 452 grams of Cocaine – Accused pleaded guilty and sentenced on her guilty plea.
Heard: 8th March 2024
Delivered: 19th March 2024

FINAL ORDER

The accused/convict is sentenced to serve a term of imprisonment of 7 years as of today. In accordance with Article 18(4) of the constitution, the period of time which the accused/convict has spent on remand in police custody shall be deducted from the 7years prison sentence.

The accused/convict shall be entitled to remission for good behaviour given that the aggravated nature of the offence has not been established.

SENTENCE

Adeline, J

[1] The accused, now a convict, one Rougouitaou Diallo, a 43 year old Guinean national, was charged before this court with a single count of Importation of a Controlled Drug Contrary to Section 5 of the Misuse of Drugs Act 2016 and punishable under Section 5 of

the Act reads with the Second Schedule of the same Act. The particulars of the offence of which she has been convicted as particularised in the formal charge sheet pertaining to CB 82/10/23, Anse Aux Pins Police Station dated 27 October 2023 filed in court reads as follows;

“Ms Rougouitaou Diallo, 43 years old, a Guinean national, on the 12th October 2023, imported into Seychelles a controlled Drug, namely cocaine having a net total weight of 452 grams”.

- [2] On the 19th February 2023, the accused/convict pleaded guilty to the charge at the first available reasonable opportunity, and was accordingly convicted before this court for a single court of Importation of a Controlled Drug, a total weight of 452 grams of Cocaine after she had admitted the facts narrated by the prosecution that led to her arrest, her eventual indictment for the offence and her prosecution for the offence.
- [3] The facts pertaining to the arrest, indictment and prosecution of the accused/convict are that, on the 12th October 2023, the accused/convict, a Guinean national from Guinea Conakry, arrived in Seychelles at the Seychelles International Airport on a flight from Addis Ababa. As she proceeded to exit the Seychelles International Airport, she was called aside for a search in her luggage. Police and custom officers found seven small cylindrical shaped bullets in her handbag which they suspected were controlled drug all of which were seized by police and customs officers. The accused/convict was also called to one side for a body scan. The body scanner showed, that there were foreign bodies in the private part of her body which the officers suspected were controlled drugs.
- [4] Thereafter, the accused/convict was told by police officers that a body search will be carried out on her body. As the search was being carried out, the accused/convict removed her clothes, and thereafter, removed from her vagina a large cylindrical shaped packet and handed over the same to the police. The accused/convict was then taken to the Airport police station to be further interrogated. She revealed, that she inserted the packet

inside her vagina when she was in Guinea Conakry after the same was handed over to her by her handler.

[5] On the 18th October 2023, the small cylindrical shaped packet and the large cylindrical shaped packet were sent for forensic analysis. It was confirmed that the small cylindrical shaped bullet contained 152.30 grams of cocaine, whereas, the large cylindrical shaped packet contained 299.70 grams of cocaine adding up to a total net weight of 452 grams. On the 27th October 2023, the accused/convict was officially charged with one count of Importation of a Controlled Drug.

[6] To decide on the right and appropriate sentence that will do justice to this case, I have given due consideration to the punitive objective of sentencing in the light of the following factors balance against each other, namely;

- (i) The circumstances of the accused/convict
- (ii) The nature of the offence including its gravity and at the same time identifying the objective seriousness of the offence.
- (iii) The interest of the community and
- (iv) The relevant sentencing legislative for the offence, the sentencing guidelines for such offence, and the case law authorities to justify the sentence.

[7] At this juncture, I am reminded of the case of Lawrence & Anor vs The Republic [1990] SLR 47, in which case, amongst other things, we are instructed that sentencing must also be directed at addressing the traditional purpose of punishment which are for deterrence, prevention, retribution and rehabilitation. From the perspective of the general public, “denunciation” is also one of the considerations. In view of the seriousness of the offence of which the accused/convict has been convicted, these terms have to be put in perspective and addressed in the right context. By the term “deterrence” when it comes to sentencing, it means, that the sentence being contemplated should be one that would dissuade the convict as well as others who may be tempted to commit similar offence from doing so. Retribution, means, that the convict ought to suffer the punishment which

he rightly deserves, and denunciation in the sense that this is achieved by the imposition of a sentence, the severity of which makes a statement that the offence in question of which the accused/convict has been convicted is not to be tolerated or taken lightly by the society we live in.

THE CIRCUMSTANCES OF THE ACCUSED/CONVICT

- [8] In his oral submissions in plea in mitigation, learned counsel for the accused/convict submitted, that his client, Mrs Diallo, is a 43 year old single mum from Guinea Conakry, a mother of five children raising five children on her own, three boys and two girls. Her youngest child is a 2 year old boy and her eldest child is her 13 years old daughter. “Now that she is incarcerated in this country”, learned counsel submitted, her children are sometimes being taken care of by their 85 year old grandma, and sometimes by neighbours. They live in a room in a shop building. It was the submission of learned counsel, that given that the children are still very young and need the support of their parents which in the instant case is their mother and accused/convict in this case, the court should give consideration to that.
- [9] Learned counsel also submitted, that throughout her arrest and charge for the offence she has been convicted of, Mrs Diallo has cooperated fully with the police, and that on the first available opportunity she pleaded guilty to the charge of Importation of a Controlled Drug, that is, 450 grams of cocaine which learned counsel stated is not a large amount. Learned counsel also submitted, that by pleaded guilty, the accused/convict has saved the court’s time and resources that would have otherwise incurred by a long protracted trial. It was further submitted by learned counsel, that the fact that Mrs Diallo is a first time offender who has shown remorse for the crime she has committed, she ought to be give some credit in that the court should not impose a harsh sentence on her. It was the submission of learned counsel, that Ms Diallo should be given the opportunity to be reunited with her family and young children in a not too distant future.

[10] It was also the submission of learned counsel, that, although that cannot be taken into account as an excuse, it must be borne in mind, that Mrs Diallo finds herself in that situation because of poverty given that her husband has passed away and in such poverty, she is the sole bread winner of the family trying to raise up 5 children. In conclusion, learned counsel urged the court not to impose a harsh sentence on his client, Mrs Diallo, and to make a recommendation that she be deported to Guinea Conakry.

NATURE OF THE OFFENCE INCLUDING ITS GRAVITY AND EXTENT THEREOF

[11] On account of the sentence prescribed by law for the offence of Importation of the amount of a Class A controlled drug for which the accused/convict has been convicted, there is no doubt that the offence is very serious in nature. The same is reflected by its long term custodial sentence. In plea in mitigation, learned counsel for the accused/convict submitted, that the amount of drugs imported by the accused/convict is not a lot. I also observe, that although the forensic analysis of the drug has confirmed that the drug is cocaine, it has not precisely confirmed what the purity of the cocaine is in terms of weight.

THE INTEREST OF THE COMMUNITY

[12] It is an undeniable fact, that there is increasingly a genuine public interest in seeing that those who are convicted of serious drugs offences are made to feel the full force of justice. This feeling amongst the general public, stems from the fact, that a large member of our youth population has had their life destroyed by drugs. In fact, in my considered opinion, no sentence, not even a life sentence can repair the damage which drugs have caused to our small community in the last decade.

[13] The damage has been overwhelming and is being felt throughout the socio economic fabric of our society. The suffering which many local families have endured and continue to endure because of drugs has been enormous. So much so, that to some families, the

impact of drugs has completely destroyed their future. Had the accused/convict managed to exit the Airport undetected, the drugs would have been on the market causing more damage and misery to our youths whilst a small groups of people, particularly those behind the importation would have enriched themselves more to the detriment of the vulnerable youth consumers. In Rep vs Micoock and Anor SCSC 322 (4th April 2022) the court had this to say;

“The youths of Seychelles are being poisoned by the drugs seemingly readily available, brought in by scrupulous persons. They have no regard to the overwhelming consequences of their act. Their greed as the expense of the effects of their trade including a lost youth and workforce, the toll on a Seychelles and the tax payers to treat and rehabilitate drug abusers, the cost of education programmes for the prevention of drug abuse, and efforts to intercept and prevent the trafficking and importation of drugs and prevent abuse is lost on them. They are oblivious to the pain and havoc they wreck on individual families and the community”.

- [14] Clearly, therefore, there is a legitimate public expectation, that when sentencing a convict for the offence of Importation of a class A controlled drug, the court has to impose a sentence to reflect public abhorrence for the crime committed. In Rep v Rabie 1975(4) SA 855(A) the court had this to say;

“Punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances”.

- [15] Locals and foreigners alike, should not allow them to be misled by the mistaken belief, that this country, being a very small jurisdiction, is a soft target for the illegal drugs trade. To the contrary, they must always bear in mind, that the moment they venture into the illegal drugs trade in this country, they effectively step on a minefield at their own peril with potentially disastrous consequences.

[16] Having said that, members of the general public should not be mistaken into believing that the court would simply pluck out of the air a sentence to reflect public sentiment towards the accused/convict and the drugs problem without thoroughly considering all the relevant factors to come to a just desert and fair sentence. The question of imposing the appropriate sentence that will do justice to the case is a matter of discretion to be exercised by the court in consideration of the aggravating and mitigating circumstances in the individual case.

[17] The approach is that a reasonable proportion has to be maintained between the seriousness of the offence or the crime, and the punishment.

THE RELEVANT SENTENCING LEGISLATIONS, GUIDELINES AND CASE LAW

[18] The maximum penalty which this court is empowered to impose on an accused/convict who has been convicted of a single count of importation of a class A controlled drug, cocaine, is prescribed under Section 5 of the Misuse of Drugs Act, 2016 read with the Second Schedule of the Act. Section 5 reads;

“a person who imports or exports a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule”

[19] The maximum penalty specified in the Second Schedule of the Misuse of Drugs Act, 2016 is a term of life imprisonment and a fine up to Seychelles rupees, one million.

[20] It is worth noted, that the minimum mandatory sentences under the Misuse of Drugs Act, 2016 (“MODA”) (Act 5 of 2016), have been done away with and replaced by indicative minimum sentences prescribed for offences which are aggravated in nature. For example, Section 7(4) of MODA refers to aggravated factors depending on the weight in a trafficking offence of over 250 grams of a controlled drug. Furthermore, in respect of the instant case, regards should also be made to Section 48 of MODA which considers the

degree of commercial element as an aggravating factor. As such, the indicative minimum sentence as required under Section 47(5) of MODA has to be given due consideration.

[21] Clearly, therefore, the offence of which the accused/convict has been convicted would have been aggravated in nature had the purity of the controlled drug imported in this country been established to be over 250 grams, and as per the sentencing guideline, the appropriate sentence would have been within the range of 12 to 15 years imprisonment. As things stand, we know that the amount of cocaine drugs imported into this country by the accused/convict is a net total weight of 452 grams. What we don't know is the quantity of the purity of the controlled drugs imported. Therefore, it is only when the weight of the drug imported with a purity of 250 grams and above, that the court should treat the offence as aggravated.

[22] Taking into consideration learned counsel's submissions in plea in mitigation as a whole, it is conceded, that a guilty plea taken at the first available opportunity, warrants a reduction in sentencing because of the benefits it brings about as correctly elaborated by learned defence counsel in his submissions. For this reason, in meting out the appropriate sentence to be imposed, the court needs to carry out a balancing exercise between the mitigating and the aggravating factors in this case. I take notice, that learned counsel did not address the court on the appropriate precedents to determine the appropriate sentence.

[23] In essence, I have taken a myriad of competing factors into account in deciding the appropriate sentence which the accused/convict justly deserves. I have, in doing so, taken into account the salient aspects of learned defence counsel's submissions in plea in mitigation which are in favour of the accused/convict, and has given her the credit she deserves.

[24] In taking into consideration the mitigating factors in this case, I have also considered the fact that the right and appropriate sentence to be imposed must be one that should act as a deterrent given that as much as heroin is prevalent in Seychelles so is cocaine.

[25] I therefore sentence the accused/convict to serve a term of imprisonment of 7 years for the single count of importation of a class A controlled drug, cocaine. In accordance with Article 18(4) of the constitution, the period of time which the accused/convict has spent on remand in police custody shall be deducted from the 7 years' prison sentence.

[26] In view that the aggravated nature of the offence of which the accused/convict has been convicted has not been established, that would have meant that by virtue of Section 30 (2) (b) of the Prison Act, Cap 180, the accused/convict would not have been entitled to remission for good behaviour, I state, that the accused/convict shall be entitled to remission for good behaviour.

[27] The accused/convict is informed, that she has 30 days as of today to appeal against the sentence imposed on her for the offence of which she has been convicted.

Signed, dated and delivered at Ile du Port 19 March 2024.

B Adeline, J