

THIRUCHELVAM
v.
ATTORNEY-GENERAL

SUPREME COURT
G. P. S. DE SILVA, C.J.,
KULATUNGA, J.
RAMANATHAN, J.
S.C. APPEAL NO. 144/94.
C.A. 106/92.
H.C. COLOMBO 4996(9)
MARCH 6, 1995, APRIL 27, 1995.

Indictment – Charge of possession of Heroin – Poisons, Opium and Dangerous Drugs Ordinance S. 54A (d) as amended by Act 13 of 1984 – Part III of the Third Schedule – Interpretation – Life Imprisonment – Whether Mandatory.

The Appellant was indicted on the charge of possession of 71.3 grammes of Heroin. After trial in the High Court, the accused was sentenced to a term of Life Imprisonment. The Court of Appeal affirmed the said Order. On appeal to the Supreme Court it was submitted that the Court of Appeal erred in law in holding that where an accused had been found guilty of having been in possession of over 2 grammes of Heroin, a sentence of life imprisonment is mandatory.

Held:

(i) In the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act, No. 13 of 1984 column II of Part III of the Third Schedule sets out the quantity of Heroin; the Penalty is in the corresponding entry in column III.

(ii) On a plain reading of the wording in Part III it is clear that for the possession of “2 grammes of Heroin and above” (column II) the penalty as set out in the corresponding entry in column III is “death or life imprisonment.”

(iii) Part III of the schedule sets out three different forms of penalty in respect of varying quantities of heroin. Where the legislature has specified the maximum and minimum terms of imprisonment, the Court is vested with a discretion within the specified limits.

(iv) In a case of possession of 2 grammes of heroin and above, the penalty set out is “death or life imprisonment.” It is manifest that in this category the discretion of court is limited to the imposition of the death sentence or to a sentence of life imprisonment; the punishment is one fixed by the legislature; there is no discretion vested in the Court in regard to the period of imprisonment.

(v) There is no warrant for inserting additional words where the sentence is one which is fixed by law.

Case referred to:

1. *Van der Hulst v. A.G.* 1989 – 1 SLR 204.

Overruled

APPEAL from the Judgment of the Court of Appeal.

Somapala Gunadheera for Accused-Appellant.

C. R. de Silva, D.S.G. with *Samaranayake, S.C.* and *Miss S. Jayawardene, S.C.* for Attorney-General.

Cur. adv. vult.

May 12, 1995.

G. P. S. DE SILVA, C.J.

The appellant was indicted on the charge of possession of 71.3 grammes of heroin, an offence punishable under section 54A (d) of the Poisons, Opium and Dangerous Drugs Ordinance, as amended by Act, No. 13 of 1984. After trial, he was convicted by the High Court and sentenced to a term of life imprisonment. On appeal, the Court of Appeal affirmed the conviction and sentence.

Special leave to appeal to this court was granted on two matters (1) Has the Court of Appeal erred in law in holding that where an accused had been found guilty of having been in possession of over 2 grammes of heroin, a sentence of life imprisonment is mandatory?

(2) Does an appellate court have the power to order the deduction of the period spent on remand prior to the date of conviction from the sentence imposed on him?

The first question involves the interpretation of Part III of the third Schedule to the Poisons, Opium and Dangerous Drugs Ordinance as amended by Act, No. 13 of 1984. Column II of Part III of the third schedule sets out the quantity of heroin and the penalty is set out in the **corresponding entry** in Column III. On a plain reading of the

wording in Part III it is clear that for the possession of "2 grammes of heroin and above" (Column II) the penalty as set out in the **corresponding entry** in Column III is "death or life imprisonment". Mr. Somapala Gunadheera for the appellant strenuously contended that it was open to the High Court to have imposed a sentence of imprisonment less than "life imprisonment". Counsel cited the case of *Van der Hultes v. A.G.*⁽¹⁾ in support of this submission. In that case the Court of Appeal quoting the words "shall be liable to the penalties in Column 3 ..." held that the High Court "had the discretion to impose any sentence over 7 years rigorous imprisonment extending up to the death penalty or life imprisonment...".

I am afraid I cannot agree with the submission of Counsel for the appellant, and the view taken in *Van der Hultes* case (*supra*). Part III of the schedule sets out three **different** forms of penalty in respect of varying quantities of heroin. Where the quantity of heroin does not exceed 1 gramme, the penalty (insofar as jail terms alone are considered) is "imprisonment of either description for a period not less than 3 years and not exceeding seven years." In a case where the quantity of heroin varies between 1 to 2 grammes the term of imprisonment is "for a period not less than 7 years and not exceeding 20 years". Thus it is seen that in both these instances the legislature has specified the maximum and minimum terms of imprisonment. The Court is vested with a discretion within the specified limits.

In the appeal before us we are concerned with a case of possession of "2 grammes of heroin and above" (vide Column II which sets out the quantities). The penalty set out in the corresponding entry in Column III is "death or life imprisonment". It is manifest that in this category the discretion of the court is limited to the imposition of the death sentence or to a sentence of life imprisonment. In other words, the punishment is fixed by the legislature; there is no discretion vested in the Court in regard to the period of imprisonment. If the argument of counsel for the appellant is to be accepted, additional words vesting a discretion in the court would have to be inserted, a mode of interpretation which is impermissible save in exceptional situations. There is no warrant for inserting additional words where the sentence is one which is fixed by law. **In this context** the expression "liable to the penalty" which

occurs in section 54A (d) cannot be given the meaning "exposed to" as contended for by counsel for the appellant, for the sentence follows upon conviction. As rightly submitted by Mr. C. R. de Silva, Deputy Solicitor-General, on a reading of Part III of the schedule as a whole, it is clear that the legislature intended a graded form or scale of punishment. Mr. de Silva stressed that this is the scheme of the Schedule. Having regard to the quantity of heroin found in the possession of an accused person, the legislature enacted an ascending scale of punishment. Where the case is one of possession of "2 grammes of heroin and above" the legislature appears to have considered the offence to be of a serious nature and the discretion of the Court is confined to imposing sentence of death or sentence of life imprisonment and nothing less.

I accordingly hold that the sentence of life imprisonment was correctly imposed on the appellant by the High Court.

The second question does not arise for consideration in the instant appeal, since the sentence is one fixed by law.

For these reasons the judgment of the Court of Appeal is affirmed and the appeal is dismissed.

KULATUNGA, J. – I agree.

RAMANATHAN, J. –

"I have had the benefit of a full argument and I am now of the opinion that the view expressed in *Van der Hulst v. A.G.* (1989) 1 SLR 204 is incorrect. I agree with the judgment of the Chief Justice".

Appeal dismissed.