Sim Teck Ho v Public Prosecutor
[2000] SGCA 44

Case Number : CA 11/2000

Decision Date : 23 August 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Chua Teck Leong and Nicolas Aw (Derrick Ravi Partnership) for the appellant; Jaswant Singh (Deputy Public Prosecutor) for the respondent

Parties : Sim Teck Ho — Public Prosecutor

Criminal Law – Offences – Controlled Drugs – Trafficking – Possession of drugs – Physical possession – Plastic bag with drugs placed in flat's storeroom – Flat occupied and visited by others – Whether accused in physical control of drugs

Criminal Law – Offences – Controlled Drugs – Trafficking – Possession of drugs – Knowledge of drugs – Accused given plastic bag by ex-prison mate – Whether ignorance of contents of plastic bag a defence – Whether element of knowledge proved

(delivering the grounds of judgment of the court): The appellant was convicted in the High Court on the following charge:

> *That you Sim Teck Ho, on 11 November 1999, at or about 1pm, at Blk 644 Yishun Street 61 [num]07-312, Singapore, did traffic in a controlled drug specified in Class `A` of the First Schedule to the Misuse of Drugs Act (Cap 185), to wit, by having in your possession for the purpose of trafficking seven (7) plastic packets containing not less than 130.46 g of diamorphine at the aforesaid place without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) and punishable under s 33 of the Misuse of Drugs Act (Cap 185).*

He appealed against his conviction. We heard his appeal and dismissed it. We now give our reasons.

The facts

In the early afternoon of 11 November 1999, at about 1pm, a team of Central Narcotic Bureau (`CNB`) officers raided a HDB flat at Block 644, Yishun Street 61, [num]07-312 (`the flat`). The flat was occupied by the appellant`s two brothers, Sim Soon Leong (`Soon Leong`) and Sim Hai Huat (`Hai Huat`), and his mother, Mdm Tan Soh Gek (`Mdm Tan`). The appellant and his other brother Sim Teck Leong were staying there temporarily. The appellant had a rented flat in Sin Ming Industrial Estate, but had been living with his mother at the flat for one or two months before the raid. Mdm Tan, Soon Leong and the appellant were in the flat at the time of the raid.

After entering the flat, the CNB officers placed the appellant under arrest on suspicion of having consumed a controlled drug. They then conducted a search of the flat. Sgt Harry Ong Keng Leng (`Sgt Harry Ong`) found a Watson`s plastic bag (`the bag`) in the storeroom, placed between two red pails on the floor beneath the shelves. The bag contained seven packets of yellow granular substance. Insp Lee Chai Hwa (`Insp Lee`) pointed to the bag and asked the appellant in Hokkien what it was. The appellant replied that he did not know. Insp Lee then asked who it belonged to. The

appellant replied that it belonged to `Ah Bei`, a Malaysian, and that he was keeping it for Ah Bei. Insp Lee asked the appellant why he was keeping the stuff for Ah Bei, and the appellant answered that he made $350 for keeping it. The seven packets were subsequently sent to the Department of Scientific Services for analysis and were found to contain no less than 130.46 g of diamorphine.

ASP Fan Tuck Chee (`ASP Fan`) arrived at the flat at 3pm. He asked the appellant six questions, including how Ah Beh could be contacted. In the process, it was revealed that the appellant had Ah Beh`s telephone number. A piece of paper with the number 020167527126 and the Chinese letters for `Ah Bei` was retrieved from the appellant. That number was subsequently ascertained to be a Malaysian telephone number. Attempts to contact Ah Bei with that number were unsuccessful.

In his voluntary statements to the police, the appellant gave an account of how he had come about the bag. On 9 November 1999, two nights before his arrest, the appellant was at the coffeshop at Blk 605 Yishun, where he worked as a hawker assistant. Sometime after 9pm, the public telephone at the coffeeshop rang. The appellant picked up the phone. A male voice at the other end asked for `Teh Oh`, which was the appellant`s nickname. The person introduced himself as Ah Beh. When the appellant said that he did not know him, Ah Beh said that the appellant would recognise him if they met. Ah Beh told him that he was one of the appellant`s former prison inmates, but the appellant could not recall who Ah Beh was. Ah Beh then told the appellant that his worker would pass the appellant something to keep and that somebody else would collect the thing a few days later. The worker would also pass the appellant a piece of paper with a telephone number. The appellant was to pass the telephone number to the person collecting and tell that person to call Ah Beh.

At about 11.15pm of the same night, after the stall had been packed up, two men that the appellant had not seen before, a Malay and a Chinese, arrived at the coffeeshop and passed the appellant the bag together with the piece of paper with Ah Beh`s telephone number. The appellant did not ask them what was contained in the bag. Although the top of the bag was rolled up, it was not sealed. The appellant claimed that he did not open it to examine the contents. The appellant then headed straight back to the flat, and kept the bag in the storeroom, in the location where it was found by the CNB raiding team. The appellant said that he used the storeroom as he believed that nobody would notice the bag there. After that, the appellant showered and went to sleep on the sofa in the living room, where he had been sleeping since moving into the flat.

The next day, on 10 September 1999, the appellant woke up in the afternoon. He left the flat for the hawker stall just before 4pm. At about 8pm, he went to see the doctor. Thereafter, he returned to work and went back to the flat at about 11pm. He then went to sleep and was still asleep when the raid occurred the next day.

Decision of the court below

The trial judge found that no one, other than the appellant, entered the storeroom between 9 November 1999 and 11 November 1999 and that the bag and its contents remained intact from the time it was placed in the storeroom by the appellant until the time of its discovery by the CNB officers.

The appellant`s assertion of total ignorance of the contents was rejected by the trial judge. In the trial judge`s view, the circumstances in which the appellant came into possession of the bag, if true, were so suspicious that it would require a totally mindless person to have done what the appellant claimed he did. Even if he did not suspect anything illicit, he surely would have enquired from Ah Beh or his two associates what the contents were. He would have needed to know if the contents were

fragile or perishable in order to discharge his duties responsibly. At the least, he would have opened the bag for a peek, for it was not as if he had been instructed not to look. He did not bother to ask why the bag should be kept by him for a few days. All of this was compounded by the fact that the owner of the bag was not only someone unknown to him, but a former prison inmate. The trial judge therefore found that the appellant clearly knew that what he was receiving and keeping was a controlled drug.

The law on trafficking in a controlled drug

The appellant was charged with trafficking in a controlled drug, an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185) (`the Act`). Section 5(2) of the Act states that a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking. Section 17(c) of the Act provides a presumption concerning trafficking. It states that any person proved to have possession of more than 2 g of diamorphine shall be presumed to have that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

The key issue in this appeal was whether the trial judge was right in finding that the appellant was in possession of the diamorphine contained in the bag. Numerous cases have established that possession encompasses the element of physical control as well as an element of knowledge. For example, in **Fun Seong Cheng v PP** [1997] 3 SLR 523 , it was said by Karthigesu JA, in delivering the judgment of the Court of Appeal:

> *53 ... Clearly in order to prove that the appellant was in possession, he must have physical control over the drugs. It is a matter of fact whether someone had physical control over an item ...*
>
> *54 Physical control is not enough for the purpose of proving possession. There needs to be mens rea on the part of the accused.*

Karthigesu JA went on cite a portion of Lord Pearce`s judgment in **Warner v Metropolitan Police Commissioner** [1969] 2 AC 256, a decision of the House of Lords which involved the meaning of `possession` for the purpose of s 1 of the Drugs (Prevention of Misuse) Act 1964. Lord Pearce`s dicta had been cited in extensio with approval by the Court of Appeal in **Tan Ah Tee v PP** SLR 211 [1980] 1 MLJ 49 . Wee Chong Jin CJ in delivering the judgment of the court, said that the word `possession` for the purpose of the Act should be construed as Lord Pearce had construed it. His Lordship had said in ***Warner*** :

> *One may, therefore, exclude from the `possession` intended by the Act the physical control of articles which have been `planted` on him without his knowledge. But how much further is one to go? If one goes to the extreme length of requiring the prosecution to prove that `possession` implies a full knowledge of the name and nature of the drug concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term `possession` is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance or mistake as to its qualities is not an excuse.*

Therefore, in order to prove possession, the prosecution must prove that there is first, physical control over the controlled drug, and second, knowledge of the existence of the thing itself, that is the existence of the controlled drug, but not the name nor nature of the drug.

Physical control

The appeal contested the trial judge`s finding that these two elements of possession were satisfied. In respect of physical control, the appellant argued that the trial judge erred in failing to give due weight to the fact that the appellant did not have exclusive possession of the flat and that there were visitors who went to play mahjong at the flat who could have entered the storeroom. We had several difficulties with this argument.

First, based on the evidence of the appellant, from the time he kept the bag in the storeroom at about 11pm to 12pm on 9 November 1999 till the time of the raid at about 1pm on 11 November 1999, the only period in which the appellant was out of the house was on 10 November from about 4pm when he went to work at the hawker stall till 11pm of the same day when he returned home. There was however no evidence of a mahjong session during this period of time. Mdm Tan in her testimony said that she would invite her neighbours to her house once or twice a week to play mahjong. The appellant`s brother, Hai Huat, in his testimony, said that his mother`s friends would come once or twice a week, on Sunday, and at times also on weekdays. He was unable to remember if he had seen his mother`s mahjong friends, and neither did he ask nor was told if her friends had come to the flat on the crucial Wednesday afternoon of 10 November 1999 to play mahjong. There was, in short, merely speculation that there might have been visitors, but no evidence of it.

Second, Mdm Tan`s mahjong friends were lady neighbours in their 60s or 70s who resided in the same block. Even if there was a mahjong session on the afternoon of 10 November 1999, no reason was suggested as to why these ladies would want to plant drugs in their neighbour`s storeroom.

Third, even if someone did plant drugs in the storeroom, it would have been extremely coincidental that the drugs were planted in the Watson`s plastic bag that the appellant`s former prison inmate had passed to him for safekeeping.

The only persons who clearly had access to the storeroom were the family members of the appellant. The appellant had however, chosen the storeroom precisely because in his view, none of the other family members went there. Moreover, it was not the appellant`s case that the drugs were planted by a family member. In view of all these circumstances, the trial judge was justified in finding that no one, other than the appellant, entered the storeroom between 9 November 1999 and 11 November 1999, that the bag and its contents remained intact from the time it was placed in the storeroom by the appellant until the time of its discovery by the CNB officers, and that the appellant had physical control over the bag and its contents.

Knowledge of the existence of the controlled drug

The second element of possession is knowledge of the existence of the controlled drug. The appellant`s contention in the court below and on appeal was that, while he knew of the existence of the bag, he was totally ignorant of its contents. In ***Tan Ah Tee*** it was said by the Court of Appeal:

> *Indeed, even if there were no statutory presumptions available to the prosecution, once the prosecution had proved the fact of physical control or possession of the plastic bag and the circumstances in which this was acquired*

> *by and remain with the second appellant, the trial judges would be justified in finding that she had possession within the meaning of the Act unless she gave an explanation of the physical fact which the trial judges accepted or which raised a doubt in their minds that she had possession of the contents within the meaning of the Act.*

Further on in the same judgment, the Court of Appeal cited the following dicta of Lord Pearce in ***Warner v Metropolitan Police Commissioner*** :

> *If a man is in possession of the contents of a package, prima facie his possession of the package leads to the strong inference that he is in possession of its contents. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been `planted` in his pocket without his knowledge, so I do not think that he is in possession of contents which are quite different in kind from what he believed. Thus the prima facie assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suitcase at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal.*

It has also been said by the Court of Appeal, in **Ubaka v PP** [1995] 1 SLR 267 and **Yeo Choon Huat v PP** [1998] 1 SLR 217 , that ignorance is a defence only when there is no reason for suspicion and no right and opportunity of examination, and ignorance simpliciter is not enough.

The appellant argued that the circumstances were not suspicious because: (a) the bag was handed over to the appellant at night; (b) the appellant was busy and tired after his work; (c) Ah Beh`s call was unexpected and the appellant obliged because he was busy and had no time to make enquiries; (d) he placed the bag at the back of the coffeshop where the dishes were washed; (e) the payment of $350 for safekeeping was pittance compared to ASP Fan`s conservative estimate of the value of the drugs at $50,400.

However, $350 was considerable compensation for simply safekeeping something, especially for the appellant who was working as a hawker assistant. The appellant`s testimony in court that he placed the bag at the back of the coffeeshop after he received it, was probably to suggest a lack of suspicion over what he had received, but it ran counter to his police statement made on 17 November 1999 that he headed straight for the flat after the bag was handed to him, and against the grain of his declaration in that police statement that, since Ah Beh entrusted him with the bag, he had the responsibility of making sure that it did not get lost. As for the fact that he was tired and busy on the night of receiving the bag, that would not have precluded him from looking at the bag while walking home, or over the course of the next two days. The appellant`s protest that there was no reason for suspicion goes against the evidence. He received a phonecall at a public telephone in a coffeeshop where he had only worked for a week, from a former prison inmate whom he did not know, but who knew his nickname `Teh Oh`, was not asked but told to keep something for Ah Beh, for the

considerable sum of $350, without being told what it was, for how long and why, nor know the persons who passed it to him nor who would collect it from him. In view of the extremely suspect circumstances in which the appellant received the bag, we were of the view that the defence of ignorance failed.

Conclusion

The appellant`s sole contention on appeal centred on the issue of possession. Contrary to the appellant`s submission, the evidence established beyond reasonable doubt the appellant`s possession of the diamorphine. Nothing was raised in the court below and nothing raised on appeal which rebutted the s 17(c) presumption of drug trafficking triggered by the proof of the appellant`s possession of not less than 130.46 g of diamorphine. For these reasons, we dismissed the appeal and affirmed the sentence.

Outcome:

Appeal dismissed.