

Jingga bin Md Selamat alias Kwan Ah Chiam v Public Prosecutor
[2001] SGCA 32

Case Number : Cr App 20/2000
Decision Date : 30 April 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Lai Kew Chai J; L P Thean JA
Counsel Name(s) : Nadesan Ganesan and Sadari Musari (N Ganesan & Partners) for the appellant;
Kan Shuk Weng and Loh Kuan Wui, Adriel (Attorney-General's Chambers) for the respondent
Parties : Jingga bin Md Selamat alias Kwan Ah Chiam — Public Prosecutor

JUDGMENT:

Grounds of Judgment

1. The appellant was convicted at the High Court of the charge that he, on 20 March 2000, did traffic in a controlled drug at Block 39, Chai Chee Ave, #03-265 (the flat) by having 78.04 grams of diamorphine in his possession for the purpose of trafficking, an offence under s 5(1)(a), read with s 5(2), of the Misuse of Drugs Act (the Act) and punishable under s 33. He was sentenced to suffer death. His appeal came up before us on 19 March 2001 and it was dismissed. We now give our reasons.

The facts

2. On 20 March 2000, at about 12.55pm, officers from the Central Narcotics Bureau (CNB) raided the flat. Present in the flat were the owner of the flat, one Mr Syed Omar bin Syed Kassim, the appellant, his wife, Rosminah bte Ali, and their son. The appellant and his family were permitted by Syed Omar to stay there. The flat was a small one-room unit.

3. Following a search of the flat, the officers found a grey plastic box under the bed. In it were three plastic bags containing a total of 175 sachets of granular substance which were later analysed to contain a net weight of 78.04 grams of diamorphine. Those 175 sachets of granular substance formed the subject matter of the charge brought against the appellant. The appellant and his wife was accordingly placed under arrest.

4. A white plastic bag, wherein there were packets of envelopes, was found on the top of a cupboard. Another packet of envelopes was also found on the dining table.

5. The appellant was asked by one of the CNB officers, Cpl Khairy, in Malay, what were in the grey plastic box. He answered that they were heroin. His statement was reduced into writing and no objection was taken by the appellant as to its admissibility in evidence.

6. On the ground floor of the block, beneath the flat, the officers found a small black plastic case containing a straw of powdery substance, two syringes and a piece of silver foil. The appellant admitted that those things were his, having thrown them out from the flat.

Voire dire

7. On 24 March 2000, the appellant gave a cautioned statement to the Investigation Officer (IO), Inspector Saherly. Later several other statements under s 121 of the Criminal Procedure Code were also given to the IO. The prosecution sought to admit

the cautioned statement, and the first of the other statements, which was recorded on 27 March 2000. The appellant contended that both these statements were not voluntarily given. Accordingly, a *voire dire* was held.

8. In relation to the two statements, what the appellant alleged was that the IO threatened to also charge his wife. He was thus coerced into making the statements. He said to protect his wife, the statements were made.

9. It is important to note that in the cautioned statement, the appellant did not admit that the drugs were his. Furthermore, earlier on 21 March, the appellant already knew that his wife was jointly charged with him for trafficking. Why was there a need to make such a threat? In re-examination, he said he gave the statements to get her released. There was a shift in position here.

10. With regard to the 27 March 2000 statement, the appellant also alleged that it was not accurate in that the IO failed to record several answers he gave. Furthermore, some of his answers were not correctly interpreted into English. However, these allegations were not put to the IO or the interpreter who was present during the recording. Moreover, the interpreter told the court that when the completed statement was read back to the appellant, he had nothing to add. The appellant also said that before the statement was taken, the IO told him again to cooperate and admit that the drugs were his. However, the fact remained that the appellant never admitted that the drugs were his.

11. The trial judge, having carefully considered the evidence tendered in the *voire dire*, came to the conclusion that the appellant had not raised a reasonable doubt as to the voluntariness of the two statements. He was satisfied that the statements were made voluntarily without any threat or inducement. This was his reasoning:-

At the end of the *voir dire* I reviewed the evidence. I found it hard to accept that the inspector had threatened to charge the accused's wife if he did not co-operate. The accused and counsel alleged that the inspector said that he will or shall charge the wife. It did not make sense for the inspector to issue such a threat to the accused when the accused knew that his wife had already been charged.

I also did not accept the accused's assertion that he yielded to the threat. His evidence was that the inspector wanted him to admit the drugs were his. However, he agreed with the prosecutor that he did not admit ownership of the drugs in either statement.

I did not believe that the inspector had made the threats alleged, or that the accused had offered his co-operation and made the statements because of any threats. The accused had not raised a reasonable doubt on the voluntariness of the two statements. I therefore ruled that the two statements were voluntary and admissible.

The statements

12. In his cautioned statement, the appellant said

I do not intend to traffic the drugs. I only helped my friend to keep the drug. He would call me the next day to collect the drugs and pay me some commission. My wife has no knowledge of the drugs. I plead for leniency.

13. In his statement of 27 March 2000, the appellant stated:-

I am currently staying at a rented flat with my wife and my adopted son The

owner, Syed Omar stays together with us.

On 20.3.2000 at about 12.55pm, I was arrested in my house. At that time, I was having a meal with the owner, my wife and son. There was a knock on the door and the owner, opened the door. A group of men identifying themselves as CNB officers then entered the house. I then threw out a black plastic container out of the kitchen window. Inside the container, are two syringes and a straw of heroin. The straw of heroin is for consumption together with my wife. The group of men then handcuffed us and made a search in the house and us. They found a syringe in my pouch. The syringe is also used by me. They then found heroin under the bed, in a grey plastic container.

There are a total of 175 sachet of heroin in the grey container in three different plastic bags. The first two plastic contains 58 sachet while the third one contains 59 sachets. There is also one weighing machine in the container. In the grey container, there is also some empty plastic sachets. The things recovered were given to me by a friend called M. His contact number is 98754115.

On 19.3.2000, at about 9.00pm, M came to the house. Nobody was around at that time. He brought along with him a white plastic bag saying that it contains heroin. I did not know how much heroin is there. He had asked me to keep it for him for the night. He told me to wait for his call the next day to arrange for the heroin to be either collected by him or sent by me. He then took out another plastic bag from the white one to show me the heroin. I then took the white plastic bag with some brown envelopes inside it and placed it on top of the cupboard. From the plastic bag, he took out three different plastic bags. He told me that two of them contained 58 sachet of heroin each and the third contains 59 sachet. I then took the three plastic bags and placed them in the grey plastic container. He then took out the weighing machine and some empty plastic sachet and I also kept them in the grey plastic container. After we had kept the drugs, we sat down and talked for a while. M said that he would collect the drugs tomorrow and give me a commission. He did not state how much commission I would get. After a while my wife and son came home. The owner also came home soon after. M then left.

Appellants wifes evidence

14. The appellants wife, Rosminah, who was called by the prosecution, told the court that she found the grey box along the corridor of her flat three or four days before the raid by the CNB officers. She took it home, washed it and left it under the bed, intending to use it to store her sons clothings.

15. A day before the raid, M, also known as Emran bin Tahir, came to see the appellant. Rosminah heard Emran offering the appellant a job. The appellant and Emran then left the flat to buy a handphone. They came back later with the appellant carrying a white plastic bag, which was the bag found by the CNB officers on top of the cupboard.

16. That night at about 2.00 to 3.00 am, as she had difficulties sleeping, Rosminah got out of bed and wanted to store her sons clothings in the grey box. She opened the grey box and saw a number of plastic bags therein and in one of the plastic bags she saw yellow substances which she recognised to be drugs. She woke up the appellant and asked him to whom did the things in the grey box belong. She also asked him to return the things to the owner. The appellant appeared to be in fear and used his

handphone to call someone.

Appellants evidence

17. The appellant admitted that he and his wife were drug addicts and they would consume about one sachet of heroin a day. His defence was that he had unwittingly come into possession of the drugs. His story was this. He knew Emran from 1989, when both of them were inmates at the Selarang Drug Rehabilitation Centre. On 17 March 2000 he met Emran at the Bedok Interchange. Emran sold to him a sachet of the drugs at \$180/-, with payment to be made the next day. On 18 March 2001, the appellant paid Emran for the sachet he took the previous day and also took another sachet of drugs from Emran on credit. The appellant and Emran continued their dealing on this basis on 19 March 2001. However, on this day, Emran, on learning that the appellant was unemployed, offered the latter a job without telling the latter what the job entailed. As Emran was then a contract worker, the appellant assumed that the job offer would be a cleaning job.

18. In the afternoon of that same day, Emran came to the appellants flat to discuss about the job he had for the appellant. Emran also suggested that the appellant obtained for himself a handphone for easy communication. Emran offered to pay for it first. Together, they left for Bedok Interchange where the appellant made the purchase. They then came back to the flat where Emran bid his goodbye to the appellant without entering the flat.

19. Later in the evening, Emran telephoned the appellant to say that he was coming to the appellants flat. It was around 9.00 10.00pm when Emran arrived, carrying a big plastic bag. Emran left the plastic bag with the appellant, indicating that he had to attend to something urgent and would return to collect the bag later. Ten minutes later the appellant received a call from Emran telling him that the bag contained three bundles of 58, 58 and 59 sachets of drugs, besides a weighing machine. The appellant checked the bag and became frightened. He asked Emran to take the bag away. Emran agreed. But by midnight when Emran failed to turn up to take away the bag, he had thoughts of, inter alia, throwing them away or calling the police. However, he could not bring himself to taking any of these steps. Instead, he poured the stuff which was in the plastic bag into the grey box, which he then placed underneath his bed.

20. Sometime in the middle of the night his wife woke him up to ask about the stuff in the grey box. At her insistence, he tried unsuccessfully to contact Emran as the latter's handphone was switched off. It was only at 11.00am to 12.00 noon on 20 March 2001 that Emran called the appellant to say that he was coming to collect the drugs from the appellant and would pay the latter a commission.

21. The appellant did not challenge Cpl Khairys evidence that he found seven packets of envelopes in a carrier bag at the top of the cupboard and another packet of envelopes on the dining table. The appellant said that the carrier bag and the envelopes were left with him by Emran after they returned from buying the handphone on 19 March 2000. As regards the packet of envelopes on the dining table, he said it was placed there by a Chinese officer who took it out from the carrier bag. However, he could not identify who this officer was. Neither was this fact put to Cpl Khairy or any of the CNB officers who testified at the trial.

22. The primary defence raised by the appellant was that in the evening of 19 March 2000, when he took over the plastic bag from Emran for safekeeping, he did not know it contained drugs. It was only when Emran rang him 10 minutes later and told him what was in it, that he knew of the contents in the bag. He explained that what he said in his statements should be viewed in that light. He was keeping the bag for a friend not knowing what it contained. The statement of 27 March 2000 was also not accurate as the IO did not fully record what he said.

23. Emran was subpoenaed by the defence to testify. While acknowledging that he met the appellant at the Bedok Interchange on 17 March 2000 and visiting the appellants flat on 19 March 2000, he denied offering the appellant a job or buying the latter a handphone. He also denied having, on 19 March 2000, handed over to the appellant a bag containing drugs for safekeeping.

Finding below

24. The trial judge did not accept the appellants claim that he did not know the bag contained heroin when he took possession of it. Without deciding whether the drugs belonged to the appellant, the judge held that the appellant was certainly in possession of it, and even if the drugs did not belong to him, he had kept them for the owner, intending thereafter to return the drugs to the owner, and that was sufficient to constitute the offence charged. The trial judge did not believe the appellants assertion that he wanted to throw the drugs away when he knew what they were. He held that the appellant had possession of the drugs for the purpose of trafficking.

Appeal

25. Before the scheduled hearing of the appeal, counsel for the appellant informed this Court that he would not be making any written submission as he was not able to advance any credible argument to challenge the findings of the court below. On the day of the hearing of the appeal, counsel reiterated that view. However, we noted that in the Petition of Appeal filed on behalf of the appellant, it was stated that the trial judge had erred in his finding as he failed to consider:-

1. That the appellant had no knowledge as to the contents of the plastic bag when he received it from "Emran".
2. That the appellant upon realising that the plastic bag contained drugs instantly formed an intention to return the same to "Emran".
3. That the appellant had reason to believe that Emran would collect the drugs immediately upon being told to collect the same.
4. That the appellant was not in a state of mind to rationalise and alert the Police instead of waiting for "Emran" to collect the drugs as he was also in a state of panic and in fear that "Emran" would harm him if the drugs were not returned to him.
5. That the appellant had any mens-rea to facilitate "Emran" to traffic in the drugs or any knowledge that "Emran" would be trafficking in the drugs upon receipt of the same.

26. All these points revolved round the assertion that at the time the appellant received the bag, he did not know that they contained drugs and, upon being notified subsequently by Emran of the same, he panicked and had thought of throwing them away. These very points were carefully considered by the trial judge who could not accept the appellants assertion that he did not know that the bag contained heroin when he took possession of it. This was how the trial judge analysed the situation:-

In his cautioned statement, he admitted knowledge of the drugs from the time he came in possession of them. In the investigation statement he elaborated on the circumstances of his possession. In the trial-within-a-trial, he claimed that he did not make the statements voluntarily. After the statements were admitted in evidence, he claimed that they did not reflect what he had said. He alleged that parts of what he said were not recorded, but that was denied by the inspector and the interpreter. He also alleged that substantial portions were put by the inspector to which he acquiesced, but this was not put to the inspector

or the interpreter.

The accused's account of the events in his defence raised many questions. He said Emran offered him a job, but he did not know what work he was required to do. He said he thought it was a cleaning job although he knew that Emran was a drug trafficker selling heroin in sachets.

I did not believe that the accused had wanted the drugs removed from the flat. If he had that intention, he would not separate the drugs from the bag they came in. There was no reason for him to take them out of the bag and hide them in the grey box under the bed. He would not throw the bag away, as he said he may have done.

27. We were unable to see any merit in the grounds set forth in the Petition of Appeal. The crux of the appellants' contentions related to the question of *mens rea*, namely, knowledge as to the things in the bag. The appellant himself was a drug addict. He was aware that Emran was a drug trafficker, as the latter had supplied drugs to him. It defied belief that he did not even ask Emran or look into the bag to see what was inside, unless he already knew what was in it by prior arrangement with Emran. This, together with what the appellant had said in his cautioned statement, as well as in the statement of 27 March 2001, established overwhelmingly that he knew what was in the bag and the trial judge was amply justified to have rejected his plea of ignorance and the story he tried to spin. There was no basis at all for us to disturb the findings of the trial judge. Accordingly, we affirmed the conviction recorded by the court below and dismissed the appeal.

28. In passing, we would add that even assuming the appellant really did not know the bag contained drugs when he received it, and only knew of it ten minutes later when notified by Emran, the fact that he kept it by putting them in the grey box constituted possession of the drugs on his part even though he intended to return them to Emran the next day. By virtue of s 17 of the Act, that possession was presumed to be for the purpose of trafficking. The fact that the appellant intended to return the drugs to the person to whom they belonged would not render the act of possession any less a possession for the purpose of trafficking: see *Lee Yuan Kwang & Ors v Public Prosecutor* [1995] 2 SLR 349 and *Lee Lye Hoe v Public Prosecutor* (unreported, Criminal Appeal No 5/2000).

LP Thean

Chao Hick Tin

Lai Kew Chai

Judge of Appeal

Judge of Appeal

Judge

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