

Bala Murugan a/l Krishnan and Another v Public Prosecutor
[2002] SGCA 34

Case Number : Cr App 2/2002
Decision Date : 12 July 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; MPH Rubin J; Tan Lee Meng J
Counsel Name(s) : Subhas Anandan and Anandan Nalachandran (Harry Elias Partnership) (both assigned) for the first appellant; Thangavelu (Rajah Velu & Co) and Paul Chia (Tan Gill & Paul) (briefed) for the second appellant; Bala Reddy and Sia Aik Kor (Deputy Public Prosecutors) for the respondent
Parties : Bala Murugan a/l Krishnan; Another — Public Prosecutor

Courts and Jurisdiction – Appeals – Accused challenging trial judge's factual findings – Whether appropriate for appellate court to interfere with such findings

Criminal Law – Statutory offences – Misuse of Drugs Act – Trafficking in controlled drugs – Abetment of trafficking – Requisite mens rea – s 12 Misuse of Drugs Act (Cap 185, 2001 Ed)

Criminal Procedure and Sentencing – Impeachment – Prosecution failing to impeach first appellant's credit – Whether necessary to impeach credit before accused's evidence can be disbelieved

Evidence – Proof of evidence – Corroboration – Inconsistent versions of events – Accused's inconsistent versions of events as corroboration of his guilt

Evidence – Weight of evidence – Relevance of exoneration by co-accused – Whether such exoneration relieves co-accused of culpability

Judgment

GROUNDS OF DECISION

Introductory

1 The appellants, Bala Murugan A/L Krishnan ('Bala Murugan'), the first appellant, and Lim Boon Kiat ('Lim'), the second appellant, along with one Steven Ang Keng Leong ('Steven Ang'), were tried jointly, convicted and sentenced to the mandatory punishment of death by Judicial Commissioner Tay Yong Kwang for offences under the Misuse of Drugs Act (Cap 185).

Charges

2 The charge against Steven Ang, who did not appeal against his conviction and sentence, was that:

[he] on the 27th day of June 2001, in a motor car bearing registration number SBQ 8587 H, along Yishun Avenue 2, Singapore, did traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in [his] possession for the purpose of trafficking 37.08 grams of diamorphine at the said place, without any authorisation under the said Act or the regulations made thereunder and [he had] thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act, Chapter 185, and punishable under section 33 of the aforesaid Act.

3 The charge against Bala Murugan was that:

[he] on the 27th day of June 2001, sometime before 3.40 p.m., did engage with one Steven Ang Keng

Leong and other unknown person(s) in a conspiracy to do a certain thing, namely, to traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, and in pursuance of the said conspiracy and in order to the doing of that thing, an act took place on the 27th June 2001 at the bus stop in front of Block 289 Yishun Avenue 7, Singapore, to wit, [he] provided 37.08 grams of diamorphine to the said Steven Ang Keng Leong for the purpose of trafficking, and [he had] thereby abetted the commission of the offence of trafficking in the said drugs and committed an offence under section 5(1)(a) read with section 12 of the Misuse of Drugs Act, Chapter 185, and punishable under section 33 of the aforesaid Act.

4 The charge against Lim was that:

[he] on the 27th day of June 2001, in a motor car bearing registration number SBQ 8587 H, along Yishun Avenue 2, Singapore, did abet one Steven Ang Keng Leong to traffic in 37.08 grams of diamorphine, a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by intentionally aiding the said Steven Ang Keng Leong in conveying him to Yishun in the said motor car belonging to [Lim] in order for [Steven Ang] to take possession of the said drugs for the purpose of trafficking, and [he had] thereby committed an offence under section 5(1)(a) read with section 5(2) and section 12 of the Misuse of Drugs Act, Chapter 185, and punishable under section 33 of the aforesaid Act.

Background facts

5 The background facts which gave rise to the charges and convictions can be summarised as follows.

6 At about 3.00pm on 27 June 2001, Steven Ang who was under surveillance by operatives from the Central Narcotics Bureau ('CNB') was observed leaving the car park of Block 12 York Hill, Singapore, in a white motor vehicle SBQ8587H driven by Lim. In the event, the surveillance team trailed the vehicle to a housing estate in Yishun.

7 Sometime after 3.20pm, Steven Ang was seen walking towards the bus stop in front of Block 289 Yishun Avenue 7. The bus stop was directly opposite the factory where Bala Murugan was working. Lim was spotted waiting in his vehicle a short distance away along Yishun Avenue 6 next to Block 289 near the junction where Yishun Avenue 6 and Yishun Avenue 7 intersect.

8 Soon after Steven Ang arrived at the bus stop, Bala Murugan was seen walking along the void deck of Block 289 towards the bus stop, carrying a haversack. When Bala Murugan reached the bus stop, he placed the haversack on the seat and sat down. Steven Ang stood close to him and they appeared to be having a short conversation. Bala Murugan then departed from the bus stop. Steven Ang picked up the haversack and made a call using his handphone. Presently, Lim drove his vehicle in the direction of the junction, turned left into Yishun Avenue 7 and stopped at the bus stop to pick up Steven Ang. Steven Ang made some hand gestures to Lim to open the boot of the vehicle. Steven Ang then placed the haversack into the boot, got into the vehicle and soon both of them were off with Lim at the wheel.

9 Bala Murugan was arrested as he was making his way across the pedestrian crossing at the junction of Yishun Avenues 6 and 7 towards his place of work. About 5 minutes later at about 3.45pm, CNB officers intercepted the vehicle, some 3.7 km away from the bus stop, and arrested both Steven Ang and Lim.

10 After the arrest of Steven Ang and Lim, the vehicle was inspected. Steven Ang informed the officers that the haversack found in the boot of the vehicle contained drugs. The seized drugs were subsequently analysed and found to contain not less than 37.08g of diamorphine.

11 Bala Murugan was first questioned by one Inspector Herman some 40 minutes after his arrest. He categorically denied any involvement with Steven Ang, claiming that he had left his workplace only to buy drinks. He also denied having handed

over anything to anyone, let alone a male Chinese earlier. He maintained this story even when giving his s 122(6) statement under the Criminal Procedure Code. However, Bala Murugan somewhat changed his story in his long statement. His revised account was that on the morning of 27 June 2001, he had run into a friend and fellow Malaysian, by the name 'Sivadas'. Bala Murugan knew Sivadas through a group which met regularly to play soccer on weekends. Sivadas, who had a haversack with him, told Bala Murugan that he wanted to pass the haversack which contained clothing to a friend and asked Bala Murugan to hold on to it for him temporarily. Bala Murugan agreed. Later that day, Sivadas called Bala Murugan on his handphone and asked him to deliver the haversack to the friend on his behalf. This friend, who turned out to be Steven Ang, made arrangements to meet Bala Murugan and they duly met at the bus stop. Bala Murugan handed the haversack over to Steven Ang and as he was returning to work, he was arrested by the CNB. He maintained that he was not aware at any stage that the haversack contained drugs.

12 Subsequently, Bala Murugan changed his story yet again, saying now that he had met Sivadas in fact on 26 June 2001 and kept the haversack at the workplace overnight before handing it over to Ang on 27 June. He admitted that he had communicated with Steven Ang on 26 June to discuss handing over the haversack. He had also attempted to call Steven Ang several more times on 27 June. When asked to explain the inconsistencies in his statements, he said that he had lied to Inspector Herman because in the 40-minute period between his arrest and Inspector Herman's arrival, the officers holding him in custody had frightened him by accusing him of drug-trafficking, telling him he would be sentenced to death by hanging. Similarly, it was the fear of the death penalty that caused him to say in his long statement that he took custody of the haversack from Sivadas on 27 June and not 26 June.

13 As for Lim, his position which he maintained throughout was that he did not know that he was participating in an act of drug trafficking. It was not in dispute that prior to the incident, Lim was buying heroin in sachets from Steven Ang. On 27 June 2001, at about noon, Lim made an arrangement with Steven Ang to buy five sachets of heroin at the agreed price of \$800. Lim arrived at Block 12 York Hill at about 3.00pm in his car. In the event, Steven Ang came to the car park where Lim was waiting and told Lim to drive him to Yishun. Lim was not told of the purpose for the trip nor did he inquire the purpose of the journey to Yishun Avenue 6. There, Steven Ang briefly left the vehicle and returned with a haversack. He requested Lim who was still at the driver's seat to open the boot. Once it was done, Steven Ang placed the boot and closed it. Soon they drove off. Shortly afterwards, the vehicle was intercepted and both of them were arrested.

14 Lim's testimony was that he had no knowledge of the fact that Steven Ang's purpose in going to Yishun was to collect the haversack which contained a large quantity of heroin. His claim was supported by the statements Steven Ang gave to the CNB, in which he stated that he had not informed Lim of his purpose in going to Yishun, and he had never previously used Lim to drive him around to collect heroin. He further testified in the court below that he had asked Lim to drive him to Yishun out of convenience, since Lim had contacted him just as he was about to leave.

15 However, Lim admitted that he suspected that the object of the trip was for Steven Ang to either deliver or collect heroin. He also disclosed that he had, in the recent past, driven Steven Ang on two separate occasions to Queensway Shopping Centre. On those two occasions, Steven Ang had told him to go home first and collect the heroin from him later. Lim had thus concluded that Steven Ang replenished his stock of heroin at Queensway Shopping Centre, and likewise, that after Steven Ang made the trip to Yishun on 27 June, he would be able to collect his 'order' of heroin from Steven Ang.

The appeal hearing:

Bala Murugan

16 The primary contention on behalf of Bala Murugan in this appeal was: that the judicial commissioner had erred in rejecting his revised claim that he was merely an innocent recipient of the haversack from a friend and that he had no reason to suspect that the haversack contained the prohibited substance.

17 In our view, the judicial commissioner had indeed addressed this defence squarely and with care. In his opinion, with which we fully agreed, if Bala Murugan's present story were to contain any grain of truth he would have certainly mentioned

this fact to the arresting officer promptly in the first instance. That was not all. On the second occasion, when he had an opportunity to state his defence during the recording of his s 122(6) statement, he still stuck steadfastly to his earlier story of denial and ignorance. Even at the time he proffered his long statement, his prevarication did not seem to have abated and he falsely told the officers that he received the haversack only on 27 June 2001.

18 Counsel for Bala Murugan was hard put to explain his prevarications and the wholly incongruent response. The excuse offered was that Bala Murugan had been frightened by the occasion and hence the lies.

19 The judicial commissioner correctly rejected the attempted explanation. He said in his judgment:

100 Insofar as B2 [the first appellant] was concerned, I agreed with the Prosecution that the new 'spin' he put on his long statements was necessitated by the StarHub handphone records and the call register details in B1's [Steven Ang] handphone which emerged only after the preliminary inquiry and in the course of trial respectively. His claim that B1 [Steven Ang] called him only once and that he called B1 [Steven Ang] only once (see paragraph 26 of his long statements) could not stand in the light of the new evidence and he therefore had to 'modify' the date of the events. I had no doubt that he was not telling the truth in court about this and that he was not labouring under any fear about having kept the haversack overnight. His omission to state the fact that he was in constant communication with B1 [Steven Ang] on 26 and 27 June 2001 must be evidence of his guilt.

20 We entirely agreed as we found his conclusions to be sound. It must also be observed at this stage that direct evidence of a conspiracy will be rarely available. In *Public Prosecutor v Sugianto & Anor* [1994] 2 SLR 1, the Court of Appeal reiterated at page 16:

... The essential ingredient of a conspiracy is agreement. (See the judgment of the Court of Appeal in *Lai Kam Loy & Ors v PP* [1994] 1 SLR 787) From the very nature of a conspiracy, direct evidence will hardly ever be available. It is evident, therefore, that the existence of a conspiracy will have to be inferred from the evidence and all the surrounding circumstances of the case.

21 In the appeal before us, the grounds of appeal put forward were exclusively concerned with the trial court's findings of fact. As pointed out by the Court of Appeal in *Khalid Bin Abdul Rashid v Public Prosecutor* (Criminal Appeal No 17 of 2000, unreported), it is a settled principle of law that since the trial court would have the singular advantage of hearing evidence and observing the demeanour of witnesses, an appellate court would generally be slow to disturb the findings of the trial court. The intervention of the appellate court would be justified only where the findings below were clearly wrong or the balance of evidence was against the conclusion reached by the trial court or where the inferences drawn by the trial court were found to be not supported by the primary facts on the record or where upon available evidence, no tribunal acting judicially and properly instructed on relevant law could have come to the determination under appeal: *Opium Farm v Chin Ah Quee* (1891) 4 SLJ 33 at 35; *Chia Han Kiat v R* [1937] MLJ 261 at 261; *Goh Ah San v R* [1938] MLJ 95 at 99; *In re AB Ltd* [1956] MLJ 197 at 200; *Tan Choon Huat v Public Prosecutor* [1991] 1 SLR 805 at 808; *Lim Ah Poh v Public Prosecutor* [1992] 1 SLR 713 at 719; *Tan Hung Yeoh v Public Prosecutor* [1999] 3 SLR 93 at 103 and *Chng Gim Huat v Public Prosecutor* [2000] 3 SLR 262 at 277.

22 We also took the view that the host of inconsistencies coursing through the various versions of events narrated by Bala Murugan could be relied on as corroborating evidence of his guilt. The conditions which must apply before a lie can qualify as corroboration were laid out in *R v Lucas (Ruth)* [1981] QB 720 at 724 and approved in *Public Prosecutor v Yeo Choon Poh* [1994] 2 SLR 867 at 876G-H:

The lie ... must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. Fourthly the statement must be clearly shown to be a lie by [independent] evidence ...

23 It was apparent from the evidence adduced that Bala Murugan had embellished his story as he went along to fit the

situation. He first attempted to dissociate himself entirely from the drug transaction and Steven Ang by claiming that he had only left the factory to buy drinks. It was only when he had been taken into custody (and presumably realised that he had been observed handing over the haversack to Steven Ang) that he admitted to arranging to meet Steven Ang. Even then, he attempted to downplay his involvement in the entire affair by claiming that he only met Sivadas on 27 June 2001 and that he had minimal contact with both Sivadas and Steven Ang. It was not until the revelation of the Starhub telephone records at the preliminary inquiry that Bala Murugan decided to come up with more explanations.

24 Amongst various grounds raised by counsel for Bala Murugan, one particular ground needs to be addressed presently. It was contended by counsel that the judicial commissioner had failed to adequately appreciate that no attempt was made by the prosecution to impeach the credit of Bala Murugan vis--vis his numerous statements.

25 In our view, there is no requirement in law that a witness's credit has to be impeached for his evidence to be disbelieved. Secondly, the prosecution having laid before the court all the statements made by Bala Murugan was well entitled to invite the court to draw the requisite inferences and conclusions. In the case at hand, it was not disputed by the defence that Bala Murugan told not one lie but several in his statements. With such an admission forthcoming, what need was there for the prosecution to embark upon an exercise in impeaching his credit? In our determination, the submission that the judicial commissioner failed to appreciate the feature that no attempt was made by the prosecution to impeach the credit of the first appellant was entirely without merit.

26 In our view, the totality of the evidence decidedly pointed to the conclusion that Bala Murugan was not an innocent courier. The judicial commissioner had concluded that Bala Murugan could not be believed, and given the entire spectrum of facts, we too shared the same opinion.

Lim

27 Lim's grounds of appeal, in the main, were that the judicial commissioner (a) erred in finding that he had the requisite *mens rea* and was a knowing participant in the journey to collect the ten packets of drugs and (b) erred in failing to recognise and give due weight to the evidence of Steven Ang which was favourable to Lim's defence.

28 The editors of *Ratanlal & Dhirajlal's Law of Crimes* (24th Edn, 1997) Vol 1 comment in respect of the offence of abetment by intentional aid at page 404:

... The intention should be to aid the commission of a crime. A mere giving of an aid will not make the act an abetment of an offence, if the person who gave the aid did not know that an offence was being committed or contemplated. The intention should be to aid an offence or to facilitate the commission of an offence ... Nor is mere proof that the crime charged could not have been committed without the intervention of the abettor, enough compliance with the requirement of section 107. It is necessary that the intervention should have been made with the intent to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of section 107.

29 In *Tan Siew Chay & Ors v Public Prosecutor* [1993] 2 SLR 14, three of the appellants had been charged with abetting one Yee Kim Yeou (who was the fourth appellant) in the commission of an offence of trafficking in a controlled drug, by intentionally aiding the said Yee in transporting six packets of drugs containing not less than 1,693.47g of diamorphine from River View Hotel, Havelock Road, to boarding gate B27 Singapore Changi Airport, an offence under s 5(a) read with s 12 and punishable under s 33 of the Misuse of Drugs Act. In respect of the essential elements which must be established, the Court of Appeal said at page 32-C:

On the charge so framed there are two essential elements which must be established, namely: (i) that the accused, either prior to or at the time of the transportation of the quantity of diamorphine by Yee from River View Hotel to the boarding gate B27 at Changi Airport, did an act or acts *in order to*

facilitate the commission of the transportation of the drugs by Yee, ie the intention of doing the particular act or acts, the mens rea, and (ii) that by that act or acts he facilitated the commission of the transportation of the drugs by Yee, the actus reus. There must be active complicity which is the gist of the offence: Shri Ram v State of UP [1975] 81 Cr LJ 240.

30 The requisite *mens rea* to warrant a conviction under s 12 of the Misuse of Drugs Act is ‘the intent to facilitate the commission of the crime’ which in the present case was to facilitate Steven Ang in obtaining possession of the drugs for the purpose of trafficking. The judicial commissioner found on the evidence that Lim knew about the trip to Yishun and its purpose before he went to York Hill to pick up Steven Ang. The learned judicial commissioner’s findings as respects Lim were as follows:

... B3 [Lim] was 43 years old at the material time. He did not appear to me to be a simpleton or someone under B1’s [Steven Ang’s] control. If all he wanted to do on 27 June 2001 was to collect 5 sachets of heroin from B1 [Lim], he would have at least asked him when he could expect to get the drugs. Yishun was not a stone’s throw away from York Hill. I found it incredible that he would simply head for Yishun without asking why they were suddenly required to go there and for how long. He knew B1 [Steven Ang] was a trafficker who had no other vocation. He even admitted in his statements that he suspected B1 [Steven Ang] was either delivering or collecting drugs. When B1 [Steven Ang] called for him after taking delivery of the haversack, he seemed totally lacking in curiosity that B1 [Steven Ang] was now carrying a haversack and putting it in his car and asking him to return to town. There was no evidence at all that he even asked B1 [Steven Ang] what the trip to Yishun was all about and what it was that he had collected.

...

... The whole sequence of events pointed inescapably to the fact that B3 [Lim] knew about the trip to Yishun before he went to York Hill and what its purpose was. Hence there was no need for any question to be asked by B3 [Lim] throughout the long drive. He was a knowing participant in the trip to Yishun to collect the ten packets of drugs and to bring them back to town. There was active complicity on his part in the way explained by the then Court of Criminal Appeal in *Tan Siew Chay & Ors v PP* [1993] 2 SLR 14. B3 [Lim] was therefore guilty as charged and I convicted him on his charge.

31 We were of the view that the contention that Lim’s conduct and acts on that day lacked the requisite *mens rea* was untenable and disingenuous. In our determination, Lim clearly seemed to have either shut his eyes to the obvious or as Admiral Nelson did in the famous battle of Copenhagen, by making a conscious decision to place the telescope to his blind eye in order to avoid seeing what he knew he would see if he placed it to his good eye. Such a situation, alluded to by Lord Scott of Foscote in *Manifest Shipping Co Ltd v Uni-Polaris Shipping Co Ltd and Others* [2001] 1 All ER 743 at 780, would amount to ‘blind eye’ knowledge as concluded by the House of Lords.

32 In *The Eurysthenes* [1976] 3 All ER 243 at 251g, [1977] QB 49 at 68, Lord Denning MR gave the following description of ‘blind eye’ knowledge:

... If a man, suspicious of the truth, turns a blind eye to it, and refrains from enquiry – so that he should not know it for certain – then he is to be regarded as knowing the truth. ...

33 In *Westminster City Council v Croyalgrange Ltd And Another* [1986] 83 Cr App R 155, Lord Bridge of Harwich observed at page 164:

[I]t is always open to the tribunal of fact, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed.

34 In *Chiaw Wai Omn v Public Prosecutor* [1997] 3 SLR 445, Chief Justice Yong Pung How observed at page 455G:

... If it could be shown that the appellant had deliberately shut his eyes to the obvious, then it could be inferred from the present circumstances that he had the requisite guilty knowledge.

35 In the present case, Lim had admitted to having strong suspicions that the trip to Yishun was drugs-related. Given the facts, he had deliberately closed his eyes to the obvious and the claim that he lacked the requisite *mens rea* could not be accepted. We would add that the claim by Steven Ang that Lim was ‘not aware of this matter’ and that he did not inform Lim of the purpose of his trip that afternoon was considered by us. However, in our view, what mattered was not so much as to what Steven Ang believed or did not do, but what Lim did that day, that was, to transport a known drug dealer who had supplied drugs to him in the past to a destination where a haversack full of drugs was obtained.

36 As pointed out by the Court of Appeal in *Thiruselvam s/o Nagaratnam v Public Prosecutor* [2001] 2 SLR 125, exoneration of an accused by a co-accused would not necessarily relieve the accused of his culpability.

37 Despite Steven Ang’s attempts to exonerate Lim we found no reason to disturb the inferences drawn and conclusions reached by the trial judge in the present case. It was not denied by the defence that Steven Ang was a known drug peddler and that there was extensive communication between Lim and Steven Ang on 26 June 2001. Having considered all the submissions, we were satisfied that the judicial commissioner’s approach and decision were entirely in consonance with sound reason and logic.

Conclusion

38 For the reasons we have given, we agreed with the findings of the judicial commissioner that the prosecution had proven the guilt of both appellants beyond a reasonable doubt. His conclusions could not be impugned. In our view that both the appellants were knowing and willing participants in the crimes for which they were charged. Consequently, we dismissed their appeals.

Sgd:

CHAO HICK TIN MPH RUBIN TAN LEE MENG

Judge of Appeal Judge Judge

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