

Azman bin Ismail and Others v Public Prosecutor
[2002] SGCA 44

Case Number : Cr App 7/2002
Decision Date : 14 October 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : Ahmad Nizam (Muzammil, Nizam & Partners) (assigned) and Ong Cheong Wei (Ong Cheong Wei & Co) (assigned) for the first appellant; James Masih (James Masih & Co) (assigned) and Ramli Salehkon (Ramli & Co) (assigned) for the second appellant; Ram Goswani (Ram Goswani) (assigned) and Boon Khoon Lim (Dora Boon & Co) (assigned) for the third appellant; Jaswant Singh (Deputy Public Prosecutor) for the respondent
Parties : Azman bin Ismail; Ruzaini bin Ajis; Mohamed Isnin bin Saleh — Public Prosecutor

Judgment

GROUNDS OF DECISION

1. The first appellant, Azman bin Ismail ("Azman"), the second appellant, Ruzaini bin Ajis ("Ruzaini"), and the third appellant, Mohamed Isnin bin Saleh ("Isnin"), were convicted of trafficking 112.91 grams of diamorphine, which were hidden in the false ceiling of an apartment used to store and pack diamorphine. The trial judge imposed the mandatory death sentence on them. The appellants appealed against the decision of the trial judge. After hearing their arguments, we dismissed the appeals and now give the reasons for our decision.

Background

2. On 17 August 2001, officers of the Central Narcotics Bureau ("CNB") conducted surveillance on an apartment at Cascadale, a condominium in Upper Changi Road. At around 1.50 pm, they saw Azman going into Unit #02-02 (the "Cascadale apartment"). He left the said apartment at around 2.05 pm and took a taxi to the Kranji MRT station. At around 2.40 pm, a van drove by the MRT station. A person came out from the van and handed Azman a bag. Azman then boarded another taxi, which was stopped by CNB officers at the junction of Upper Changi Road East and Upper Changi Road West. Azman was arrested. His bag contained 30 packets of heroin. When Azman was searched, the Cascadale apartment keys as well as \$42,364.29 were found on him.

3. CNB officers next arrested Ruzaini at the pathway of the Cascadale condominium at around 3.35 pm. Both Azman and Ruzaini were then escorted to the Cascadale apartment. The CNB officers could not enter the apartment as Isnin, who was then in the apartment, had pressed a chair against the front door. When the CNB officers finally entered the apartment, Isnin was in the master bedroom toilet, trying to flush some drugs down the toilet bowl. Isnin was arrested at around 3.43 pm. He was found to have a set of the Cascadale apartment keys in his haversack.

4. When the CNB officers searched the apartment, they found 23 packets of diamorphine above the false ceiling of the master bedroom toilet and another 20 packets of diamorphine above the false ceiling of the kitchen toilet. The 43 packets of drugs contained 112.23 grams of diamorphine. In addition, 0.68 grams of diamorphine were found in a plastic bowl, in an unsealed sachet and in a loose pile on the floor of the master bedroom. Azman's fingerprint was found on the false ceiling of the kitchen toilet while Isnin's fingerprint was found on the false ceiling of the master bedroom toilet.

5. Azman and Ruzaini tried to distance themselves from the drugs in the Cascadale apartment, which had been rented by the latter's girlfriend, Rohaizan binte Buang ("Rohaizan") on his behalf. Azman said that he had been asked by his friend, a Malaysian Malay named "Brother", to collect VCDs on his behalf from someone at the Kranji MRT station. He had been instructed to proceed to the Cascadale apartment to take some money to pay for the VCDs. He went there and took \$40,000 from a bedroom. He added that he went to the kitchen for a drink before leaving the apartment and that while he was in the kitchen toilet, he noticed that the false ceiling above the toilet was slightly open. He climbed onto the toilet bowl and adjusted the false ceiling board. That was why his fingerprint was found on the said ceiling

board.

6. Azman claimed that while he was on the way to Kranji, "Brother" called and told him not to pay for the VCDs. Instead, he was to collect the VCDs and hand them and the money he had collected earlier on from the Cascadale apartment to someone who was waiting for him at the Cascadale condominium. He said that he assumed that the bag that he collected at the Kranji MRT station contained VCDs because he had collected VCDs on behalf of "Brother" two weeks ago.

7. In the face of evidence that he had instructed his girlfriend, Rohaizan, to rent the Cascadale apartment on his behalf, Ruzaini claimed that he had arranged for the rental of the said apartment on behalf of "Brother". While Azman said that "Brother" was a Malaysian Malay, Ruzaini said that he was a Malaysian Chinese Muslim. He said that when he was arrested, he was waiting for Azman at the garden of the Cascadale condominium as they had agreed to proceed together to Orchard Road. He added that he had not gone into the Cascadale apartment and that he did not know anything about the drugs which were in the apartment.

8. Isnin's statements to the CNB officers certainly shed light on the appellants' operations. He also claimed to have acted on the instructions of "Brother" but he described him as an Indian Muslim. In a statement recorded on 23 August 2001, he said that Ruzaini telephoned him on the morning of the day they were arrested to say that he needed help. He understood this to mean that help was required for the packing of drugs. Azman also called him to ask if he was going to "the place". He said that Azman told him that Ruzaini would also be there. On 27 August 2001, Isnin explained in another statement that he had been to the Cascadale apartment on other occasions prior to the arrest. During his first visit, he saw Ruzaini and his girlfriend, Rohaizan, at the apartment. Two or three days later, he went to the Cascadale apartment to pack 50 sachets of heroin in the master bedroom. On the day before his arrest, he went to the apartment to pack drugs again. On this occasion, Ruzaini let him in and he, Ruzaini and Azman packed drugs together.

The trial judge's decision

9. The trial judge accepted Isnin's evidence that he, Azman and Ruzaini were packing drugs in the Cascadale apartment on 16 August 2001. He took the view they did not complete their task of packing drugs on 16 August 2001. As such, they had unfinished business at the apartment on 17 August 2001, the day they were all arrested. For reasons which will be discussed in the latter part of this judgment, the trial judge had no doubt that when the appellants were arrested, they were in possession of the drugs in the apartment for the purpose of trafficking. That being the case, he found them guilty of the capital charge faced by them.

The appeal

10. The main thrust of the appellants' appeal was that there was insufficient evidence to show that they were in possession of the 112.91 grams of diamorphine in the Cascadale apartment or that there was a common intention in relation to drug trafficking.

11. Azman's appeal will first be considered. He contended that the trial judge erred when he accepted Isnin's evidence that he and Ruzaini had packed drugs in the Cascadale apartment on 16 August 2001 or that he had spoken to Isnin on the following day about going to the apartment again. He also asserted that the trial judge did not give due weight to the fact that anyone could have gained entry into the Cascadale apartment by obtaining a set of keys which had been placed in the letter box structure and could have put the 43 packets of drugs in the said apartment. Finally, he contended that the trial judge erred in holding that there was sufficient circumstantial evidence to prove that he was in possession of the drugs found in the apartment.

12. The trial judge noted that when Azman was arrested, he had the Cascadale apartment keys on him and he had just collected 30 sachets of heroin for delivery to someone at the Cascadale condominium. After reviewing the evidence and listening to the witnesses, he chose to believe Isnin's evidence that Azman had packed drugs at the Cascadale apartment on 16 August 2001 and had given instructions, which Isnin understood to be in connection with returning to the apartment to pack more drugs on the day they were all arrested. He pointed out that Isnin was not seeking any advantage for himself when he made those admissions. He was not trying to shift the blame to Azman or Ruzaini. In fact, he was also implicating himself with his admissions.

13. The trial judge pointed out that Azman's conduct after his arrest and his account of material events raised serious questions about his

credibility. For instance, although he claimed that he thought that the bag which was seized from him after his arrest contained VCDs, he had in fact told the CNB officers that he did not know of its contents when he was first questioned. Furthermore, although he claimed to have adjusted the false ceiling board in the kitchen toilet because it was out of place, he had first denied that he touched the ceiling board. His evidence as to how he got the Cascadale apartment keys also left much to be desired. He claimed, inter alia, to have taken the said keys from some plants outside the said apartment when there were no such plants. In our view, it was not established that the trial judge erred when he rejected Azman's defence that he had no knowledge of the drugs in the apartment and that he had nothing to do with the drugs found there.

14. As for Ruzaini, the main grounds of his appeal were that the trial judge should not have rejected his submission of no case to answer at the end of the prosecution's case, that there was insufficient evidence to prove that he was guilty beyond reasonable doubt, that prejudicial and inadmissible evidence had been admitted, and that it was not established that there was a common intention to traffic in the seized drugs. He denied Isnin's allegation that he was at the apartment on 16 August 2001 and said that he was framed because Isnin had thought that he was a CNB informer.

15. For a start, it was obvious that Ruzaini had a lot of explaining to do regarding the rental of the Cascadale apartment. It was not disputed that his girlfriend, Rohaizan, had rented the apartment on his behalf, that she had paid for the deposit and rental with money provided by him and that she had handed over the keys to the apartment to him. Although Ruzaini claimed that he had arranged for the Cascadale apartment to be rented on behalf of "Brother", Rohaizan's evidence was that he had said that he wanted the apartment for himself and his friends. Her unchallenged testimony was that she had gone to the apartment on several occasions to meet him. Furthermore, Isnin testified that Ruzaini had packed drugs with him in the apartment previously and that he was called by Ruzaini to help pack drugs in the apartment on the day they were all arrested. Ruzaini claimed that he had called Isnin to help him arrange for transport but it was not put to Isnin that this was the purpose of the phone call. Finally, Azman, who said that he was to telephone someone called "Boy" and deliver the bag collected at Kranji to him, admitted that "Boy" was Ruzaini, who was at the Cascadale condominium at the material time. In view of the aforesaid, the trial judge rightly said that all these showed that Ruzaini "had more to do with the apartment than merely being Brother's proxy for renting it". In the face of the evidence against him, Ruzaini's contradictory evidence did not advance his case. For instance, he denied knowing Azman or Isnin but subsequently admitted that this was a lie. Furthermore, he claimed that he was not at the Cascadale apartment on 16 August 2001 as he was at a hotel in Geylang. However, no evidence was produced to support his alibi even though such evidence could easily have been obtained from the hotel's records. During the hearing of the appeal, nothing credible was advanced to show that the trial judge's finding that Ruzaini was guilty of the charge faced by him should be overruled.

16. As for Isnin's appeal, his counsel submitted that there was insufficient evidence to prove his guilt. Isnin admitted that he had packed drugs in the apartment on two previous occasions, once alone and the other time with Azman and Ruzaini. He had in his possession the Cascadale apartment keys and his fingerprint was on the master bedroom toilet ceiling, which concealed 23 packets of heroin. His explanation that his fingerprint was on the master bedroom toilet ceiling board because "Brother" had asked him to check the apartment for breakage and damage was not believable. He had earlier said that he checked the apartment to see if there were more drugs there as he was frightened after he found drugs in the master bedroom. All these did not prevent him from staying on to pack drugs in the apartment. Indeed, when the CNB officers managed to enter the apartment, he was trying to flush drugs down the toilet bowl. There was no evidence whatsoever to counter the inference that he was in a willing party in the plan to traffic in the drugs and that he knew about all the drugs found in the false ceiling of the Cascadale apartment. That being the case, he failed to establish that the trial judge's error by finding that he was guilty of the charge faced by him.

17. It is trite law that an appellate court will not disturb findings of fact unless they are clearly against the weight of the evidence and that in examining the evidence, an appellate court must be mindful of the fact that the trial judge has had the opportunity to see and hear the witnesses (See, for instance, *Lim Ah Poh v Public Prosecutor* [1992] 1 SLR 713, 719). If one looks at all the circumstances of this case, it was not established that the trial judge had insufficient evidence before him to prove the appellants' common intention to traffic in the drugs found in the Cascadale apartment or that his conclusion that the appellants were in possession of the drugs found in the Cascadale apartment for the purpose of trafficking was wrong. In view of this, we dismissed the appeals of all the three appellants.

Sgd:

YONG PUNG HOW
Chief Justice

CHAO HICK TIN
Judge of Appeal

TAN LEE MENG
Judge

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