

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 51

Criminal Appeal No 12 of 2016

Between

Norasharee Bin Gous

... Appellant

And

Public Prosecutor

... Respondent

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing — Stay of execution]

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Norasharee bin Gous

v

Public Prosecutor

[2022] SGCA 51

Court of Appeal — Criminal Appeal No 12 of 2016
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Tay Yong Kwang JCA
6 July 2022

7 July 2022

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 Criminal Appeal Nos 12 and 13 of 2016 (“CCAs 12 and 13”) were heard by this court on 27 October 2016. Those appeals arose from a trial that involved three joint accused, one Mohamad Yazid bin Md Yusof (“Yazid”), one Kalwant Singh a/l Jogindar Singh (“Kalwant”) and the present applicant, Norasharee bin Gous (“Norasharee”). The High Court Judge (“the HCJ”) who heard the matter convicted all three accused persons of their respective charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) as follows:

- (a) Yazid faced one charge under s 5(1)(a) read with s 5(2) of the MDA for possessing not less than 120.90g of diamorphine for the purpose of trafficking.
- (b) Kalwant faced one charge under s 5(1)(a) read with s 5(2) of the MDA for possessing not less than 60.15g of diamorphine for the purpose

of trafficking (in respect of the three bundles in his haversack) and another charge under s 5(1)(a) of the MDA for trafficking in not less than 120.90g of diamorphine (in respect of the six bundles delivered to Yazid).

(c) Norasharee faced one charge under s 5(1)(a) read with s 12 of the MDA for abetting, by instigation, Yazid to traffic in not less than 120.90g of diamorphine.

2 The HCJ sentenced Yazid to life imprisonment and 15 strokes of the cane, while Kalwant and the present applicant, Norasharee, were sentenced to the mandatory sentence of death as they did not qualify for the alternative sentencing regime provided for under the MDA.

3 On 10 March 2017, we issued our judgment in *Norasharee bin Gous v Public Prosecutor and another appeal and another matter* [2017] 1 SLR 820 (“the Judgment”) dismissing the appeals that had been brought by Kalwant and by the present applicant. Both these cases then involved some further applications and in the case of the present applicant, he applied for and obtained from us an order that the matter be remitted to the HCJ to enable some further evidence to be taken in his effort to establish a defence of alibi. For present purposes, it suffices to note that the HCJ found that the defence of alibi was not made out. The only witness called by the present applicant at the remittal hearing was found to be an unreliable witness and when the matter came back before us, we dismissed the application to re-open the appeal.

4 The sentence imposed by the HCJ and affirmed by us is scheduled to be carried out tomorrow, 7 July 2022. On 5 July 2022, we received a motion filed by Kalwant seeking a stay of execution. We fixed the matter for an urgent

hearing at 3.00pm today, 6 July 2022. We dismissed Kalwant's application this afternoon at 4.33pm.

5 At about 4.00 pm, the court received a letter from the present applicant stating that he wished to seek a stay of execution of his own sentence. Just prior to this, the Court had also received some letters from the present applicant's wife and another letter from Yazid's ex-wife, Nordiana bte Mohd Yusof, who we refer to as "Nordiana". The letter from the applicant's wife included a statutory declaration sworn by Nordiana in essentially similar terms to what was in her letter. We directed that the present applicant's letter be treated as an oral application for a stay of execution even though there was no filing of a formal motion in accordance with the rules and no supporting affidavit. We also directed that the Prosecution be served the letters and be asked to attend. The Prosecution attended by DPP Yang Ziliang at very short notice.

6 The heart of the present applicant's contention is that new evidence had just come to his awareness which cast doubt on the correctness of our decision in the original appeals. His precise words in his letter are as follows:

The evidence in Nordiana's letters has a direct bearing on the judgment of the court of appeal. In paragraph 61 the court said that my failure to explain how Yazid knew I was at VivoCity on 25 October 2013 [the actual date in question was 23 October 2013] was 'critical'.

Nordiana's new evidence explains this clearly to my benefit and renders Yazid's testimony unreliable. The attached evidence are [sic] self-evident on that.

7 For present purposes, we take the applicant's case at its highest. We begin by setting out what we said in the material part of [61] of the Judgment in CCAs 12 and 13 as follows:

Norasharee's evidence failed in three critical aspects – his failure to explain why Yazid would want to frame him, how Yazid knew he was at VivoCity on 23 October 2013 and why he denied previously that he knew Yazid.

8 There were three separate and distinct aspects of the evidence which undergirded our conclusion that the present applicant's contention at trial and at the appeal that Yazid's evidence should be rejected was unsustainable. As we explained to the present applicant, taking his case at its highest, he only puts Nordiana's evidence forward in an attempt to challenge the second of these bases. Nothing is put forward to attack or undermine the first and third bases on which we came to our finding on that issue.

9 But beyond that, Nordiana's evidence in fact says nothing at all about that second basis. To reiterate, as we said in the Judgment and as the present applicant perfectly understood as seen from that extract of his letter, that second basis had to do with whether the present applicant could explain how Yazid knew that the applicant was at VivoCity on the day in question. But nothing in Nordiana's evidence touches on this. Instead, her evidence is directed at her contention that Yazid would allegedly go to VivoCity quite frequently to drop Nordiana at her workplace and/or to have lunch with her. Even if we accept that this is true, it says nothing about how Yazid would know that the present applicant was at VivoCity that day.

10 In the circumstances, there is nothing before us that even remotely displaces the validity of the conclusion we reached in the appeal, nor on any one of the three separate grounds on which we reached that conclusion including that we found Yazid's evidence to be reliable. In these circumstances, we dismiss the present application.

11 We would add that in the Judgment, we had also explained at [100]–[101] that the present applicant’s contention that he did not meet Yazid at VivoCity on that day was fanciful and incredible not least because there was simply no reasonable hypothesis that could sustain that possibility. We repeat what we said there as follows:

100 If Yazid did not take instructions from Norasharee in person that day in VivoCity, then there were only a few hypotheses that could possibly explain how Yazid knew that Norasharee was at VivoCity:

(a) Yazid met Norasharee at VivoCity but they did not talk about drugs. We reject this hypothesis because Norasharee did not take the position that there was a meeting.

(b) Yazid saw Norasharee at VivoCity fortuitously. If so, why did Yazid not volunteer information about Norasharee’s presence at VivoCity earlier to help the CNB track Norasharee down, especially if his alleged intent was to frame an enemy from a rival gang?

(c) Yazid learnt subsequently that Norasharee had gone to VivoCity in the afternoon of 23 October 2013. This raised the question as to how Yazid came across this information despite being in remand and although Norasharee was in VivoCity for only 33 minutes. There was also the issue of how he could state very early during the investigations that he had taken instructions from Boy Ayie in the afternoon of 23 October 2013.

(d) Yazid was telling lies that turned out to be consistent with objective facts.

101 We find that all the above hypotheses contain no merit and create no doubt as to the truthfulness of Yazid’s evidence.

....

12 Those observations remain completely valid in our judgment. We explained the key points of what we have just set out to the applicant before we just stood down and the applicant then asked that the stay of execution be granted to enable him to consult counsel. The present applicant has been extended the fullest protection of the law and of due process. There is no basis

at all for us to grant a stay of execution for him to consult counsel when there is no substratum of fact to support a real possibility of relief being granted. We therefore dismiss the application.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

The appellant in person;
Yang Ziliang, Marcus Foo and Andrew Low (Attorney-General's
Chambers) for the respondent.
