

Yeo Kang Oh v Public Prosecutor
[2001] SGCA 74

Case Number : Cr App 14/2001
Decision Date : 09 November 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Chua Eng Hui (Infinitus Law Corporation) and Peter Ong Lip Cheng (Thomas Loh Partnership) for the appellant; Ng Cheng Thiam (Deputy Public Prosecutor) for the respondent
Parties : Yeo Kang Oh — Public Prosecutor

Judgment

GROUND OF DECISION

This was an appeal against the decision of Justice Kan Ting Chiu, who convicted the appellant, Yeo Kang Oh (Yeo) of an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap. 185) (the Act) and sentenced him to death.

The charge

2 The charge against Yeo reads as follows:-

You, Yeo Kang Oh, are charged that you on or about the 27th day of January 2001, at about 6:10 p.m., at Blk 9, Toa Payoh Lorong 7 #04-327, Singapore (the Toa Payoh flat), 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 your possession for the purpose of trafficking, 25.55 grams of diamorphine, without having any authorisation under the said Act or the regulations made thereunder, and you have 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.

The prosecutions case

3 The prosecution presented the following facts. About two months prior to Yeo's arrest, he met Tan Jek Cheng (Tan). The pair were friends who shared a common interest in abusing heroin. At that time, Yeo needed a place to stay because he was trying to hide from law enforcement officers as he had skipped a scheduled urine test with the police. Tan owned the Toa Payoh flat and he offered Yeo accommodation in one of the rooms of the flat. Tan himself stayed in the utility room. The pair smoked heroin together in the utility room, using drugs and equipment supplied by Yeo.

4 Yeo wanted to traffic in heroin to maintain his addiction. On 26 January 2001, he went to Woodlands Central to meet a drugs supplier called Xiao Tee. He bought one pound of heroin from this person, with the intention to traffic in it. Subsequently, Yeo returned to the Toa Payoh flat and hid the heroin in his own room. He did not tell Tan about his purchase.

5 The next day, Yeo returned to Woodlands to pay Xiao Tee for the drugs. This time Tan drove him there in a van, bearing registration number GQ 2429 L. Yeo paid for the rental of this van for the Chinese New Year period to avoid the inconvenience of hiring a cab during the festive season. Tan

was told that Yeo was meeting a friend but did not know who this friend was or the purpose of the meeting. Tan waited in the car park for Yeo while he met Xiao Tee. After Yeo paid Xiao Tee, he returned to the van and the pair drove off. They had lunch and proceeded to Yeos own flat in Jalan Membina. At about 5 p.m., they left the flat and returned to the Toa Payoh flat.

6 When they reached the car park adjoining the Toa Payoh flat, Yeo told Tan to go back to Jalan Membina to pick up his wife, See Han Kook (See) and his grandson. Tan complied and left the car park without going up to his flat. After they parted, Yeo went up to the flat and transferred the drugs that he hid in his room to the utility room. He started re-packing the drugs into empty sachets for sale in the utility room because he did not want See to find out about his drug trafficking activities and was afraid that she would discover his secret if he packed them in his own room.

7 Meanwhile, Tan picked up See and her grandson from Jalan Membina. They were travelling in the van when a party of CNB officers stopped them at the junction of Lorong 6 and 7, Toa Payoh. The officers arrested Tan and See, on the suspicion that they were trafficking in heroin. Some heroin was found in the van. Tan admitted that he owned them and that they were for his personal consumption. The officers also ascertained Tans address and obtained the keys to his flat from him. Subsequently, they proceeded to raid his flat.

8 On reaching the Toa Payoh flat, the officers tried to gain access to it using Tans keys. Yeo was still in the flat and when he discovered that some officers were about to enter the flat, he armed himself with a chopper in each of his hands. He threatened the officers with the choppers and caused them to back off. He then went to the kitchen and discovered that there were more officers stationed at the bottom of the block. He re-entered the living room but retreated to the kitchen again. He went to the kitchen window and jumped down, falling four storeys. He intended to kill himself as he realised the seriousness of being caught with the drugs in the utility room.

9 After Yeo jumped down, the officers entered the flat and found some drugs on the floor of the utility room. They also found a straw of heroin in the kitchen and some drug paraphernalia in the utility room. The officers secured the premises and handed it over to the Investigating Officer, ASP Daniel Tan. ASP Tan brought the drugs recovered from the flat to the Department of Scientific Services for analysis. Subsequently, he received from them eight reports pertaining to the drugs found in the utility room, which revealed that the drugs found in the utility room were 25.55 grams of diamorphine.

10 The prosecution relied largely on four statements that Yeo made after his arrest. Yeo did not challenge the admissibility of these statements. In particular, in his cautioned statement, he admitted to the ownership of all 25.55 grams of diamorphine found in the utility room and exonerated See and Tan completely. His other statements also did not implicate either of them. They explained, among other things, that he owned the drugs for the purposes of trafficking in them.

The defences case

11 Yeos defence was that he was not guilty of trafficking in all 25.55 grams of heroin as he only owned half of the drugs in the utility room while Tan owned the other half. Furthermore, Yeo said that he intended to traffic in only half of his own share and use the rest for personal consumption. His counsel argued that he should only be liable for the trafficking of one quarter of the heroin found in the utility room.

12 Yeos version of the facts was as follows. On 26 January 2001, he and Tan went to Woodlands to collect drugs. He placed the drugs in the utility room with Tans knowledge. The next morning, Tan

bought empty sachets to contain the drugs for trafficking. At about 12 p.m., both of them returned to Woodlands together and while Tan waited in the van for him, he went to pay Xiao Tee for the drugs. Tan contributed \$1,000 and Yeo raised the other \$4,200 required to pay for the drugs. Both of them had an agreement to split the pound of heroin equally. Yeo was willing to let Tan have a half share on credit, although he only paid \$1,000 initially. Tan agreed to pay for the rest of his share in the drugs in instalments.

13 After paying for the drugs, the pair went for lunch and proceeded to the Jalan Membina flat. They returned to the Toa Payoh flat at around 3-4 p.m and spent some time there together. Tan only left the flat at about 5 p.m. to fetch See and her grandson.

14 This version of the facts contradicted his own statements to the CNB in two material areas. First, that Tan owned a half share in the drugs pursuant to an agreement the pair had made and was aware of all the arrangements that were made in relation to their purchase. Secondly, that Tan returned to his flat on 27 January before picking up See.

15 Yeo accepted that his statements were admissible. However, he explained that, although he made them without threat, inducement or promise, they contained falsehoods. With respect to the discrepancies as to Tans involvement and ownership of the drugs, he explained that he lied because he wanted to ensure that his wife would not be implicated for drug trafficking. He believed that See would be released if he admitted to the sole ownership of the drugs in the utility room and Tan admitted to the ownership of the drugs in the van. With respect to the discrepancies as to whether Tan was in the flat with him on 27 January, he explained that he forgot to mention this to the investigating officer as he was too nervous at the time.

The decision below

16 Kan J held that the prosecution had proven the charge against Yeo beyond reasonable doubt. The judge rejected Yeos defence primarily because he had admitted fully to the charge in the clearest terms in his statements to the CNB and he did not challenge the admissibility of these statements at trial.

17 The judge gave full weight to the statements as he believed that the statements contained the truth. He gave two reasons for rejecting Yeos contention that he lied in the statements about the ownership of the drugs to exonerate his wife. First, it was unnecessary for Yeo to lie about the ownership of the drugs in the flat for fear that See may be implicated by Tan for the drugs in the van. Yeo admitted that during the course of investigations and the recording of his statements, he had been told that See had been absolved of any liability for the drugs in the van since Tan had already admitted to the sole ownership of those drugs. Secondly, it was equally unnecessary for Yeo to claim sole ownership of the drugs in the flat to exonerate his wife of any liability for the drugs in the flat. Implicating Tan was in no way inconsistent with Sees innocence. The judge also noted that during the course of investigations, Yeo had many opportunities to implicate Tan, if he were really responsible for half of the drugs, but failed to do so.

18 In addition, Kan J found that Yeos argument that he only owned half of the drugs could not be sustained because his counsel did not put it to Tan that he had made arrangement with Yeo to take the drugs on credit and pay for them in instalments. The judge also disbelieved Yeos contention that Tan knew about the drugs in the utility room because he went up to his flat with Yeo on 27 January 2001. He did not believe that Yeo could forget to mention such an important fact in his statements simply because he forgot.

19 The judge also rejected Yeos contention that he intended to traffic in only half of his own share, leaving the rest for personal consumption. This was because such a contention was inconsistent with his statement to the CNB where he claimed that he bought the drugs to traffic in them. Furthermore, his testimony on his consumption rate varied substantially. The judge concluded that, even if some of the drugs were for personal consumption, they were principally for trafficking.

The appeal

20 The grounds of appeal were substantially the same as those canvassed at the trial below. There were two main issues. First, whether Yeo lied in his statements to the CNB about the ownership of the drugs. Secondly, whether the judge erred in failing to properly consider the evidence which supports Yeos defence that Tan owned half of the drugs. Yeo did not appeal against the judges finding that the defence of consumption was not made out.

21 The issues raised in this appeal solely revolved around questions of fact which were more appropriately decided by the trial judge. The principles governing an appellate courts decision to overturn findings of fact made by the trial judge are clear. In *PP v Ng Ai Tiong* [2000] 1 SLR 454, Yong Pung How CJ set out the following:

It is trite law that an appellate court will generally be reluctant to overturn the trial judge`s findings of fact, especially where they turn on the trial judge`s assessment of the credibility and veracity of witnesses.

Thus, we would dismiss this appeal unless Yeo showed that the judges findings were *clearly wrong*. (see also *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 and *Tan Hung Yeoh v PP* [1999] 3 SLR 93).

The veracity of the statements made at the CNB

22 Yeo did not address the reasons given by the trial judge for rejecting his contention that he incriminated himself in the statements to exonerate his wife. He merely reiterated that the "*only* thing he could do to completely shield his wife from prosecution would be to admit to sole possession of the drugs in the flat". No reason was given as to why incriminating Tan would not achieve the same result of exonerating the wife.

23 There was no evidence that the trial judge was clearly wrong in his finding that the statements that Yeo gave the investigating officer contained the truth regarding the ownership of the drugs. On the contrary, this finding was amply supported by the two reasons given by the judge. First, See would also not be implicated for the drugs in the van if Tan was implicated for the drugs in the flat. Yeo admitted that he had already been told, during the course of investigations, that Tan had admitted to the ownership of the drugs in the van and absolved See. Secondly, it was unnecessary for Yeo to admit to the sole ownership of the drugs to shield See since incriminating Tan only would still exonerate See from the drugs in the flat.

24 Furthermore, Yeo also admitted that there was no prior arrangement between Tan and himself that, if he were to take the blame for the drugs in the flat, Tan would exonerate See for the drugs in the van. We did not believe that Yeo would falsely incriminate himself of a capital offence and completely exonerate Tan when he knew or should have known that implicating Tan would not have any effect on Sees liability for the drugs in the van and the flat.

Analysis of the evidence that Yeo relies on

25 Yeo contended that the judge should have drawn the inference that Tan had an "active share" in his drug trafficking activities based on the following facts that he presented. First, Tan was a heroin addict who was in need of money to support his addiction. Secondly, Tan owned the digital weighing scale needed for packing the drugs for trafficking. Thirdly, Tan allowed him to stay in the Toa Payoh flat, even though Tan knew that he was involved in drug trafficking. Lastly, Tan participated in obtaining the drugs by driving Yeo to Woodlands to pay for the drugs, in a van rented in his name.

26 Throughout the appeal, Yeos counsel merely contended that Tan had an "active share" in the drugs but did not quantify the share which Tan allegedly owns. Such a failure to establish the quantity of drugs owned by Tan, and thus, Yeo, was determinative of this appeal as no reasonable doubts were raised as to whether Yeo owned not more than 15 grams of diamorphine and thus was innocent of the charge against him. In any event, the trial judge found that Yeo never made an agreement to share the drugs equally with Tan and the records did not show that the trial judge was clearly wrong in this finding.

27 The conclusion that we drew in the previous paragraph was sufficient to dismiss this appeal. However, we went on to consider whether Yeos contention that Tan had an "active share" in the drugs was made out. We concluded that this contention should also be rejected. During the course of the trial, only one of the four alleged facts that Yeo relied on to make out his contention that Tan had a share in the drugs was established. This established fact was that Tan was a heroin addict and he was in financial difficulties. However, this was not, of itself, sufficient to raise a reasonable doubt on the prosecutions case.

28 In the trial below, it was not put to Tan that he owned the digital weighing scale needed for the packing of the drugs for trafficking. In fact, no questions were asked of Tan by defence counsel relating to the ownership of such a scale. Thus, this allegation had not been verified and could not be used in support of Yeos case.

29 Yeos counsel also did not establish that Tan knew of Yeos drug trafficking activities. No questions were asked as to whether Tan was aware that Yeo trafficked in drugs in general. As for the present instance of drug trafficking, i.e. that Yeo bought a pound of heroin to traffic in and stored it in the flat, Tan testified that he did not know about it. In addition, he testified that, although he knew that Yeo had a ready source of drugs, he did not know anything about this source as he did not want to question Yeo on it for fear of being thought to be an informant.

30 Tan also denied that he knew about and participated in the procurement of the drugs by sending Yeo to Woodlands Central. He testified that he only knew that Yeo wanted to go to Woodlands to meet a friend. He was not told and did not ask Yeo who the friend was and the purpose of the meeting. He did not see who Yeos friend was either because he was waiting for Yeo in the car park while the latter went to meet Xiao Tee.

31 Tan withstood cross-examination on all the points mentioned in the preceding two paragraphs and thus his testimony that he did not have a share in the drugs was accepted by the trial judge. On the other hand, Yeo did not provide reasonable explanations as to the inconsistencies between his oral testimony and his statements to the CNB. The trial judge accepted the veracity of the latter and rejected Yeos oral testimony as to Tans knowledge and participation in Yeos drug trafficking activities. There was no evidence to show that the trial judge was clearly wrong in preferring Tans testimony in court to Yeos and concluding that Tan did not have an active share in the drugs.

Conclusion

32 In the light of our findings above, we found that the trial judge rightly convicted Yeo of the offence as charged. We therefore dismissed the appeal against conviction and sentence.

Sgd:
YONG PUNG HOW
Chief Justice

Sgd:
L P Thean
Judge of Appeal

Sgd:
CHAO HICK TIN
Judge of Appeal

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