

Mohd Arsad bin Hassan v Public Prosecutor
[2004] SGCA 36

Case Number : Cr App 7/2004
Decision Date : 23 August 2004
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Kan Ting Chiu J; Yong Pung How CJ
Counsel Name(s) : Rudy Gunaratnam (Tan Rajah and Cheah) and Ratnagopal Hariprasad (Harry Elias Partnership) for appellant; Kan Shuk Weng (Deputy Public Prosecutor) for respondent
Parties : Mohd Arsad bin Hassan — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act (Cap 185, 2001 Rev Ed) – Trafficking in controlled drugs – Defence of lack of knowledge of quantity of drugs in bag – Whether defence believable

23 August 2004

Kan Ting Chiu J:

1 The appellant, Mohd Arsad bin Hassan, was convicted by Tay Yong Kwang J for trafficking in 46.9g of diamorphine and was sentenced to suffer death: see *PP v Mohd Arsad bin Hassan* [2004] SGHC 67.

2 The offence took place on 8 July 2003 at a carpark of a McDonald restaurant along New Upper Changi Road. The appellant was arrested because the two persons to whom he was selling the diamorphine to were undercover officers from the Central Narcotics Bureau ("CNB"), namely Staff Sergeant Ashari bin Hassan ("SSgt Ashari") and Staff Sergeant Mohd Affendi bin Ideris ("SSgt Affendi"), who assumed the names "Nick" and "Didi" in the operation.

3 The appellant admitted that he agreed to sell heroin to the two officers for \$20,100, and that he delivered to them a bag containing heroin. His defence was that he thought that the transaction was for six sachets of about 8g each, and not the 439.8g of heroin delivered. ("Heroin" is used here to refer to the drugs in the state they were recovered, before analysis, in contradistinction to "diamorphine" which refers to the diamorphine content of the drugs after analysis.)

4 A week before 6 July, SSgt Ashari was assigned to go undercover and purchase heroin from a trafficker by the name of Jack, and he established contact with Jack.

5 On 6 July at around midnight, SSgt Ashari received an unexpected call from the appellant who introduced himself as Jack's friend. The appellant offered to sell to him a "set" or "kereta" of heroin at \$3,800 a set, subject to a minimum purchase of three sets. According to SSgt Ashari, "set" and "kereta" are understood in drug circles as ten sachets of about 8g each.

6 SSgt Ashari did not commit himself to the offer as his instructions were to buy from Jack, not the appellant. He reported the call to his superiors who instructed him to carry on negotiations with the appellant.

7 On 7 July, they spoke again over the telephone. SSgt Ashari said that the appellant offered him five sets of heroin for \$19,000. He accepted the offer, and it was agreed that the deal was to be a "left-right" transaction with delivery and payment to be made simultaneously. He also requested that they meet the following morning to get acquainted and to finalise the arrangements for the deal.

8 On the morning of 8 July, they met for the first time. He brought SSgt Affendi with him. They

picked up the appellant in front of the Sultan Mosque, and went to a coffee shop at Stamford Road. At the coffee shop, the appellant told them that he could offer them a better deal. He could supply one "batu" (or pound) of heroin, which could be repacked into 50 to 60 sachets, for \$18,500, and a further half-set of heroin for \$1,600. The offer was accepted for the "batu" and the half-set for \$20,100, and it was agreed that the transaction would take place that afternoon at a venue to be arranged.

9 SSgt Affendi corroborated SSgt Ashari's evidence, and referred to his pocket book in which he had recorded that the heroin to be delivered was to be in one-pound form.

10 The officers then parted ways with the appellant. In the afternoon, they were in contact again, and arranged to meet at the car park along New Upper Changi Road. The two officers went to the car park in a car, while other CNB officers were positioned around the area. The appellant arrived in a taxi and went to the officers' car. After they assured him that they had the money, the appellant made a call from his mobile telephone.

11 Subsequently two persons came into the car park on a motorcycle. The appellant went to the motorcycle and received a plastic bag from the pillion rider. He took the bag to the car and handed it to the officers. SSgt Affendi opened the plastic bag and saw a packet wrapped in newspaper and a white envelope. He tore off a small portion of the newspaper wrapping of the packet, and saw heroin inside. On seeing that he gave a pre-arranged signal by saying "barang baik" (meaning "good stuff"), and the other CNB officers moved in and arrested the appellant after a short chase.

12 The contents of the bag were the subject matter of the charge against the appellant. The packet of heroin was found to weigh 439.8g, and the envelope was found to contain five sachets of heroin with a total weight of 39.31g (or an average of 7.87g a sachet). The contents of the packet and five sachets were analysed and were found to contain not less than 43.59g and 3.31g of diamorphine respectively.

13 The appellant and the plastic bag were first taken to the Bedok Police Station, where Inspector Tan Seow Keong recorded a statement from him, which was admitted in evidence without objection. Before taking the appellant's statement, Inspector Tan recorded that he pointed to the appellant a large packet of yellowish granular substance wrapped in plastic and newspaper, and five packets of white granular substance. In the statement the appellant admitted that they were "ubat" or heroin, and that they were to be delivered to "Nick" for \$20,100.

14 The appellant had a better look at the packet and sachets on 9 July when they were photographed and weighed in his presence at the Police Cantonment Complex. Another statement was recorded from him by ASP Ong Pang Thong which was also admitted in evidence without objection. In this statement, the appellant stated that "Nick" had asked for six "keretas", and that his supplier whom he knew as "Ali Kong" had supplied them for \$20,000.

15 In his defence, the appellant disputed several aspects of the Prosecution evidence. This included, for example, the question whether there was an agreement reached before the meeting at the coffee shop. The appellant's case was that there was no previous agreement to buy and sell five sets as described by SSgt Ashari and that the deal was always for six sachets, even though SSgt Affendi had noted in his pocket book that the appellant offered them heroin in pound form at the coffee shop.

16 However this issue and other questions over what was said in the earlier conversations were peripheral matters, because it was common ground that the terms for the transaction carried out were agreed to at the meeting at the coffee shop.

17 The crucial issue was whether they had agreed on one pound plus five sachets or only six sachets at the coffee shop. If the appellant's account was correct, then the deal was for six sachets of heroin of about 3.97g (on the basis that the five sachets contained 3.31g of diamorphine). In that event, he would avoid the death penalty.

18 Such a defence actually raises another issue, which is whether an honest belief is enough or whether it must be a reasonable belief. There is no decision on this, but for the defence of mistaken belief over the contents of a package that a person is in possession of, *eg*, a package believed to contain gold when it actually contains heroin, it has been established that ignorance *simpliciter* of the nature of the drugs is not enough, if there was reason and opportunity to examine the package in question, and the person failed to make any effort to find out what the contents were: see *Cheng Heng Lee v PP* [1999] 1 SLR 504 at [46].

19 The same requirement may be applied to the appellant's defence. The question can be raised whether he had reasonable grounds to believe that a "kereta" is a sachet, and whether he could have clarified that with "Nick", "Didi" or "Ali Kong" if he was not sure. However, as the question was not raised or addressed before us, we will go no further. In any event, as Tay J found that the deal was for one "batu" and five sachets and we agree with his findings, the appellant had not made out a case that he honestly believed that six sachets were to be transacted, the question whether the belief he held was reasonable does not arise.

20 The appellant admitted that he used the term "kereta" at the coffee shop, but to him one "kereta" was one sachet, and that he did not know the weight of a sachet. He explained that he was not conversant with the drug jargon in current use because he was out of circulation between 1995 and April 2003 as he was imprisoned.

21 The appellant's case was that there was no change in the quantity of drugs to be sold. At all times, the agreement was for six sachets. "Nick" had asked to buy six sachets, and as he did not have the means to supply them, he looked to a supplier whom he knew as "Ali Kong". When "Ali Kong" was told about the request, he was prepared to supply six sachets for \$20,000, and "Nick" in turn agreed to buy them for \$20,100. Throughout the time, he thought that a sachet was like any of the five sachets in the envelope in the plastic bag delivered. It came as a total surprise to him that the bag contained a "batu" or one pound packet and five sachets.

22 Several matters undermined his defence. Firstly, SSgt Ashari gave evidence that the quantity of drugs to be transacted was changed from six sets or "keretas" to one packet and five sachets at the meeting at the coffee shop.

23 Secondly, the appellant did not register any surprise in the two statements referred to in [13] and [14] over the quantity of drugs seized. By that time, he knew that a lot of heroin, far in excess of the amount he thought had been agreed to, was involved, yet he did not say in either statement that there were more drugs than was agreed to be sold. He must have known that a substantial increase in the quantity of the drugs would enhance the severity of the offence he committed and the punishment he would face. It would have been natural for him to say "I only agreed to sell six sachets, not all those drugs in the bag."

24 Thirdly, it was incredible that a supplier like "Ali Kong" would quote a price of \$20,000 for six sachets when according to SSgt Ashari's undisputed evidence, the price of six sachets would not have been more than \$2,000.

25 Fourthly, it was also incredible that SSgt Ashari, who was familiar with drug terminology and prices, would agree to pay \$20,100 for six sachets of heroin.

26 Fifthly, it was impossible to contemplate a supplier like "Ali Kong" packing and delivering one

packet and five sachets when the deal was for six sachets. Perhaps five or seven sachets might have been packed by mistake, but it is beyond belief that the supplier would pack such a significantly different quantity in weight and in form. The total weight of the heroin delivered was 479.11g, more than ten times the weight of six sachets of 47.22g arrived at based on the average weight of 7.87g of the sachets delivered. Furthermore the "batu" packet was substantially bulkier than five sachets.

27 For the appeal to succeed, we had to be persuaded that the two officers had misunderstood the quantity of drugs during the negotiations and that the supplier made a mistake in packing and delivering them, or that the two undercover officers lied in their evidence and that SSgt Affendi made a false entry in his pocket book, but we were not so persuaded.

28 For all the reasons stated, we dismissed the appeal.

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