Public Prosecutor v Tan Chui Yun Joselyn
[2003] SGHC 19

Case Number : MA 223/2002

Decision Date : 07 February 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Sia Aik Kor (Deputy Public Prosecutor) for the appellant; Cheah Kok Lim (Ang & Partners) for the respondent

Parties : Public Prosecutor — Tan Chui Yun Joselyn

Criminal Law – Offences – Controlled drugs – Consumption without authorisation – Whether evidence adduced sufficient to rebut presumption under Misuse of Drugs Act (Cap 185, 2001 Rev Ed) s 22

Evidence – Witnesses – Credibility – Defence witness a friend of accused – Whether testimony suspect – Whether trial judge erred in accepting his evidence

1 This was an appeal by the Public Prosecutor against the decision of the district judge Hamidah Ibrahim to acquit the respondent Tan Chui Yun Joselyn ('Joselyn') of one charge under s 8(b)(i) of the Misuse of Drugs Act for unauthorised consumption of a Class B controlled drug.

The prosecution's case

2 On 19 April 2002, SSgt Tuen Chee Lim received information from a third party that Joselyn was taking part in drug activities involving Ketamine. SSgt Tuen called Joselyn down for an interview on 25 April 2002 but was unable to take a statement from her that day as he was occupied. He then sent a letter to ask her to come down for another interview on 2 May 2002. However, Joselyn only knew about the letter when she returned from a holiday in Bangkok on 1 May 2002. Joselyn called SSgt Tuen on 2 May 2002 to fix the interview for 3 May 2002 instead, as she was not feeling well.

3 When Joselyn showed up on 3 May 2002, SSgt Tuen observed that she had bloodshot eyes and slightly slurred speech. He placed her under arrest. Two bottles of her urine were sent to the Health Science Authority (HSA) for analysis. Her urine was found to contain Norketamine, a metabolyte of the drug Ketamine. Dr Lui, an analyst with HSA, testified that when a person consumes Ketamine, Norketamine would be detected in the urine for about one to three days after consumption. The time taken for it to dissipate would vary with the metabolic and excretion rate of the individual.

4 The positive result from the urine tests triggered the presumption from s 22 of the Misuse of Drugs Act. As this Court held in *Vadugaiah Mahendran v PP* [1996] 1 SLR 24, there was a presumption of both the actus reus and the mens rea of the offence. As such, the prosecution's case had been made out and the defence was called.

The defence

5 Joselyn's defence was that she did not knowingly consume Ketamine. She claimed that she had known since 25 April 2002, that she was under investigation for drug-related activities. She testified that she had gone to the police station on 25 April 2002 with a friend – one Christopher Lim ('Chris') –

an ex-police officer who recognised SSgt Tuen as being from the anti-drug squad. Knowing full well that she was scheduled for an interview and facing the possibility of being asked to undergo a urine test, it was extremely unlikely that she would knowingly consume Ketamine shortly before the day of the interview.

6 As for the presence of Norketamine in her system, she suspected that her drink could have been spiked when she was at a pub called Madam Wong's on the evening of 2 May 2002. She had accepted a drink from a man in a white shirt at the pub, a man she had seen talking to a friend of hers, one Dennis Ng. She suspected that Dennis had colluded with the man in the white shirt to spike her drink as she had previously rebuffed Dennis' attempts to date her. Chris gave evidence that corroborated her version of events. Chris testified that he saw a man in a white shirt approach Joselyn and offer her a drink. Chris also affirmed that he saw Dennis at the pub that night. Dennis gave evidence that he was not at the pub that night, nor did he spike her drink.

Decision of the court below

7 The district judge found that Joselyn had managed to discharge the burden of rebutting the s 22 presumption on a balance of probabilities. In reaching her decision, the district judge acknowledged that she had approached the defence with greater caution than usual. She had noted that this was not 'the usual run of the mill case where an accused is arrested after a raid at a pub and the usual defence of spiking is raised'.

8 The district judge accepted Joselyn's evidence that she had known that she was under investigation for drug-related activities and had come to the reasonable conclusion that she might be subjected to a urine test. That being the case, she acknowledged that "…it would have been inconceivable that she would knowingly consume a controlled drug.." on the day of the interview. Furthermore, she held that, if Joselyn had knowingly consumed the drug the day before, she could have easily called to postpone the interview to a later date.

9 The district judge also preferred the evidence of Chris to that of Dennis. Though Chris was an ex-boyfriend of Joselyn, the district judge found his account "clear and lucid" and saw no reason for him to fabricate anything in her favour. She therefore accepted Joselyn's version of events – i.e. that she had accepted a drink from a man in a white shirt who had been seen talking with Dennis. The district judge found it suspicious that Dennis had lied about being at the pub that night and this showed that he had something to hide. This gave rise to the probability that Dennis had indeed colluded with the man in the white shirt to tamper with Joselyn's drink.

The appeal

10 The Public Prosecutor contended that the district judge erred in her assessment of the evidence by finding that the defence had managed to rebut the presumption on a balance of probabilities. In particular, the Public Prosecutor put forward three grounds of appeal.

> (a) The district judge erred in finding that Dennis could have been in cahoots with the man in the white shirt to tamper with Joselyn's drink

11 The Public Prosecutor argued that the district judge erred in accepting Chris's evidence over that

of Dennis, because she failed to consider the fact that Chris was not a disinterested witness. I was of the view that this did not constitute a valid ground for disturbing the findings of the trial judge. Other than the fact that Chris was an ex-boyfriend of Joselyn, there was no evidence to suggest that he was fabricating evidence to protect her. As this Court held in *Soh Yang Tick v Public Prosecutor* [1998] 2 SLR 42 at para 48:

> Prima facie just because the appellant's witnesses were in some way related or connected to him did not render their testimonies suspect. There must be additional grounds for rejecting the evidence of such witnesses, or alternatively the testimonies of these witnesses were so littered with inconsistencies that they could not be believed.

12 Here, the district judge noted that Chris was no longer Joselyn's boyfriend and found that there was no reason for him to fabricate anything in her favour. Unfortunately, she did not elaborate on her grounds for disbelieving Dennis's testimony. However, I was of the view that, while the Court must necessarily choose between the two conflicting testimonies, it has to keep in mind the fact that the appellate court has not had the opportunity to observe the demeanour of the witnesses. As such, it should give due regard to the trial judge's assessment of their credibility: *Sundara Moorthy Lankatharan v Public Prosecutor* [1997] 3 SLR 464.

> (b) The district judge erred in placing undue weight on the fact that Joselyn did not postpone her appointment dates.

13 Next, the Public Prosecutor contended that the district judge erred in concluding that Joselyn could have easily postponed the interview to a date later than 3 May 2002 if she had knowingly consumed Ketamine. The Public Prosecutor argued that this failed to take into consideration the fact Joselyn could have simply underestimated the time taken for the drug to dissipate, and furthermore she could have felt that any further postponement might alert SSgt Tuen.

14 There was some merit to the argument of the Public Prosecutor. It is possible that Joselyn could have knowingly consumed the drug and simply underestimated the time taken for it to dissipate. However, this inference is hardly irresistible. As such, the fact that Joselyn did not postpone her interview date was neither here nor there. Though the Public Prosecutor was correct to contend that one should not put too much weight on this evidence, I was of the view that this did not constitute a valid ground for overturning the decision as it did not form the main basis of the district judge's decision.

> (c) Concluding that the defence has rebutted the presumption on a balance of probabilities

15 Finally, the Public Prosecutor argued that, even if we accepted the finding that Joselyn had taken a drink from the man in the white shirt, this should not be sufficient in law to rebut the presumption on a balance of probabilities. The man in the white shirt was not produced, nor was there any evidence to show that the drink had been tampered with. The Public Prosecutor contended that "…to allow **mere suspicion of spiking** to succeed as a defence in consumption cases would seriously undermine the efficacy of the Misuse of Drugs Act in combating drug consumption."

16 In *Cheng Siah Johnson v PP* [2002] 2 SLR 481, this Court noted that the defence of spiking is one that is commonly raised because they are allegations which are extremely easy to make but almost

impossible to debunk. It went on to state that the correct approach to a commonly used defence is to approach it with greater caution and circumspection than usual in the absence of other credible evidence. It was apparent from the grounds of decision that the district judge clearly had the above principles in mind when she reached her decision.

17 In this case, Chris - a witness who was found to have been 'clear and lucid' - corroborated Joselyn's version of events. As such, there was a finding of fact that Joselyn had indeed taken a drink offered her by a man in a white shirt who had been with Dennis. Had this been the only evidence put forward, it might have been insufficient to rebut the presumption. However, there was other evidence to tip the scales in Joselyn's favour. In particular, the district judge found the fact that Dennis denied being at the pub on the night of 2 May 2002 to be significant. If he had been at the pub but had not spiked her drink, he should simply have testified to that effect. However, his categorical denial that he had been at the pub, when both Joselyn and Chris had testified to the contrary, showed that he had something to hide. It was this fact which led the district judge to conclude that there was a strong probability that Dennis may indeed have colluded with another person to spike Joselyn's drink.

18 Furthermore, I was in agreement with the district judge that this was a situation that could be distinguished from that in *Cheng Siah Johnson.* Here, Joselyn had been fully aware almost a week before the urine test was conducted, that she was under investigation for drug-related activities. At the least, she would have been alert to the fact that it would be extremely risky to engage in any drug-related activities that week.

19 The Public Prosecutor contended that the efficacy of the Misuse of Drugs Act would be undermined if it were held that 'such flimsy evidence' was sufficient to rebut the presumption. While the Courts should be sensitive to the efficacy of the presumption in combating drug consumption, it is equally true that the presumption should not place too onerous a burden on a defendant. In order to rebut the presumption the defence is not required to show, beyond a reasonable doubt, that someone has tampered with the drinks. That would be tantamount to making the offence one of strict liability.

20 Whether the defence has managed to rebut the presumption remains a question of fact to be decided on the totality of the circumstances of each case. In this case, the defence did not merely assert a suspicion that Joselyn's drink had been spiked. Rather, it was bolstered by the fact that Joselyn was in the unique circumstance of knowing a week beforehand that she was under investigation for drug related activities and also because the district judge had found Dennis to be lying. While it was true the defence put forward a commonly used defence, it is not a rule of law that it cannot be accepted. Instead, the approach is one of greater circumspection and caution. Based on the above, I was of the view that the decision of the district judge reflected this principle and was not against the weight of evidence. As such, the appellate court should be slow to disturb this finding.

Conclusion

21 In light of the above reasons, I decided that the Public Prosecutor's appeal be dismissed

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