

Public Prosecutor v Abdul Salam bin Musthafa
[2010] SGHC 81

Case Number : Criminal Case No 17 of 2009
Decision Date : 15 March 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ng Cheng Thiam, Nor'ashikin Samdin and Ng Yiwen (Deputy Public Prosecutors) for the prosecution; S S Dhillon (Dhillon & Partners) for the accused.
Parties : Public Prosecutor — Abdul Salam bin Musthafa

Criminal law – MDA

15 March 2010

Choo Han Teck J:

1 The accused was 39 years old. He owned a company called "JMS Call Centre Pte Ltd" which carried on the business of telemarketing from its office at Jalan Besar. He claimed trial to five charges of drug trafficking. The charges concerned offences occurring on two days, namely, 27 December 2007 and 31 December 2007. The first charge (C1) was in respect of 14.99g of diamorphine; the second (C2), 0.42g of methamphetamine; the third (C3), 8.76g of methamphetamine; the fourth (C4), 6.43g of diamorphine; and the fifth (C5), 0.01g of morphine. The cluster of charges concerning the offences alleged to have been committed on 31 December 2007 ("first cluster") were the main ones although the other cluster of three charges were in respect of offences alleged to have been committed four days previously ("second cluster"). Both clusters concerned the accused in conspiracy with others. In the case of the first cluster, with Maryati Binte Sipon ("Maryati") Khairul Anwar Bin Zaini ("Khairul"), Jamaliah binti Yacab ("Jamaliah"), and a male person known only as "Boy Cino"; and in the case of the second cluster, with Khairul, Jamaliah and Boy Cino only. Maryati, Khairul, and Jamaliah had pleaded guilty for their roles in the transactions in question and are serving varying sentences of imprisonment each. I begin with the first cluster.

2 Maryati testified for the prosecution. She said that on the morning of 31 December 2007 she brought along her seven-year old daughter Nur Fitri along to meet the accused. She was given S\$30,500 by the accused and she went to Johor Bahru, Malaysia where she changed the money into M\$69,692.50. She then handed that money over to Boy Cino. Jamaliah also testified on behalf of the prosecution and she said that about 1pm or 2pm Boy Cino called her and arranged for her to collect a plastic bag in which was a detergent box where the drugs in question were concealed. She was instructed to bring the drugs across to Singapore and hand them to Khairul. At 5.25pm she crossed over to Singapore and headed to Khairul's flat at Block 19, Telok Blangah Crescent. She met Khairul at the 10th floor lift landing and handed the plastic bag with the drugs to him. He gave her \$50 as transport money back to Malaysia. Both of them were arrested moments after they had completed the transaction. There was no dispute that the drugs seized from Khairul here were the drugs in respect of the first cluster of charges. Khairul's flat was searched and more drugs were seized. These were the remnants of the drugs delivered to him by Jamaliah in conspiracy with the accused in respect of the second cluster of charges.

3 Maryati maintained her evidence that she was given the money by the accused to hand to Boy

Cino. She also maintained that Boy Cino telephoned the accused to confirm that he had received the money. Shortly after that the accused telephoned Maryati to say she could leave. The evidence from the prosecution's narrative showed that after Maryati left, Boy Cino contacted Jamaliah to deliver the drugs to Khairul. Maryati and Jamaliah maintained their evidence even under cross-examination. Khairul, on the other hand, retracted his earlier statement recorded on 26 August 2008 (P142) stating that the accused was the one who instructed him in the delivery of the drugs concerned in the five charges against the accused. In court, he testified under cross-examination that he gave the statement eight months after his arrest because he was coerced into doing it. He gave no convincing details as to how he was coerced apart from the fact that he was facing the death sentence. I was not persuaded by his testimony under cross-examination. I accept his statement of 26 August (P142) as corroborative of the overall evidence against the accused. The main evidence against the accused was the testimony of Maryati which I found to be reliable. If Maryati was telling the truth, the accused must be lying. Hence, Mr Dhillon, counsel for the accused, subjected her to a strenuous cross-examination, but I do not think that either her credibility or her story was discredited. I was satisfied that Maryati's evidence was reliable.

4 The accused was arrested in his office at Jalan Besar at 6.30pm on 31 December 2007. Nothing incriminating was found on him or in his office. The evidence against him came mainly from the testimonies of Maryati and Khairul, and, indirectly, Jamaliah, whose evidence completed the prosecution's narrative. The accused elected to testify in his defence when his defence was called. He had no witness other than himself. Mr Dhillon submitted that the telephone call made from telephone number 962XXXXX (from a phone registered in the name of the accused) to Maryati on 30 December at 11.44pm did not belong to the accused. First, he submitted that Khairul agreed that the accused had only one cell-phone and that was 919XXXXX. Secondly, there were calls made from 962XXXXX from Malaysia between 20 and 25 December 2007, and that proved that they were not by the accused because he did not have a passport and did not travel to Malaysia. That may remain a mystery but it would not absolve the accused and neither is it sufficient to raise a reasonable doubt as to whether Maryati's evidence was unreliable. I am of the opinion that the evidence that the accused used only 919XXXXX was unreliable. On the other hand, even so far as telephone number 919XXXXX was concerned, on 26 December 2007, there were 35 communications with the other accomplices. The number, frequency and timing of the communications indicated that a co-ordinated activity was in progress, contrary to the evidence of the accused that he was only making small talk. I was unable to accept the explanation that the accused had given his cell phone 962XXXXX to a man known only as "Bob". I also did not accept the explanation as to why Bob could not be located to testify on behalf of the accused. I also noted that the various cell phones were, on the accused person's own evidence, liberally borrowed by the persons in the accused's circle of friends.

5 There was another piece of prosecution evidence that the accused disputed. The prosecution adduced a message from the short message system which the accused sent to Boy Cino. It stated in Malay, "Boy kuda dah jalan?" The interpreter's evidence was that it meant "Boy has the horse moved?" Maryati and Khairul understood the message as a message addressed to Boy Cino, asking him (Boy Cino) whether the courier had moved (left or started off). The accused insisted that the words "Boy kuda" was a nickname for another friend called "Rashid". The circumstances did not seem to justify this and no other evidence was led to persuade me that a Rashid who was also known as "Boy kuda" existed. I was not inclined to accept the accused person's explanation. Defence counsel submitted that the call records should not be taken into account if other evidence contradicts them. I was of the view that the call records are part of the evidence upon which I evaluate the veracity of the witnesses. A witness is believed or disbelieved not only by what he says or how he says it, but also by how his story compares with other evidence.

6 For the reasons above, I was of the view that the prosecution had proved its case against the

accused beyond reasonable doubt. I therefore found the accused guilty and convicted him on all the five charges. In mitigation, the accused said that he had no trouble with the law since 2000 although his convictions were recorded only in 2004, for which he was sentenced to a total of 36 months' imprisonment, in connection with the consumption of morphine and breaches of supervision orders. He also stated that because of his terminal illness, a long prison sentence will effectively be a "death sentence" for him. He has a 17-year old daughter and two sons aged 11 and 15 respectively.

7 The learned DPP, Mr Ng Cheng Thiam, drew my attention to the sentences meted out to the co-accused persons. After taking into account the mitigation, I was of the view that in sentencing this accused the sentences of his co-accused, who had all pleaded guilty, should be taken into account also. I, therefore, sentenced this accused to a total of 30 years imprisonment and 24 strokes of the cane. The sentence of imprisonment was to take effect from 2 January 2008.

Copyright © Government of Singapore.