Public Prosecutor v Rahmat Bin Abdullah and Another
[2003] SGHC 206

Case Number : CC 34/2003

Decision Date : 11 September 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Benjamin Yim and Lee Cheow Han [Attorney-GeneralÂ's Chambers] for the Public Prosecutor

Parties : Public Prosecutor — Rahmat Bin Abdullah; Kalaiselvan A/L Nallathamby

Criminal Procedure and Sentencing – Sentencing – Principles – Appropriate sentence of imprisonment – Range of the prescribed length of imprisonment to be taken into account.

Criminal Procedure and Sentencing – Mitigation – Accused pleading guilty – Lack of previous convictions – Relevance to sentencing – Correct mitigatory weight to ascribe to such factors.

Criminal Procedure and Sentencing – Sentencing – Principles – Charge of trafficking – Quantity stated in charge less than that which accused was caught with – Whether relevant factor in sentencing – Whether quantity to be taken into account for sentencing should be that stated in the charge.

1 The first accused was 59 years old and was a taxi driver by occupation. He was originally charged with conspiracy (with the second accused) to traffic 1063g of cannabis. That was a capital charge. He also faced seven other various charges of trafficking in smaller quantities of cannabis and cannabis mixture, as well as a charge for consumption of cannabis. The second accused was originally charged with trafficking the said 1063g of cannabis. He also faced five other charges relating to drug offences, including one for consumption of cannabis. The prosecution reduced the capital charges against both accused. Each of the two accused pleaded guilty to a reduced charge of trafficking 499.9g of cannabis, and a charge of consumption of cannabis. Both accused agreed to have all the other charges taken into account for the purposes of sentencing. They admitted the statement of facts without qualification. Accordingly, I convicted both of them as charged. The trafficking charges were for an offence under s 5(1)(a) read with s 5(2) and s 12 of the Misuse of Drugs Act, Ch 33. The consumption charges were for an offence under s 8(b)(i) of the Misuse of Drugs Act.

2 The facts were uncomplicated. The two accused had known each other since 2002. The second accused was a 45 year old Malaysian who was unemployed. He lived in Singapore at Blk 729 Woodlands Circle. He received a telephone call from the first accused at 9.50am on 25 January 2003. He was asked to help the first accused retrieve a plastic bag containing cannabis. As instructed, the second accused collected a bag hidden in a rubbish bin at Blk 728 Woodlands circle and brought it back to his flat and there unpacked the drugs. Later that afternoon, the second accused met the first accused and the two were seen driving off in the first accused's taxi. The taxi was intercepted by officers of the Central Narcotics Bureau at 3.20pm at Woodlands Drive 61. The second accused's flat was subsequently searched and the drugs which were the subject matter of the trafficking charge were found in a cupboard in his flat. The urine sample of both accused were taken at the Central Narcotics Bureau on the same day. The samples were tested positive for controlled drugs by the Health Sciences Authority. I sentenced both accused to 22 years imprisonment and in addition, the second accused was sentenced to 15 strokes of the cane in respect of the trafficking charge; and one year's imprisonment for each of them in respect of the consumption charge. The terms of imprisonment are to run concurrently with effect from 27 January 2003 when they were first remanded.

3 The prescribed punishment for the trafficking charge is 20 to 30 years imprisonment and 15 strokes of the cane, or life imprisonment and 15 strokes of the cane. The prescribed punishment for the consumption is imprisonment up to 10 years or a fine up to $2,000 or both. There was little by way of mitigation for both accused persons save that these charges were their first offences concerning prohibited drugs. The first accused is 59 years old and had been hospitalised when he suffered a stroke about four or five years ago. The second accused is 45 years old. His counsel submitted a medical certificate reporting that he had surgery for an inguinal hernia.

4 The learned DPP submitted that pleading guilty merits no discount in sentence if the public is to be protected. He then referred to Parliament increasing the range of punishment to include life imprisonment as an indication that the trafficking offence is one such offence where a plea of guilt does not count in sentencing. The DPP also submitted that the absence of previous convictions was of minimal value for mitigation purposes. Finally, the DPP submitted that the drugs recovered were twice the threshold for a capital case.

5 There is one factor which I think must not be overlooked in the sentencing of a criminal, and that is the range of prescribed punishment. A range from 2 years to 3 years is materially different from a range of 20 to 30 years imprisonment. Increasing a 20 year sentence by 1% is only 2 years, but that is double the span of an original 2-year sentence. Furthermore, 50 year old criminal who is imprisoned for 3 years will be 53 when he is released (if there is no remission of sentence) but if the same person is imprisoned for 30 years he will be 80 years old when released. The rigours of imprisonment are felt not only during incarceration but also upon release. Readjustment to society requires a greater effort after a 30-year sentence than a 3-year one. This observation is not a declaration that, as a rule, no one ought to be imprisoned to the age of 80 or thereabouts. Neither am I saying that a long custodial sentence is always more appropriate in the case of young persons, say in their 20's or 30's. The point is that the range of prescribed length is a factor that must be taken into consideration in each case together with all other factors so that it can rightly be said that the sentence is a fair one in *each* instant case.

6 Some judges appear to be harsher in respect of some offences; some in respect of all offences; some judges appear to be more lenient in respect of some offences; and some in respect of all offences. The lower and higher end of the range of prescribed punishment mark the limits of harshness and leniency. The fair and appropriate sentence will vary from case to case and the indicia of an inappropriate sentence – whether it is manifestly excessive or manifestly inadequate – is measured by taking all the relevant factors of the individual case into account.

7 The range for the appropriate sentence in unexceptional cases will likely to be fairly wide, and individual sentences can be diverse, including offences such as the present where the range is between 20 to 30 years, or life imprisonment. Divergent sentences are the consequence of the application of judicial discretion to the individuality of the cases. It is not necessary to attempt any comprehensive list as to what is or is not a factor to be considered. Some factors are inherently weak as some are inherently strong. Some others still are weak in comparison. For example, a thief who steals a watch merely because he is too lazy to work attracts much less sympathy than one who steals bread because he had no job and had not eaten for days. Thus, in the latter circumstances judicial sympathy can more readily be expressed in the leniency of sentence.

8 While I agree with the DPP that the fact that the accused persons had pleaded guilty is not an important factor in itself; nor do I disagree with the fact that having no previous convictions is of lesser importance when the offences in question are serious offences. However, these factors should not be totally ignored because if they are acceptable factors, then they must have a place in the overall picture. The sentence that is meted out must ultimately be based on the perception of that

overall picture. Some features may stand out in sharp focus (whether towards enhancement or mitigation of sentence) and others may lay in the obscure background. It is apt and appropriate to give greater weight to the distinct features and little or no weight to the background.

9 I ought also to address the DPP's submission that it is relevant to note that the prosecution proceeded only on 499.9g of drugs when the weight of the drugs seized was in fact 1063g. I am of the view that it would be relevant to take into account the quantity and weight of the drugs seized, but one must not exceed the relevancy of this factor, and regard the DPP's decision to amend the charge to a non-capital one as justifying a higher sentence in itself. It must be borne in mind that the charge in respect of which the accused persons were convicted stipulated the weight to be 499.9g and it is that weight that merits attention. The accused may had admitted a larger quantity in the statement of facts but they are not charged for that quantity. It is speculative to draw any conclusion as to why the charges were reduced and why the accused agreed to admit the larger quantity in the statement.

10 Finally, in the present case, I decided on the same length of imprisonment for both accused because the circumstances do not merit any variance. In my view, if any distinction is at all required to distinguish the sentences of the two accused, it would not be very significant on the facts of this case. Although the first accused was the initiator I cannot say, on the basis of the sparse facts, that the second accused was a mindless minion of a great mastermind. Their roles were about the same. I also took into account the fact that the first accused would by reason of his age, be spared caning. However, given his age and the sentence of 22 years imprisonment, no adjustment was, in my opinion, necessary.