

Ali bin Serti v Public Prosecutor
[2001] SGCA 15

Case Number : CA 25/2000
Decision Date : 12 March 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : S H Almenoar and Rabi Ahmad s/o M Ab Ravoof (Tan Rajah & Cheah) for the appellant; Jennifer Marie (Deputy Public Prosecutor) for the respondent
Parties : Ali bin Serti — Public Prosecutor

JUDGMENT:

Grounds of Judgment

The appellant, Ali bin Serti, was tried in the High Court on the following charges:

1st Charge

You, ALI BIN SERTI

On the 11th day of April 2000, at about 6.05 p.m., in a lorry bearing registration number YD 8173P along Kallang Bahru, Singapore, 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, 81 sachets of substance containing not less than 24.47 grams of diamorphine without 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 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

2nd Charge

You, ALI BIN SERTI

On the 11th day of April 2000, at about 8.00 p.m., in the bedroom of Blk 6 Jalan Minyak #12-362, Singapore, 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, 2 packets and 12 sachets of substance containing not less than 77.40 grams of diamorphine without 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 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

The Judicial Commissioner convicted the Appellant on both charges and sentenced him to death, which is the punishment mandated by section 33 read with the Second Schedule of the Act. The Appellant brought this appeal against his conviction in the High Court. We dismissed the appeal and now give our grounds.

Facts

2 At the time of his arrest in April 2000, the Appellant was unemployed, although he had occasionally been deployed as a daily-rated painter by two contractors. On 11 April 2000, the Appellant was the subject of a surveillance operation conducted by the Central Narcotics Bureau (CNB) at a Housing and Development Board (HDB) flat at Block 6 Jalan Minyak, #12-362, which was registered in the Appellant's name. In the early evening, the Appellant was seen leaving the flat in the company of one Abdul Rahman bin Mohd Noor. The Appellant was seen carrying a brown paper bag on which was printed the word "CAPTIONS". The Appellant and Abdul Rahman then met up with one Zamri bin Mohd Ali at the void deck of Block 6. The Appellant and Zamri then boarded a lorry, registration number YD 8173 P, driven by one Rumli bin Sarib. Also on board the lorry were one Ng Sick Yong and one Jaseni bin Latip. Abdul Rahman was seen boarding the lorry shortly afterwards, along Chin Swee Road.

3 The lorry was subsequently intercepted by CNB officers near a JTC flattened factory in Kallang Bahru. The Appellant and the 5 other persons in the lorry were arrested. CNB officers found the "CAPTIONS" brown paper bag carried by the Appellant in the front cabin of the lorry. The bag contained 8 envelopes and a red plastic bag containing a total of 81 sachets of a substance believed to be heroin, and subsequently confirmed by the Department of Scientific Services as containing not less than 24.4 grams of diamorphine. In respect of the possession of these sachets, the Appellant was charged with trafficking in a controlled drug, or, more specifically, with possession of a controlled drug for the purpose of trafficking under s 5(2) of the Misuse of Drugs Act (the 1st charge).

4 Also found on the Appellant's person at the time of his arrest was a bunch of 3 keys to the Appellant's HDB flat at Block 6 Jalan Minyak. Later that evening, a CNB team, accompanied by the Appellant used these keys to enter the flat, where, upon searching the bedroom, they recovered a white plastic bag on which the words "Maxim Cakes" were printed. The bag contained 2 packets and 12 sachets of a substance believed to be heroin, and subsequently confirmed by the Department of Scientific Services as containing not less than 77.40 grams of diamorphine. In respect of the possession of these packets and sachets, the Appellant was similarly charged with trafficking in a controlled drug, or, more specifically, with possession of a controlled drug for the purpose of trafficking under s 5(2) of the Misuse of Drugs Act (the 2nd charge).

5 Also found in the "Maxim Cakes" bag at the time of the search were a digital weighing scale, two candles, two metal spoons, two used envelopes, a stack of 9 envelopes, some more envelopes and a stack of 346 empty sachets. In a carton near the bed, another white plastic bag was recovered, which was found to contain 2320 empty sachets arranged in 5 stacks. Evidence was given in the court below that the spoons could be used to repack the heroin from the larger packets into the smaller sachets, the weight of each sachet measured using the digital weighing scale, and the packed sachets sealed with the candles.

Appellant's Statements

6 In statements made to the CNB, the Appellant stated that the heroin retrieved from the "CAPTIONS" brown paper bag and the "Maxim Cakes" white plastic bag belonged to a Chinese at Geylang Lorong 37, known as "Ah Mike". The Appellant said that he first dealt with "Ah Mike" four days prior to his arrest, when an unknown quantity of heroin was delivered to him by an unidentified individual, to be repacked by the Appellant into smaller sachets. The Appellant did so, and 2 hours later, returned the sachets to another unidentified Chinese man at Geylang Lorong 37, for which he was paid \$1000.

7 On the night before his arrest, the Appellant was out drinking at the market place at Geylang Lorong 2 in the company of Abdul Rahman and another man known only as "Ahmad". At about 3 a.m. on 11 April 2000, Abdul Rahman left by taxi. Ahmad left at 5 a.m. The Appellant continued drinking until about 8 a.m. At about 10 a.m. he received a call on his handphone informing him that "someone was coming", by which he understood that he was to receive a new delivery of drugs. At 11 a.m. on 11 April 2000, two male Chinese drove up in a Malaysia-registered vehicle. The Appellant walked to the car and removed a brown paper bag from the back seat. This was the same brown paper bag seized from the Appellant at the time of his arrest. No words were

exchanged and the two Chinese drove off.

8 The Appellant then took a taxi back to his flat at Block 6 Jalan Minyak, where he inspected the contents of the the brown paper bag. Inside, the Appellant found 8 envelopes containing small packets of heroin and a plastic bag containing 2 big packets of heroin. He stored the plastic bag on the floor of the bedroom, next to the wardrobe. The Appellant then waited for a call on his handphone. At about 4 p.m., he received a call instructing him to bring the 8 envelopes containing small packets of heroin to "the same place", which the Appellant understood to mean Geylang Lorong 37, at about 6 p.m. that day.

9 Shortly after receiving the call, the Abdul Rahman came to the Appellant's flat, where the Appellant gave him a small quantity of heroin to smoke. According to the Appellant, Abdul Rahman had no knowledge of the brown paper bag and its contents, or of the plastic bag containing two big packets of heroin. At around 6 p.m., the Appellant and Abdul Rahman left the flat. Soon after, at the void deck, the Appellant, by chance, met an individual known as Zamri bin Mohd Ali (whom the Appellant knew as "Hassan"). Zamri told the Appellant that he was going to Tampines by lorry. The Appellant asked Zamri for a lift and Hassan agreed. Zamri also agreed to give Abdul Rahman a lift, as he was also going to Tampines. The lorry was subsequently intercepted by the CNB, as explained in the course of events narrated above.

The Appeal

10 The quantities of diamorphine contained in the heroin found in both the "CAPTIONS" brown paper bag and the "Maxim Cakes" white plastic bag exceeded the statutory amount (2 grammes) required to activate the rebuttable presumption under s 17 of the Misuse of Drugs Act that the Appellant possessed the drugs for the purpose of trafficking. This in turn activated s 5(2) which provides that a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking. On this basis, the Judicial Commissioner convicted the Appellant of both charges.

11 In his Petition of Appeal, the Appellant contended that the Judicial Commissioner erred in finding that he had failed, on a balance of probabilities, to rebut the presumption arising under s 17 that he possessed the drugs for the purpose of trafficking. Section 17 provides that the presumption of possession for the purpose of trafficking can be rebutted if the accused proves that his possession of the drug is for some other purpose. In this context, it was argued that the evidence showed that the appellant's purpose in having possession of the drugs was to repack them into smaller sachets and to return them to their owner, the Chinese man known as "Ah Mike". It was the Appellant's case that possession for the purpose repacking is not equivalent to possession for the purpose of trafficking. This argument was rejected by the Judicial Commissioner, and we agreed with his conclusion.

12 Section 2 of the Misuse of Drugs Act provides that

"traffic" means

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act or the regulations; and

"trafficking" has a corresponding meaning;

In *Lee Yuan Kwang & Ors v PP* [1995] 2 SLR 249 the Court of Appeal ruled that possession of drugs with the intention of returning them to their rightful owner did not rebut the s 17 presumption. In other words, possession as a bailee or custodian of the drugs still amounts to possession for the purpose of trafficking. See also *Goh Hock Huat v PP* [1995] 1 SLR 274 and *Sze Siew Luan v PP* [1997] 2 SLR 522. In *Lee's* case, the Court of Appeal distinguished an earlier decision, *PP v Wan Yue Kong & Ors* [1995] 1 SLR 417 in which two defendants were convicted of possession *simpliciter* under s 8 in circumstances where they

knew of the presence of drugs in the flat but the drugs were left there by a third person who had intended to retrieve them from the premises. The Court in *Lee* emphasised that this was a prosecution that had been brought under the law prior to the 1993 amendment to the Misuse of Drugs Act that introduced s 17, and that in the absence of evidence showing overt acts of trafficking, the elements of the more serious offence of possession for the purpose of trafficking were not made out. Prior to the introduction of s 17, mere possession of the proscribed amount did not shift the burden to the defendants to disprove possession for the purpose of trafficking.

13 In this appeal, the Appellant argued that he ought to have been convicted of possession *simpliciter* and not possession for the purpose of trafficking because he only intended to repack the drugs. We do not see how that line of reasoning can be reconciled with the Court of Appeal's ruling in *Lee Yuan Kwang*. Here, the Appellant, in addition to being in possession of the drugs, admitted in his statements to the CNB that he intended to repack them, ostensibly with a view to resale by "Ah Mike". The Appellant's arguments that this did not constitute trafficking flew in the face of reason, and, if we were to accept it, would have undermined a fundamental objective of the statute. In any event, this argument, even if we were to accept it, would only have assisted the Appellant in the 2nd charge. In relation to the 1st charge, the evidence showed that the Appellant was merely delivering the same 8 envelopes he had collected at Geylang Lorong 2 to Geylang Lorong 37, which falls squarely within the definition of "trafficking" in s 2.

14 In the circumstances, we dismissed the appeal, and confirmed the imposition of the capital sentence as required by the Act.

Yong Pung How

L P Thean

Chao Hick Tin

Chief Justice

Judge of Appeal

Judge of Appeal

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