

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 283

Criminal Appeal No 9 of 2019 (Criminal Motion No 18 of 2020)

Between

Mohamed Shalleh bin Abdul
Latiff

... Appellant

And

Public Prosecutor

... Respondent

In the Matter of Criminal Case No 74 of 2018

Between

Public Prosecutor

And

Mohamed Shalleh bin Abdul
Latiff

FINDINGS ON REMITTAL

[Criminal Procedure and Sentencing] — [Taking additional evidence]

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Mohamed Shalleh bin Abdul Latiff

v

Public Prosecutor

[2020] SGHC 283

High Court — Criminal Appeal No 9 of 2019 (Criminal Motion No 18 of 2020)

Hoo Sheau Peng J

6 October, 11 November 2020

30 December 2020

Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 Pursuant to an application by the accused, Mr Mohamed Shalleh bin Abdul Latiff (“the accused”), the Court of Appeal directed me to take further evidence from Mr Khairul Nizam bin Ramthan (“Mr Khairul”) under s 392(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). Having done so, pursuant to s 392(4) of the CPC, I now set out the effect, if any, the additional evidence taken has on my earlier verdict.

The trial

2 The accused was convicted of a charge of possession of not less than 54.04g of diamorphine (“the Drugs”) for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev

Ed) (“MDA”). The mandatory sentence of death was passed on him. My reasons are contained in *Public Prosecutor v Mohamed Shalleh bin Abdul Latiff* [2019] SGHC 93 (“GD”).

3 At the trial, the Prosecution’s evidence showed that on 11 August 2016, officers from the Central Narcotics Bureau (“CNB”) conducted an operation in the vicinity of Balestier Road and Boon Teck Road, and later arrested the accused in his car along Mei Ling Street: see [4]-[7] of the GD.

4 As stated at [8] of the GD, upon a search of the accused’s car, the CNB officers recovered the following items from the floorboard of the front passenger seat:

- (a) one orange plastic bag which contained one “Lexus” box which in turn contained two packets of crystalline substance; and
- (b) three zip-lock bags each containing one bundle wrapped in brown paper. The three bundles are to be collectively referred to as the “Bundles”.

5 The contents of the Bundles were analysed and found to contain the Drugs, while the crystalline substance in the two packets was found to contain methamphetamine.

6 It was not disputed by the accused that in collecting the Drugs, the accused followed the instructions of one “Bai”, pursuant to an agreement that the accused would do a delivery job for Bai. As per Bai’s instructions, on the day of his arrest, the accused met with Mr Khairul to receive the goods at Boon Teck Street. The accused also passed Mr Khairul an envelope containing S\$7,000. Then, the accused proceeded to Mei Ling Street to await further

instructions about who to deliver the Bundles to. Before the accused could complete the delivery, he was arrested.

7 In his defence, the accused disputed having knowledge of the nature of the drugs, alleging that he believed that the delivery involved contraband cigarettes. The key reason why the accused had allegedly formed this belief was because Bai had told him that the delivery job involved contraband cigarettes, and the accused trusted Bai's word: see [14] of the GD.

8 As part of his defence, the accused claimed that he did not see the Bundles until they were recovered by the CNB officers. Mr Khairul had delivered them to him in the orange plastic bag with the handles tied up. The orange plastic bag was placed on the floorboard of the front passenger seat of the car. Thus, the Bundles were not visible to him: see [14(d)] of the GD.

9 On this aspect, the accused's evidence was contradicted by Senior Staff Sergeant Tay Keng Chye ("SSSgt Tay"). According to SSSgt Tay, following the arrest, he found the orange plastic bag *beside* the Bundles on the floorboard of the front passenger seat of the car: see [9] of the GD. In other words, the Bundles – which were roughly palm-sized, round and irregularly shaped – were outside the orange plastic bag.

10 As possession of the Drugs was undisputed, the Prosecution was able to rely on the presumption of knowledge of the nature of the drugs under s 18(2) of the MDA. Having reviewed the evidence, I found that the accused had failed to rebut this presumption for reasons which fell into three broad areas:

- (a) The evidence showed that the accused did not have a close relationship with Bai, and there was no reason for the high level of trust

he allegedly placed in Bai given the suspicious circumstances of the transaction: see [23]-[27] and [39] of the GD.

(b) I also observed that the accused had omitted to mention important aspects of his defence in his statements made in the course of investigations: see [28]-[34] of the GD.

(c) Further, I found that the accused's account was contradicted by SSSgt Tay's evidence. I saw no reason to disbelieve SSSgt Tay's evidence, and accepted that the Bundles were in fact located outside the orange plastic bag when they were found by SSSgt Tay. As the Bundles were left exposed on the floorboard, the accused would have caught sight of their appearance. The round and irregular shape should have aroused the accused's suspicion that they contained something else besides cartons of cigarettes: see [36]-[37] and [39] of the GD.

11 Having rejected the accused's defence, I convicted him of the charge. I should add that at the close of the Prosecution's case, Mr Khairul was offered as a witness to the defence. However, he was not called as a witness.

The application

12 After the trial, the Court of Appeal's decision in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*") was released. The Prosecution noted that Mr Khairul could be considered a material witness as he was in the position to testify whether the Bundles were inside or outside the orange plastic bag. This issue had some bearing on whether the accused had knowledge of the Drugs. If the Bundles had been left exposed, their round and irregular shape would have aroused the accused's suspicion that the contents were not cartons of cigarettes. Therefore, in accordance with *Nabill*, the

Prosecution disclosed to the Defence the statements made to the CNB by Mr Khairul.

13 Subsequently, for the purpose of the appeal, the Defence applied for Mr Khairul to give evidence on the two following issues:

- (a) Whether Mr Khairul placed the orange plastic bag on the floorboard of the car; and
- (b) If Mr Khairul did so, whether the Bundles were within the orange plastic bag or outside the orange plastic bag.

14 The Prosecution did not object to the Defence’s application. As stated at [1] above, the application was granted, and the matter was remitted to me for additional evidence to be taken from Mr Khairul on the two issues.

Mr Khairul’s evidence

15 Mr Khairul was arrested on 11 August 2016.¹ Subsequently, he pleaded guilty to and was convicted of a non-capital charge of trafficking in methamphetamine *ie*, the crystalline substance contained in the two packets found in the “Lexus” box in the orange plastic recovered from the accused’s car: see [4(a)] above. He was sentenced to 15 years of imprisonment and 10 strokes of the cane.² In relation to a capital charge of delivering the Bundles containing the Drugs to the accused, he was given a discharge *not* amounting to an acquittal.³

¹ NEs 6 October 2020, p 2 lines 18 – 19.

² NEs 6 October 2020, p 21 lines 9 – 17.

³ NEs 6 October 2020, p 22 lines 7 – 15.

16 During questioning by Defence Counsel, Mr Khairul testified that at Boon Teck Road, he entered the accused's car, and passed him the methamphetamine which was placed in a box in an orange plastic bag.⁴ There was nothing else in the orange plastic bag.⁵ Specifically, as instructed by the accused, Mr Khairul placed the orange plastic bag on the floorboard of the accused's car.⁶ Mr Khairul denied that he delivered the Bundles to the accused.⁷ He disagreed that the Bundles were inside the orange plastic bag.⁸ Thereafter, he took the envelope of money from the accused and left the car.

17 When questioned by the Prosecution, Mr Khairul elaborated that when he opened the front passenger door of the accused's car, the Bundles were already on the front passenger seat. After he boarded the car, he wanted to occupy the front passenger seat. Therefore, he pushed the Bundles onto the floorboard. He showed the orange plastic bag to the accused, and he placed it on the floorboard next to the Bundles. Looking down at the floorboard as he was seated in the front passenger seat, the Bundles were to the right of the orange plastic bag. He could not remember whether the handles of the orange plastic bag were tied up. After the accused gave him the envelope with the money, he left the car.⁹

⁴ NEs 6 October 2020, p 2 line 28 – p 3 line 19.

⁵ NEs 6 October 2020, p 3 line 28 – p 4 line 4.

⁶ NEs 6 October 2020, p 6 line 29 – p 7 line 3.

⁷ NEs 6 October 2020, p 6 line 8 – 9.

⁸ NEs 6 October 2020, p 17 lines 13 – 20.

⁹ NEs 6 October 2020, p 24 line 9 – p 27 line 10.

18 Relying on six statements provided by Mr Khairul to the CNB in the course of investigations,¹⁰ Defence Counsel sought to impeach the credit of Mr Khairul pursuant to s 157(c) of the Evidence Act (Cap 97, 1997 Rev Ed) (“Evidence Act”). The provision reads:

Impeaching credit of witness

157. The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls him:

...

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

19 Defence counsel referred to the contents of six of Mr Khairul’s statements given on 11 August 2016, 12 August 2016, 17 August 2016, 18 August 2016, 8 December 2016 and 22 February 2017. These were marked as Exh D1 to Exh D6 respectively.

20 In his initial statements *ie*, Exh D1 to Exh D4, Mr Khairul denied handing over anything to the accused when they met at Boon Teck Road. He claimed that he only received an envelope of money from the accused. In fact, in Exh D2 to D4, he denied entering the accused’s car. However, in Exh D5 which was recorded on 8 December 2016, Mr Khairul admitted that he delivered the “ice” *ie*, methamphetamine to the accused. This was after Mr Khairul was asked to explain why his DNA had been found on the inside of one of the packets of ice. In Exh D6, Mr Khairul admitted that prior to his arrest, he had been helping to deliver “drug” to the accused. He received the money as payment for the “drug”. However, Mr Khairul continued to deny that he had anything to do with the Bundles. In court, he explained that by “drug”, he meant

¹⁰ NEs 6 October 2020, p 18 lines 13 – 18.

“meth” *ie*, methamphetamine.¹¹ He admitted that he had lied in his initial statements in relation to the methamphetamine in order to protect himself.¹²

Submissions of the parties

21 Defence Counsel submitted that Mr Khairul lied in court.¹³ Mr Khairul had only been granted a discharge not amounting to an acquittal for the charge of trafficking in the Drugs. Any admission from him in relation to the Drugs could result in him being dealt with for a capital offence.¹⁴ Indeed, in his initial version to the CNB, he had denied entering the accused’s car or delivering anything to the accused. When he discovered that his DNA had been found on one of the packets of “ice”, his version changed.¹⁵ He accepted that he entered the accused’s car and handed the “ice” to the accused. However, to protect himself, he continued to lie that he did not hand the Drugs to the accused.¹⁶ He was able to deny this because he knew that his DNA was not on the Bundles. Given the discrepancies in his initial statements with his evidence in court, Mr Khairul is not worthy of credit. It is entirely possible that on the day in question, Mr Khairul handed over the “ice” and the Bundles to the accused.¹⁷ In the event that he did, it is entirely possible that the Bundles and the “ice” would be in the

¹¹ NEs 6 October 2020, p 16 lines 9 – 10.

¹² NEs 6 October 2020, p 9 line 25 – p 10 line 6.

¹³ Defence’s Skeletal Submissions dated 11 November 2020 (“DSS”) at para 4.

¹⁴ DSS at para 17.

¹⁵ DSS at paras 6 and 7.

¹⁶ DSS at para 9 and 14.

¹⁷ DSS at para 19.

same plastic bag.¹⁸ There would be no reason for Mr Khairul to remove any or all of the three bundles from the orange plastic bag.

22 The Prosecution agrees with the Defence that Mr Khairul is not a credible witness.¹⁹ Insofar as Mr Khairul denied that he delivered the Bundles, he should not be believed.²⁰ That said, Mr Khairul's lies do not necessarily support an inference that the Bundles must have been in the orange plastic bag at the point of delivery.²¹ Indeed, the Prosecution points out that Mr Khairul's account does not corroborate the accused's version that the Bundles were in the orange plastic bag.²² In fact, Mr Khairul's evidence is consistent with that of SSSgt Tay that the Bundles were on the floorboard of the car.²³ Mr Khairul could not remember if the handles of the orange plastic bag were tied up.²⁴ In other words, Mr Khairul's evidence did not advance the defence. The further evidence should have no bearing on the court's earlier findings.

Findings

23 I agree with the parties that Mr Khairul is not a credible witness. Until the DNA evidence linked him to the packets of methamphetamine, Mr Khairul did not admit to any delivery to the accused at all. After being confronted with the DNA evidence, he admitted to the delivery of the packets of

¹⁸ DSS at para 20.

¹⁹ Prosecution's Skeletal Submissions dated 10 November 2020 ("PSS") at para 16.

²⁰ PSS at para 20.

²¹ PSS at para 16.

²² PSS at para 21 – 22.

²³ PSS at para 13.

²⁴ PSS at para 21.

methamphetamine. His initial version was contrary to the evidence in court. Clearly, he had lied in his initial statements to protect himself. Mr Khairul admitted to this. Therefore, I find his credit impeached pursuant to the Defence's application under s 157(c) of the Evidence Act. Further, it is evident that Mr Khairul has an incentive to continue to disassociate himself from the Bundles. Any admission of involvement with the delivery of the Bundles would implicate him in the commission of a capital offence. Generally, I do not find him a reliable witness.

24 Turning to the two issues set out at [13] above, Mr Khairul's evidence did not support the accused's version of the events. Contrary to the parties' common position, Mr Khairul denied that he had delivered the Bundles to the accused. To do so, it is unsurprising that Mr Khairul said that when he entered the accused's car, the Bundles were already on the front passenger seat which Mr Khairul then pushed to the floorboard of the car. While the latter aspect lent some support to SSSgt Tay's observation on the location of the Bundles, I do not consider Mr Khairul's evidence reliable. Proceeding on the basis that Mr Khairul had delivered the Bundles to the accused, the Bundles could well have been inside or outside the orange plastic bag when placed in the car. At the end of the day, there is nothing to contradict SSSgt Tay's evidence that he found the Bundles beside the orange plastic bag on the floorboard of the car. There is also nothing to support the accused's assertion that the Bundles were inside the orange plastic bag all the while.

25 As stated at [10] above, in the GD, I found that the accused had failed to rebut the presumption of knowledge of the drugs for reasons which fell into three broad areas. Mr Khairul's evidence has no bearing on my finding within the third broad area that the Bundles were located outside the orange plastic bag. It has no bearing on my observation that "the round and irregular shape should

have aroused suspicion that they contained something else besides cartons of cigarettes”: see [36] of the GD.

26 Accordingly, Mr Khairul’s evidence has no effect on my earlier verdict.

Hoo Sheau Peng
Judge

Ramesh Chandr Tiwary (Ramesh Tiwary) for the accused;
Anandan Bala, Theong Li Han and Claire Poh (Attorney-General’s
Chambers) for the Prosecution.