Choa Joo Liang v Public Prosecutor
[2005] SGCA 15

Case Number : Cr App 14/2004

Decision Date : 16 March 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J; Yong Pung How CJ

Counsel Name(s) : Kelvin Lim Phuan Foo (Kelvin Lim and Partners) and Loo Khee Sheng (K S Loo and Co) for the appellant; Benjamin Yim (Deputy Public Prosecutor) for the respondent

Parties : Choa Joo Liang — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Appellant convicted of possession of diamorphine for the purpose of trafficking – Offence carries mandatory death penalty – Whether appellant could appeal against death sentence imposed on the ground that it was manifestly excessive

16 March 2005

Lai Kew Chai J (delivering the judgment of the court):

1 The appellant, Choa Joo Liang, was charged with possession of diamorphine for the purpose of trafficking, an offence under s 5 of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("MDA") punishable under s 33 of the MDA. At the trial below, he was convicted of the charge, and sentenced to suffer death. The appellant appealed against the sentence. Having dismissed the appeal, we now set out our reasons.

The facts

2 On 20 October 2003, officers from the Central Narcotics Bureau ("CNB") raided Block 537 Bukit Panjang Ring Road #19-831. After gaining entry, the officers proceeded to the master bedroom where they found the appellant squatting inside the attached toilet. The appellant was arrested. There were some packets on the toilet floor. When asked what they contained, the appellant replied that it was "*peh hoon*" (Hokkien slang for heroin). In all, six packets of granular substance and two bundles were recovered from the toilet floor. Two sachets of granular substance were also recovered from the toilet cabinet.

3 When asked whether there were any more drugs, the appellant replied that there were some more in the bedside table drawer and a paper carton box in the master bedroom. Seven envelopes each containing ten sachets of granular substance, two loose sachets of similar granular substance, as well as a significant sum of money, were recovered from the bedside table drawer. Four envelopes containing 21 sachets of granular substance were recovered from the carton box.

4 Various drug trafficking paraphernalia were also found. A rolling pin was recovered from the bedside table drawer. A digital weighing scale, a plastic spoon, a sealer, and some empty sachets were recovered from underneath the bed in the master bedroom.

5 Subsequently, the packets and sachets, as well as the various paraphernalia, were sent for analysis at the Health Sciences Authority ("HSA"). In all, the granular substances in the packets and sachets were found to contain a total of 103.15g of diamorphine. The rolling pin and digital weighing scale were also found to be stained with diamorphine.

6 During investigations, various statements were recorded from the appellant. In his cautioned statement, the appellant stated that he had nothing to say. Subsequently, in his long statement, the appellant admitted that he had told the CNB officers that the packets on the toilet floor contained heroin, and that they belonged to him. He also admitted to having told the officers that there were more drugs in the bedside table drawer and a paper carton box in the master bedroom. He also admitted that the money found in the bedside table drawer were earnings from his drug-trafficking activities.

7 Subsequently, in a further statement, the appellant admitted that he had engaged in drug-trafficking activities on two occasions. He would buy heroin, grind it down into finer form, scoop the heroin into empty sachets, weigh the sachets so that there would be 8g of heroin in one sachet, and use a sealer to seal the sachets. The appellant claimed that he consumed about one sachet per day. He admitted to selling the rest at $200.00 each.

The proceedings below

8 In all, the appellant faced three charges for drug-related offences under the MDA, including the trafficking charge. The Prosecution proceeded with the trafficking charge. The appellant informed the court that he wished to plead guilty, being fully aware that the trafficking charge carries a mandatory death sentence. As it was a capital charge, the trial judge did not accept the appellant's plea, and directed the Prosecution to prove its case against the appellant. At the close of the Prosecution's case, counsel for the appellant did not submit that there was no case to answer. The trial judge informed the appellant that he would call for the defence, and adjourned the hearing for the appellant to consider whether he wished to elect to give evidence or remain silent. Subsequently, the appellant elected to remain silent, and did not call any witnesses to give evidence on his behalf. He also did not challenge the admissibility of the statements of the various CNB and HSA officers, as well as the statements that were recorded from him. Counsel for the appellant also informed the court that they would not make any submissions.

9 The trial judge was of the view that there was clear and credible evidence, which was unchallenged, that the appellant had admitted that the large quantities of diamorphine found belonged to him, and that he had intended to pack most of them for sale and to consume some himself. The trial judge felt that the amount of diamorphine found was so large that any reduction, which could reasonably be made from the amount intended for self-consumption, would not reduce the amount to below the 15g level so that it would not attract the death sentence. In the circumstances, the trial judge convicted the appellant of the charge and sentenced him to suffer death.

The appeal

10 In their petition of appeal, counsel for the appellant contended that the sentence imposed on the appellant was manifestly excessive. In response, the Prosecution submitted that such a contention was untenable. The death sentence was mandatory, and it was the only sentence, and no other, that could be imposed in the circumstances. Subsequently, in their written submissions, counsel for the appellant conceded that they were unable to make any submissions that could persuade us to set aside the conviction or alter the sentence.

11 Section 33 of the MDA is the operative section that creates the punishment for trafficking diamorphine. In turn, s 33 of the MDA makes reference to the Second Schedule to the MDA ("the Schedule"). The offence of trafficking diamorphine falls under s 5(4) of the first two columns of the Schedule. One then looks across to the sixth column for the prescribed punishments. The amount of diamorphine involved in the present case is 103.15g. The relevant section to refer to is therefore

s 5(4)(b) of the first two columns of the Schedule, which provides for the offence of unauthorised trafficking of more than 15g of diamorphine. The punishment for the offence is clearly prescribed in the sixth column as "Death".

12 In *Nguyen Tuong Van v PP* [2005] 1 SLR 103 ("*Nguyen Tuong Van*"), to which the Prosecution referred, this court had emphatically stated, and had put beyond doubt, that the death penalty prescribed in the MDA, in that case for importing more than 15g of diamorphine, is a *mandatory* sentence. In this regard, the court had expressed at [48]–[53] that:

> 48 … If Parliament had intended to confer on the sentencing court a discretion to impose a range of punishments, it could have provided for it. Further, if a range of sentences is prescribed for the import of a range of diamorphine below 15g and not less than 10g, it is illogical to think that Parliament would in respect of any unauthorised import of diamorphine of more than 15g confer a discretion on the sentencing court to impose any sentence up to the maximum sentence of death.
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> 49 … As the DPP has submitted, it is beyond doubt that Parliament legislated the offence as punishable with the sentence of death. That is patently clear from a reading of the Hansard. When the mandatory death penalty was introduced for the unauthorised import of more than 15g of diamorphine in 1975, the then Minister for Home Affairs and Education, who tabled the Bill, said (see *Singapore Parliamentary Debates, Official Report* (20 November 1975 at col 1382)):
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> > The death penalty will … be imposed for the unauthorised import, export or trafficking of more than 30 grammes of morphine or more than 15 grammes of heroin.
> >
> > … It is not intended to sentence petty morphine and heroin pedlars to death. It is, therefore, necessary to specify the quantity by weight, exceeding which the death penalty will be imposed. … For heroin any quantity in which the pure heroin [*ie* diamorphine] content is above 15 grammes will attract the death penalty. … As a comparison, Iranian law provides for a mandatory death sentence where the trafficking only involves more than 10 grammes of heroin.
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> 50 The object of the 1975 amendments to the MDA is therefore clear. An interpretation of the punishment for the offence under s 7(4)(b) and falling within the first and second columns of the Second Schedule of the MDA must promote that object, which is the imposition of the mandatory death penalty …
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> …
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> 53 The punishment for the unauthorised import of more than 15g of diamorphine is, in our view, prescribed expressly and in clear terms. There is but one sentence for the High court to impose and that is the sentence of death.

13 As the Prosecution rightly pointed out, *Nguyen Tuong Van* was applicable here. It was of no consequence that the present case involved the trafficking of diamorphine, whereas *Nguyen Tuong Van* involved the importing of diamorphine. This is because, firstly, the level that will attract the death penalty for both importing and trafficking diamorphine is the same, *ie*, the 15g level. Secondly, just like for importing between 10g to 15g of diamorphine, the same range of sentences is also prescribed for trafficking not less than 10g but below 15g of diamorphine, *ie*, a minimum sentence of 20 years' imprisonment and 15 strokes of the cane, and a maximum sentence of 30 years' imprisonment or life imprisonment and 15 strokes of the cane. Indeed, the wording on punishments set

out in the Schedule in respect of the trafficking of diamorphine under s 5 is identical to that for the importing of diamorphine under s 7.

14 Accordingly, the ground of appeal that the sentence imposed on the appellant was manifestly excessive could not succeed, when there is only but one sentence for the court below to impose, and that is the sentence of death.

Conclusion

15 In the light of the overwhelming and unchallenged evidence against the appellant, we could see why the appellant had elected to remain silent at the trial when the defence was called. For the same reason, we could also see why the appellant did not advance his case during the appeal. We dismissed the appeal, and affirmed the death sentence imposed on the appellant.

Appeal dismissed.