Khalid bin Abdul Rashid v Public Prosecutor
[2000] SGCA 64

Case Number	: Cr App 17/2000, CC 53/2000
Decision Date	: 28 November 2000
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; MPH Rubin J; L P Thean JA
Counsel Name(s)	: Tan Teow Yeow (Tan Teow Yeow & Co) and Juana Saifful Manis (A R Saleh & Saifful) (assigned) for the appellant; Bala Reddy and Toh Yung Cheong (Deputy Public Prosecutors) for the respondent
Parties	: Khalid bin Abdul Rashid — Public Prosecutor

JUDGMENT:

Grounds of Judgment

The charge

1 The appellant, Khalid bin Abdul Rashid, was tried before the High Court on a charge that he, on or about 14 March 2000 at about 6.45pm at Block 634 Bedok Reservoir Road, #04-11, Singapore, trafficked by having in his possession for the purposes of trafficking, not less than 21.37g of diamorphine, an offence under s 5(1)(a) read with a 5(2) and punishable under s 33 of the Misuse of Drugs Act (Cap 185) ('the MDA').

2 At the end of the trial, the learned trial judge found the appellant guilty, convicted and sentenced him to suffer death. The appellant's appeal against his conviction and sentence was dismissed by us and our reasons now follow.

Facts

3 The evidence adduced by the prosecution which was in effect not challenged by the appellant was that on 14 March 2000 at about 5.35pm, he was arrested by a party of officers from the Central Narcotics Bureau (CNB) along a corridor at the Singapore National University Hospital. After his arrest, he was taken to his sister's flat at Block 634 Bedok Reservoir Road, #04-11, Singapore. There, under the bed in the appellant's bedroom, the CNB officers found a travelling bag with a lock at the end of the zipper. The appellant assisted the officers to locate a key to unlock the bag inside which they discovered the following items:

> (a) Ten envelopes (B13) containing a total of 99 small transparent sachets of granular substance;
>
> (b) Six brown packets (B7 to B12) inside which was a total of 357 small transparent sachets of granular substance; and
>
> (c) Six transparent packets also containing granular substance (B1 to B6).

4 Also found in the seized bag were implements suggestive of drug trafficking such as aluminium foil, envelopes, sticky tapes, a pair of gloves and a razor blade.

5 Scientific analysis carried out by the Department of Forensic Science established the following:

> (a) The granular substance in the ten envelopes (B13) (ie, 99 sachets) had a gross weight of 763.4g and upon analysis was found to contain not less than

1.80g of diamorphine;

(b) The granular substance (ie, 357 sachets) in the six brown packets (B7 to B12) yielded a gross weight of 2,787g and upon analysis was found to contain not less than 8.59g of diamorphine; and

(c) The granular substance in the six transparent packets (B1 to B6) had a gross weight of 2,762g and upon analysis was found to contain not less than 10.98g of diamorphine.

6 In the result, the gross weight of all the granular substance found in the seized bag was 6,312.4g and the nett total diamorphine content of all the substance seized was 21.37g.

7 At the trial, upon the application of the prosecution, a number of statements made by the appellant were admitted in evidence as being made voluntarily. In these statements the appellant admitted to having been in possession of the drugs found in the bag; neither the admissibility nor the authorship of the statements was challenged by the appellant.

8 At the close of the prosecution's case, the learned trial judge correctly ruled that the prosecution had established a prima facie case which if unrebutted, would warrant the conviction of the appellant on the charge he faced. The standard allocution was administered, the courses open to the appellant were explained and thereafter the trial judge called on the appellant to enter upon his defence.

Defence

9 In his defence, the appellant did not endeavour to materially resile from what he had told the CNB in his statements. He admitted that the offending drugs found in his possession were collected by him from his supplier "Glass" two or three days before his arrest. He claimed however, that he was a heroin addict and that having smoked some of the substance he had collected from "Glass" and having found them to be of poor quality, he had decided to retain the six brown packets (B7 to B12) for his consumption. It should be observed presently that the gross weight of the said six packets was 2,787g and their nett diamorphine content was 8.59g.

10 The appellant testified that during the period of about a month before he was arrested, his rate of consumption of heroin was about half a sachet per day. Although half a sachet per day was the appellant's normal rate of consumption, he claimed that owing to the poor quality of the drugs he had with him, his rate of consumption from the present consignment was about four or five sachets per day.

11 The appellant further claimed that he was unemployed at the time of his arrest. He said that he had agreed to hold and deliver drugs for "Glass" because he needed the money to fund his drug addiction. He asserted that he intended to sell and deliver the drugs found in the ten envelopes (B13) and the six transparent packets (B1 to B6) with a view to buying the drugs in the six brown packets (B7 to B12) for his own consumption. The appellant testified that although "Glass" had asked him to sell each brown packet of drugs (B7 to B12) for $2,750.00, "Glass" had promised to sell to him each packet at a discounted price of less than $2,000 if the drugs were for his own consumption.

12 The prosecution did not and would not concede that the appellant was a heroin addict. To support this, the prosecution to some extent relied on the evidence of the investigating officer that the appellant appeared normal at the time of his arrest as well as that of the evidence of doctors who examined the appellant just before and after his statements under s 122(6) of the Criminal Procedure Code (Cap 68) ('CPC') were taken. The learned trial judge, however, did not accept the contention of the prosecution in this regard. He found that the accused's records spoke volumes about his drug problems. Having considered the opinion of Dr Leow Kee Fong, a government doctor who examined the appellant three days after his arrest, stating that the appellant was a

mild heroin addict and the evidence of Dr Lim Yun Chin, a consultant psychatrist produced by the defence, who opined that the appellant was an active heroin-dependent individual, based on the appellant's drug history and what the appellant had told him, the learned trial judge accepted the appellant's claim that he was indeed a heroin addict.

13 As to the amount the appellant was consuming each day prior to his arrest, there was indeed a measure of prevarication in the evidence of the appellant. In this regard, it was observed by the learned trial judge that the appellant had told Dr Leow that he was consuming half a packet per day but in court he claimed that he was smoking about four to five packets per day. However, in his statements he had said that he consumed only half a sachet of heroin per day. Having noted the explanation of the appellant that the quality of the heroin in the consignment under reference was rather low and that he needed four to five sachets to get high, the learned judge was prepared to accept the claim of the appellant that prior to his arrest he had smoked four to five packets a day to get high. This, however, did not dispose the matter at hand in favour of the appellant for the issue before the trial court was not how many sachets the appellant was consuming per day but whether the appellant had on the balance of probabilities established that the six brown packets (B7 to B12) were not for trafficking but for his own consumption.

Decision by the trial judge

14 In the end, after giving careful consideration to all the evidence, the trial judge rejected the appellant's defence. The learned judge's concluding comments in this regard bear reproduction and were as follows:

> The issue that I now have to consider is whether the accused's claim that B7 to B12 were not for trafficking but were for his own consumption should be accepted bearing in mind that the burden was on the accused on a balance of probabilities to establish that that was so.
>
> The accused in this case was a drug addict who had spent considerable time under detention for his drug addiction. He was unemployed and did not have any assets. By his own testimony, he agreed to hold and deliver drugs for "Glass" because he needed money to fund his drug addiction. No evidence was led by the prosecution as to what the street value of the drugs in the consignment found on him was but the accused's testimony was that each durian [*the term used the appellant to refer to a packet of heroin*] was worth $2,750. The 14 durians in the consignment that the accused received would therefore be worth $38,500. The street value of the 6 durians that the accused claimed were for his own consumption would be approximately $16,500. Even allowing for any special discounts on the price that the accused may obtain from "Glass", that is an inordinately large sum of money for a person in the accused's financial circumstances to come by. The accused explained that he would raise this sum of money from the profits he would obtain by selling the 99 sachets found in the 10 envelopes. I find this explanation difficult to accept. It is made even more implausible by the fact that the accused had not even told "Glass" that he would be retaining 6 out of the 14 packets for his own consumption. Nor did the accused in his CNB statements make any reference to the 6 packets being for his own consumption. I therefore do not accept the defence that these packets were for his own personal consumption. If at all any part of the consignment was for the accused's own consumption, it would certainly not be in the order of 6 packets and would not be of an amount that would reduce the amount of diamorphine in his possession for the purposes of trafficking to anywhere near 15g, leave alone below 15g. I therefore reject the defence raised.

The appeal

15 The primary contention in this appeal was that the learned trial judge had erred in rejecting the evidence of the appellant that the six brown packets of drugs (which contained 8.59g of diamorphine) were meant for his own consumption on account of the low quality of the drugs in question.

16 The argument advanced on behalf of the appellant in this regard was that an addict with the appellant's history and background would have to consume more in view of the low heroin concentration of the consignment which he was in possession of. It was further suggested that there was nothing extraordinary for a drug addict with such a long history of addiction to hoard such an amount of drugs for his personal consumption. It was also contended by counsel for the appellant that although the gross weight of these six packets of heroin was 2,787g, their pure heroin content was only 8.59g, ie, only 0.3% purity.

17 In the appeal before us, it was never in doubt that the appellant was in possession of the offending substance which upon analysis was found to contain not less than 21.37g of diamorphine. It was also not in dispute that the appellant knew the nature of the drugs he was in possession of. Consequently, by operation of s 17 of the MDA, he was presumed to have had the drugs in his possession for the purposes of trafficking unless it was proven that his possession of the drug was not for that purpose. The burden was thus on the appellant to rebut this presumption by establishing on the balance of probabilities that the six brown packets of drugs (B7 to B12) found in his possession were not for trafficking but for his own consumption: ***Aziz bin Abdul Kadir v Public Prosecutor*** [1999] 3 SLR 175 at 189; ***Chia Song Heng v Public Prosecutor*** [1999] 4 SLR 705 at 706.

18 To rebut the presumption of trafficking and to establish that a portion of the drugs in his possession was for consumption and not for trafficking, an accused had to adduce credible evidence to show that part of the offending substance was intended for self-consumption and in this regard a mere casual declaration by the accused would not suffice. He would have to, in addition to the history of his addiction and consumption habits, also satisfy the trial court of the rates of his consumption. If all that the accused could conjure up was a bare allegation bereft of details, the trial judge would be well entitled to reject his evidence as unworthy of belief and an appellate court would be most reluctant to disturb any such finding: ***Jusri bin Mohamed Hussain v Public Prosecutor*** [1996] 3 SLR 29 at 39; ***Fung Choon Kay v Public Prosecutor*** [1997] 3 SLR 564 at 572. Another factor which would weigh in the mind of the court is the financial means or the ability of the accused to pay for the drugs: ***Public Prosecutor v Dahalan bin Ladaewa*** [1996] 1 SLR 783 at 814.

19 Reverting to the appeal before us, we were of the view that the learned trial judge's evaluation of the evidence and the findings thereon were flawless and beyond reproach. His conclusion that the appellant was financially incapable of retaining the six 'durians' using the appellant's own estimate of current street price amounted to about $16,500 was also unassailable. The cost of the six packets, even allowing a generous discount his supplier "Glass" allegedly promised him or might have allowed him, would still set him back with a figure beyond his reach for he was by his own admission unemployed at the material time. Given the context, the learned trial judge's conclusion that it would entail an inordinately large sum of money for a person in the accused's financial circumstances to come by, could not be faulted. The learned trial judge also rejected the explanation of the appellant that he would raise this sum of money from the profits he would obtain by selling the 99 sachets found in the ten envelopes as unworthy of credit owing to the fact that the appellant had not even told his supplier that he would be retaining the said six packets for his use.

20 We agree with the learned trial judge that the explanations attempted by the appellant at the trial that the six packets were for his own consumption did not feature anywhere in his CNB statements nor did the appellant proffer this explanation in his s 122(6) CPC statement when charged with the offence. His failure to mention such a material aspect naturally led the trial judge to conclude, as he did in this case, that his present claim that these packets were meant for his personal consumption was implausible and therefore rejected. In this connection, we hasten to reiterate what the Court of Appeal observed in ***Goh Soon Huat v Public Prosecutor*** [1995] 1 SLR 634 at 640:

> … it is not necessary for the appellant to minutely detail all his defences in his s 122(6) statement. However, accepting this proposition does not mean that the court must accept what the appellant said as true. This must still be weighed against the other evidence. It may not always be clear when an omission to state details becomes an omission to state material particulars. This is a matter for the trial judge on an evaluation of all the evidence at the trial.

21 In the appeal before us, the grounds of appeal averted to were solely concerned with the trial judge's findings of fact. It is trite law that as the trial court has the advantage of hearing evidence and observing the demeanour of witnesses, an appellate court would generally be slow to disturb the findings of the trial court. Nonetheless, the appellate court would intervene where the findings are clearly wrong or the balance of evidence is against the conclusion reached by the trial court or where the inferences drawn by the trial court are not supported by the primary facts on the record or where upon available evidence, no tribunal acting judicially and properly instructed on relevant law could have come to the determination under appeal: ***Opium Farm v Chin Ah Quee*** 4 SLJ 33 at 35; ***Chia Han Kiat v R*** [1937] MLJ 261 at 261; ***Goh Ah San v R*** [1938] MLJ 95 at 99; ***In re AB Ltd*** [1956] MLJ 197 at 200; ***Tan Choon Huat v PP*** [1991] 1 SLR 805 at 808; ***Tan Hung Yeoh v PP*** [1999] 3 SLR 93 at 103 and ***Chng Gim Huat v PP*** [2000] 3 SLR 262 at 277.

22 The facts and issues raised in the appeal before us bear some resemblance to the case of ***Fung Choon Kay v Public Prosecutor*** [1997] 3 SLR 565, where the Court of Appeal observed at page 571 that:

> … Although the fact that the appellant was an addict lent support to the appellant's defence of consumption, that fact by itself was not conclusive. The trial judge had to look at the totality of the evidence and decide whether he was satisfied, on a balance of probabilities, that part of the heroin was for the appellant's own consumption. Here, apart from the medical evidence, the appellant was unable to adduce any independent evidence to support his testimony in court that part of the heroin was for self-consumption. Much thus depended on the trial judge's assessment of the appellant's credibility. The trial judge had the advantage of seeing the appellant give evidence in the witness box and was in the best position to gauge his credibility. An appellate court would be most reluctant to disturb his finding.

23 Although the appellant was found to be a drug addict and even if it could be assumed that he was consuming four to five sachets a day prior to his arrest, these factors by themselves were, in our determination, not sufficient to warrant the view that those six packets were not for the purposes of trafficking. In our evaluation, the learned trial judge had carefully considered the entire spectrum of defence raised and in the end had seen fit to reject it on the basis that the accounts narrated by the appellant defied credence.

24 In our judgment, the prosecution had amply discharged the onus placed on it by proving the case against the appellant beyond a reasonable doubt. The statutory presumption that he trafficked in that quantity of drugs arose under s 17 of the MDA and as the trial judge found, he had not rebutted the presumption on the balance of probabilities. On this, we entirely agreed with the learned trial judge. There was no merit in the appeal and we accordingly dismissed it.

Appeal dismissed

L P Thean	Chao Hick Tin	M P H Rubin
Judge of Appeal	Judge of Appeal	Judge