Syed Yasser Arafat bin Shaik Mohamed v Public Prosecutor
[2000] SGCA 46

Case Number : CA 4/2000

Decision Date : 24 August 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Amolat Singh (Amolat & Partners) and M Sivakumar (Azman Soh & Murugaiyan) for the appellant; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : Syed Yasser Arafat bin Shaik Mohamed — Public Prosecutor

Criminal Law – Offences – Controlled Drugs – Trafficking – Presumption of possession for purpose of trafficking – Whether accused had physical possession of drug – Whether accused had knowledge of drug in his physical possession – ss 5, 13 and 17 Misuse of Drugs Act (Cap 185, 1998 Rev Ed)

Evidence – Proof of evidence – Statements – Admissibility – Voluntariness – Threats, inducement or promise – Robust questioning – Threats to accused's family members – Whether statements should be excluded – s 24 Evidence Act (Cap 97, 1997 Rev Ed)

Criminal Procedure and Sentencing – Trials – Accused remaining silent when defence called – Whether sufficient evidence to call on accused to enter his defence – Whether right to draw inference from accused's silence that he is guilty – ss 189 and 196 Criminal Procedure Code (Cap 68, 1985 Rev Ed)

(delivering the grounds of judgment of the court): The charge against the appellant was possession of controlled drug for the purpose of trafficking. The mainstay of his defence was his challenge to the proof of possession of a haversack that contained the drug. The appellant elected to remain silent and did not call any witnesses for his defence. He was found guilty of the charge, convicted and sentenced accordingly.

At the appeal, counsel for the appellant brought up several interrelated issues pertaining to the proof of possession as well as the admissibility of three long statements that were highly incriminating to the appellant. We unanimously rejected the submissions. We agreed that Justice Rubin`s scrutiny of facts was meticulous and that his findings of facts were amply justified. There was neither strong nor compelling ground, on either law or facts, to justify quashing the conviction.

The facts

The charge was that the appellant trafficked in a controlled drug, by having in his possession five packets of diamorphine weighing 32.27 g nett for the purpose of trafficking, without any authorisation, and had thereby commited an offence under s 5(1)(a) read with s 5(2) and punishable under s 33 of the Misuse of Drugs Act (`MDA`).

The time and location of the arrest, as well as the identities of the parties involved were not challenged. Earlier on the day of arrest, a team of officers from the Central Narcotics Bureau (`CNB`) carried out surveillance on an apartment block at Kallang Bahru (`the Kallang Bahru apartment block`). A Malay male, later identified as Daud, was spotted at the void deck of the Kallang Bahru apartment block. At about the same time, one of the officers noticed a taxi arriving at the entrance of a multi-storeyed car park, next to the Kallang Bahru apartment block. Daud boarded the taxi from the front passenger side, seated himself and waited.

Then, the appellant was spotted at the corner of the corridor on the fifth floor of the Kallang Bahru apartment block. He was seen walking towards the staircase on the corridor of the fifth floor. Shortly after, the appellant emerged at the ground level. He immediately boarded the taxi from the rear left passenger side and occupied the rear left passenger seat.

The taxi driver testified that the appellant had a haversack with him then (`the haversack`). This was confirmed by Daud. Daud testified that, when he turned to the appellant and asked for the taxi`s destination, he noticed that the appellant had the haversack by his side. The appellant told them to proceed to a certain apartment at Yishun (`the Yishun apartment`).

The CNB officers trailed the taxi from Kallang Bahru to Yishun. At a certain junction, the taxi was intercepted by the CNB officers. Daud was arrested at the front passenger seat. The appellant was arrested at the rear passenger seat. The arresting officer, S/SSgt Tan testified that he saw the haversack laid beside the appellant.

At about 5pm, S/SSgt See and his team of officers arrived at the scene to take over the case from S/SSgt Tan and the arresting party. S/SSgt Tan briefed S/SSgt See and pointed out to S/SSgt See the haversack that was still beside the appellant in the taxi.

In the presence of both the appellant and Daud, S/SSgt See proceeded to unzip the haversack and found in it five packets of granular substance. These were later certified to be diamorphine by the Department of Scientific Services (`DSS`). A search was immediately conducted on Daud and the appellant. Amongst other things, a bunch of six keys was found in the appellant`s left trouser pocket.

At about 5.55pm, Insp Soh, with his party of officers arrived at the scene and took over the case from S/SSgt See, who handed over the haversack and the bunch of keys seized from the appellant. Then at about 6.25pm, Insp Soh, S/SSgt See and the team of officers brought along Daud and the appellant, and carried out a raid at the Yishun apartment. The officers used two keys from the bunch of six keys seized from the appellant, to gain entrance.

Both Daud and the appellant were brought into the Yishun apartment. In the ensuing search, some drug-related paraphernalia were found in a cabinet and a wardrobe, in a small room. They were:

- from the left drawer of the cabinet, two boxes of candles;

- from the right drawer of the cabinet:

(a) a plastic container containing numerous empty sachets;

(b) two stained pincers;

(c) a digital weighing scale;

(d) a plastic container containing a bowl with a knife and two spoons;

(e) a box of candles;

(f) a plastic container;

(g) three stacks of envelopes;

(h) empty sachets in a plastic bag; and

- from the right bottom drawer of the wardrobe, a straw of heroin wrapped in tin foil.

Besides certifying that the five packets in the haversack contained a total of 32.27g nett of diamorphine, the DSS also certified that the bowl, two spoons and two of the plastic containers were stained with diamorphine.

The mainstay of the appellant`s defence was his challenge to the evidence of possession of the haversack. At the appeal, counsel for the appellant submitted that the prosecution had not proven beyond reasonable doubt the possession of the haversack by the appellant. It was submitted that there were numerous CNB officers on the specified surveillance mission observing the appellant and they were not merely perchance witnesses.

However, the evidence was clear on this. We will first highlight the relevant pieces of evidence, to demonstrate that there was no break in the chain of evidence showing that the appellant had physical possession of the haversack that contained the drug.

W/Sgt Yap spotted the appellant carrying the haversack as the appellant was walking towards and boarding the taxi at the entrance of the multi-storeyed carpark. This was not challenged by the defence at the trial.

The taxi driver testified that he saw the appellant with a haversack over his back. He even demonstrated to the court the manner in which the appellant carried the haversack.

Daud`s testimony on this confirmed the taxi driver`s testimony. Daud testified that after the appellant boarded the taxi, he turned to the appellant to ask him for the destination. Daud saw that the appellant had the haversack under his right arm. Daud also demonstrated to the court the manner in which the appellant held onto the haversack, and positively identified the haversack. The defence did not contest Daud`s testimony that the appellant had the haversack with him.

S/SSgt Tan, who arrested and handcuffed the appellant, also testified that the haversack was found in the taxi next to the appellant. The defence did not contest S/SSgt Tan`s testimony on this. In fact, the defence appeared to agree with S/SSgt Tan that the haversack was indeed recovered from the appellant in the taxi.

Whatever the contention regarding the surveillance evidence from the CNB officers of the appellant`s activities prior to his boarding the taxi, the indisputable fact was that the appellant brought the haversack with him when he boarded the taxi. This was confirmed by two witnesses, ie Daud and the taxi driver. And none of their testimonies could be faulted.

The appellant failed to successfully challenge this chain of evidence showing him having physical possession of the haversack that contained the drug. However, the presumption under s 17 MDA only arises where possession of the drug (not merely physical possession) has been proven. Many precedents can be found, such as **Toh Ah Loh & Anor v R** [1949] MLJ 54 , **Chan Pean Leon v PP** [1956] MLJ 237 , **Sukor v PP** [1995] 1 SLR 221 , **Low Kok Wai v PP** [1994] 1 SLR 676 , **PP v Wan Yue Kong & Ors** [1995] 1 SLR 417 , **Lim Lye Huat Benny v PP** [1996] 1 SLR 253 , **Poh Kay Keong v PP** [1996] 1 SLR 209 and **Yeo See How v PP** [1997] 2 SLR 390 . The prosecution must also show that the appellant had knowledge of the drug in the haversack.

There was ample evidence to show that the appellant did in fact have such knowledge. We would

address the evidence from his cautioned statement, the drug-related paraphernalia, the three long statements that revealed much of the appellant`s activities and were highly incriminating to him, as well as his silence when his defence was called. Taking into account all the evidence, we agreed that it was amply justified for the trial judge to have found that possession was proven beyond reasonable doubt, and the presumption of possession for the purpose of trafficking under s 17 MDA was triggered.

Cautioned statement under s 122(6) of the CPC

In the cautioned statement, the appellant simply stated:

> *I do not know anything about the stuff. That is all.*

It was acknowledged by the trial judge. Counsel for the appellant submitted however that the trial judge had erred in law and in fact in failing to adequately consider and give due weight to the appellant`s defence disclosed by this cautioned statement.

In **Tan Ah Tee v PP** SLR 211 , Wee Chong Jin CJ, stated that:

> *once the prosecution had proved the fact of physical control or possession or possession of the plastic bag and the circumstances in which this was acquired by and remained with the second appellant, the trial judges would be justified in finding that she had possession of the contents of the plastic bag within the meaning of the Act unless she gave an explanation of the physical fact which the trial judges accepted or which raised a doubt in their minds that she had possession of the contents within the meaning of the Act.*

The appellant`s bare denial in his cautioned statement, in the circumstances in which the haversack that contained the drug was found on him, as well as the finding and seizure of the drug-related paraphernalia by the CND officers in his presence at the Yishun apartment, allowed the court to infer that the appellant did have knowledge of the drug in the haversack.

Drug-related paraphernalia

Drug-related paraphernalia were seized at the Yishun apartment. They included a straw of heroin. Some of these items were also stained with diamorphine. In **Abdul Karim bin Mohd v PP** [1996] 1 SLR 1 and **Chan Hock Wai v PP** [1995] 1 SLR 728 , the finding of drug-related paraphernalia was treated as telling evidence of or, to be used as an inference of trafficking.

The utility of these drug-related paraphernalia was obvious. They were for the preparation of drug for sale. They were therefore relevant as circumstantial evidence reinforcing the finding of trafficking. This was further reinforced here, as a few of the items were stained with diamorphine, the same kind of drug the appellant was charged with.

In reverse, evidence of the drug-related paraphernalia illustrated that someone who was in the business of dealing with drug had more opportunity and was more likely to be in possession of the drug. It was thus very relevant to the principal facts in this case. The discovery of them

strengthened the link between possession and trafficking, and worked both ways.

The relevancy of these drug-related paraphernalia was that the appellant, shown to be in the business of dealing with drug, had more opportunity and was more likely to be in possession of the drug, as charged.

Long statements

There were three other separate statements recorded on three separate dates, 11 August 1999, 14 August 1999 and 24 August 1999. They were highly incriminating to and revealing of the appellant. In them, the appellant admitted that he was in possession of the drug in the haversack, and knew that it contained the drug and that he intended to deal with it, by repackaging and selling it in much smaller sachets for profits.

There were objections to the admissibility of the evidence in these three statements. Voluntariness was made an issue. A voir dire ensued. On this, the law is settled, as seen in various authorities such as **Gulam bin Notan Shariff Jamalddin v PP** [1999] 2 SLR 181 , **Seow Choon Meng v PP** [1994] 2 SLR 853 and **Poh Kay Keong v PP** [1996] 1 SLR 209 . The prosecution has to prove beyond reasonable doubt that the statements were made voluntarily. Section 24 of the Evidence Act governs the admissibility of the statements made to the CNB officers.

As counsel for the appellant submitted at length on the admissibility of these statements, we would deal with each allegation individually. On the day of arrest, inside the taxi shortly after his arrest, the appellant alleged that he was questioned by S/Sgt See in a stern manner. That was certainly far off from the borderline of a valid challenge. The case of **Seow Choon Meng v PP** [1994] 2 SLR 853 made it amply clear that official interrogation preceding a confession may be robust.

On the day of arrest, at the Yishun apartment, the appellant was questioned by Insp Soh. The appellant was also once pulled aside by a tall Malay officer and was told that he had better admit and co-operate since he was caught with the drug. He also questioned the appellant in a firm tone about the drug. Again, this was an official interrogation preceding a confession. Again, we regarded it as robust, but not anywhere near a valid challenge on the issue of voluntariness.

The appellant alleged that on 6 August 1999, after the cautioned statement had been completed, Insp Soh showed the appellant the photograph of his son and his girlfriend. Insp Soh told the appellant to think about his son and girlfriend`s future, especially that of his son. Insp Soh told him to co-operate. Otherwise, he would recommend to the authorities the confiscation of his flat where he was residing with his parents and son. The appellant said his mind was not at ease, since he had only one son and both his parents were old. If the house were to be confiscated they would have no roof over their heads. He felt pressurised and confused.

The appellant also alleged that on 11 August 1999, the interpreter asked him about his sister. She told him that she had acted as the interpreter when his sister was facing a capital charge. The appellant said that whatever statement made on 11 August 1999 was not voluntarily given. He was trying to save the best for his son, his parents and the flat that they were residing in.

The appellant also alleged that on 14 August 1999, his mind was not at ease. He believed whatever Insp Soh told him about his son and house on 6 August 1999. After the statement was completed, Insp Soh told him to think about the charge he was facing. Insp Soh told the appellant again that he was going to recommend to the authorities that his house be confiscated because most of his siblings

were involved in drug offences. The interpreter was not present at the time when Insp Soh told him this. The appellant said he was afraid. He believed then that Insp Soh was serious, as this was the second occasion he mentioned confiscation of the flat.

Had any of these last three allegations been accepted by the trial judge, the statements would certainly have been rendered involuntary. As was said in the case of **Seow Choon Meng v PP** [1994] 2 SLR 853 , robust interrogation is an essential and integral aspect of police investigation. But there is a line to be drawn. The case of **Sim Ah Cheoh & Ors v PP** [1991] SLR 150 made it clear that if the questioning was too vigorous or prolonged, it would become oppressive, and the statements would be rendered inadmissible. We had no doubt that each of these last 3 allegations, had they been accepted by the trial judge, would have rendered the statements inadmissible. It is not a requirement that the inducement must relate or have reference to the charge in order to exclude a confession made as a result of that inducement (**Ibrahim v R** [1914] AC 599, **Commissioners of Customs and Excise v Harz & Anor** [1967] 1 AC 760 and **Poh Kay Keong v PP** [1996] 1 SLR 209). A threat made against family members could be sufficient to vitiate a confession (**Yeo See How v PP** [1997] 2 SLR 390 and **Poh Kay Keong v PP** [1996] 1 SLR 209).

The statement given on 24 August 1999 was made in a question and answer session. The appellant alleged that whenever he went out of line or was forgetful about certain events, he was corrected by Insp Soh and the interpreter. However, it was clear that the mere use of the question and answer method or cross-examination in recording a confession would not render the statement involuntary. This could be seen from the case of **Sim Ah Cheoh & Ors v PP** [1991] SLR 150 .

In the circumstances, the trial judge was satisfied that no vitiating comments, threats, inducements or promises were ever made to the appellant either during or before the commencement of the recording of the statements, as the prosecution witnesses` statements were by and large consistent and free from any significant inconsistency.

On the other hand, the trial judge found the claims of the appellant replete with contradictions and inconsistencies. We would elaborate on a few pertinent instances.

It was put to Insp Soh by the defence that after the interpreter left the interview room on 6 August 1999, Insp Soh told the appellant that he knew the background of his family members. But when the appellant was asked during his cross-examination whether that was so, the appellant answered in the negative.

It was also put to Insp Soh by the defence that after 6 August 1999 and before 11 August 1999, Insp Soh met the appellant and reminded him again to `better co-operate`. Insp Soh denied this meeting. When the appellant was cross-examined on this, he said he had not met up with Insp Soh during this period.

It was also put to Insp Soh that on 11 August 1999 he once again reminded the appellant: `Think about your child. Give me a good statement and I will know what to do for you.` Insp Soh denied this. It was put to Insp Soh that he told the appellant: `The drugs belong (sic) to Hamal. I know what to do about this. Better co-operate.` When cross-examined on whether these statements had been uttered by Insp Soh, the appellant replied in the negative.

It was also put to Insp Soh by the defence that he threatened the appellant on 14 August 1999 before the interpreter came in. But the appellant`s evidence in his examination-in-chief contradicted what was put to Insp Soh. The appellant maintained all along that when he went into the room of Insp Soh on 14 August 1999, the interpreter was already there.

It was also put to Insp Soh that on 14 August 1999, he told the appellant that the six keys seized from him belonged to the Yishun apartment and that he had better co-operate. Insp Soh denied making this statement. When the appellant was cross-examined on this, he could not recall.

Most important of all, when asked by the trial judge whether on 14 or 24 August 1999 Insp Soh put pressure on him by mentioning the possibility of the confiscation of the flat or the matter concerning his family members, the appellant simply said he could not recall.

From the record of proceedings and the grounds of judgment, it was obvious that the trial judge had exercised meticulous caution, in analysing the evidence and reaching his decision to admit the evidence from these statements. The decision to admit the evidence was amply justified. Authorities such as **Lim Ah Poh v PP** [1992] 1 SLR 713 , at 719 and **Ng Soo Hin v PP** [1994] 1 SLR 105 have made clear that an appellant court would not disturb the findings of fact of a trial judge unless they were clearly reached against the weight of evidence. There was no compelling reason to do so here.

Silence and negative inference

There was more than sufficient evidence to call on the appellant to enter his defence, under s 189(1) CPC. The trial judge rightly did so. The legal authorities on this (**Haw Tua Tau & Ors v PP** SLR 73 [1981] 2 MLJ 49 ; **Sim Ah Cheoh v PP** [1991] SLR 150 and ***Oh Laye Koh v PP*** (1995) 1 ***CLAS News*** 142) are clear. The standard allocution was administered, with the mandatory warning of possible adverse inferences under s 196(2) CPC.

However, when called upon to enter his defence, the appellant elected to remain silent. It was an informed decision. The trial judge granted an adjournment to let the appellant to reconsider his decision. He did not change his decision. Neither did he call any witnesses on his behalf. There was no submission from the defence, admittedly also upon his instructions.

As seen in **Murray v DPP** [1994] 1 WLR 1 and **Chai Chien Wei Kelvin v PP** [1999] 1 SLR 25 , a proper inference under s 196(2) CPC included the drawing of an inference that the appellant was guilty of the offence charged. The trial judge would necessarily have borne in mind whether taking into account all the other circumstances, a guilty inference was justifiable. As evinced in ***Murray*** and ***Haw Tua Tau*** , it is a common-sense test. Intervention by an appellant court would only be exercised if it was obvious from the records that such negative inference was unjustifiable or unreasonable.

Counsel for the appellant submitted that an adverse inference ought not to have been drawn against him under s 196(2) CPC, and that it was not the only inference that could be drawn. The submission was that the appellant knew that he would be convicted if he could not come up with a good defence. This would never constitute a ground of appeal with any merits.

In the circumstances, both the appellant`s physical possession of the haversack that contained the drug, as well as the appellant`s knowledge of the content of the haversack were proven beyond reasonable doubt. The statutory presumption of possession for the purpose of trafficking under s 17 MDA was triggered. That made out the offence under s 5(1)(a) read with s 5(2) MDA. The appellant`s silence and failure to adduce any evidence to show that the drug was not for the purpose of trafficking necessarily meant that a guilty verdict was amply justified. Counsel`s submission that the trial judge erred in drawing an adverse inference against the appellant was unsustainable.

Conclusion

In this case, possession of 32.27 g of diamorphine was proven beyond reasonable doubt. The presumption under s 17 MDA was triggered. The appellant`s election to remain silent, refusal to call any witnesses, failure to explain his possession of the drug and to present final submissions at the trial, made it impossible for him to discharge the burden of rebutting the presumption against him, or to cast reasonable doubt on the case. There was no compelling reason to fault the trial judge`s decision to admit the three long statements. For the above reasons, we dismissed the appeal and upheld the conviction and sentence.

Outcome:

Appeal dismissed.