

Public Prosecutor v Pillai Dominic Cornelius
[2000] SGHC 91

Case Number : CC 33/2000
Decision Date : 24 May 2000
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Amarjit Singh and Christina Koh (Deputy Public Prosecutors) for the prosecution;
Ram Goswami (Ram Goswami) and Francis Ow (S M Ow & Co) (AC) (both assigned) for the accused
Parties : Public Prosecutor — Pillai Dominic Cornelius

JUDGMENT:

GROUND OF DECISION

1 Pillai Dominic Cornelius, a 33-year-old Singaporean was charged and tried before me on the charge that he:

on or about the 23rd day of November 1999, at or about 7:30 pm, at 96, St Patrick's Garden, St Patrick's Road, 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,

cannabis weighing 1,364.10 grams at the aforesaid place 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) and punishable under section 33 of the Misuse of Drugs Act.

2 A second charge preferred against him was stood down pending trial of the foregoing charge.

3 At the commencement of the trial, when the plea of the accused was taken, the accused informed the court that he did not intend to contest the charge. Such a plea notwithstanding, the court required the prosecution to prove its case, as had been the practice of the High Court over a period of time, since the prescribed mandatory punishment for the offence was the supreme penalty of death.

4 In the result, the evidence adduced by the prosecution which was by and large undisputed, can be summarised as follows.

5 Following information received, operatives from the Central Narcotics Bureau (CNB) raided the accused's flat at 96 St Patrick's Garden, St Patrick's Road, Singapore and arrested the accused along with another person. The raiding party was led by S/Sgt Ravi Vellu (PW-8). In the ensuing search of the bedroom of the accused, several packages of drugs were seized, significant amongst them were:

(a) some loose vegetable matter placed on newspaper and five small slabs of vegetable matter suspected to be cannabis; and

(b) another four blocks of vegetable matter also believed to be cannabis.

6 Subsequently, the kitchen of the flat as well as vehicle No SCN 8453P used by the accused were

also searched. The result was some more controlled drugs were seized from them which, however, did not form part of the charge at hand.

7 In addition to the drugs seized, the CNB operatives also recovered a few drug-related paraphernalia from the flat which included two 'Tanita' digital weighing scales and quite a number of empty plastic sachets.

8 Altogether eight statements, two oral statements contemporaneously recorded in the pocket book of S/Sgt Ravi Vellu, five written statements including the cautioned statement recorded by the investigating officer Insp Saherly Bin Limat (PW-10) as well as one further oral statement recorded by Insp Saherly were admitted in evidence as being made voluntarily, without any objection from the defence. In essence, the accused had admitted in all the statements that the drugs seized were cannabis, they belonged to him and he intended to sell the drugs in the open market.

9 Scientific analysis carried out by Dr Lui Chi Pang (PW-4) of the Department of Scientific Services (DSS) concluded that the drugs seized from the bedroom of the accused contained altogether 1,364.10g of cannabis. I will return to this aspect later. The certificates in relation to the analysis could be found in exhibits P-44 (page 22 of the PI records), P-45 (page 23 of the PI records), P-46 (page 24 of the PI records), P-47 (page 25 of the PI records) and P-49 (page 27 of the PI records).

10 At the close of the prosecution's case, defence counsel did not make any submission. The learned DPP after recapitulating the evidence adduced by the prosecution, submitted that a case had been made out by the prosecution which, if unrebutted, would warrant his conviction. Having considered all the evidence adduced by the prosecution, in particular the admissions contained in the statements of the accused, I called upon the accused to enter his defence after explaining the courses open to him. The accused, however, elected to remain silent and chose not to give evidence from the witness box nor did he call any evidence on his behalf.

Final speeches

11 Predictably, there was no submission from defence counsel. The prosecution's submission was that since the evidence tendered by the prosecution remained unrebutted and that the accused did not come forward to give evidence from the witness box or offer any explanation, the accused ought to be convicted of the charge.

Recall of Dr Lui Chi Pang and conclusion

12 At the close of the whole case, despite the accused's decision not to contest the charge and to remain silent, I reviewed all the evidence as was incumbent on me. During the review, it occurred to me that the scientific evidence as concerns the analysis of drugs required further elucidation. Consequently, Dr Lui Chi Pang was recalled to clarify certain aspects of his evidence relating to the chemical tests carried out by him on the intact branches which were identified by him as cannabis following his macroscopic and microscopic examinations of the matter submitted to him.

13 It should be observed presently that Dr Lui in his earlier evidence had stated that before a certificate could be issued confirming that the subject matter was cannabis, it had to undergo three obligatory test phases: visual or macroscopic; microscopic and chemical analysis. I need not detail

the processes involved at any length for they had been adequately dealt with in a host of cases decided by our courts and in this connection reference can be made to **Public Prosecutor v Teo Tiang Hoe** (Criminal Case No 8 of 1995, unreported, at para 41; see also CCA No 25 of 1995 (unreported)); **Public Prosecutor v Abdul Raman Bin Yusof & 2 Ors** (Criminal Case No 4 of 1996, unreported, at paras 48 to 54 therein; see also [1996] 3 SLR 15 (CA) at page 26 D-F and page 27 C-E); and **Public Prosecutor v Manogaran s/o R Ramu** (Criminal Case No 44 of 1996; see also [1997] 1 SLR 22 at 38G (CA)). In regard to the chemical tests, Dr Lui mentioned that those tests were carried out to determine whether the vegetable matter ie the intact branches which in his view constituted the plant cannabis, contained the requisite amount of cannabinol and tetra-hydrocannabinol above the range of 0.5%.

14 Dr Lui then disclosed to the court that in relation to the certificates issued by him namely P-44, P-45, P-46, P-47 and P-49, his chemical tests were confined to only about 80% and the remainder was returned to the CNB. In this connection particulars given by him were as follows:

Court Exhibit No	Page reference in PI notes	Amount certified (in grams)	Amount actually chemically tested (in grams)
P44	Page 22	139.90	116.00
P45	Page 23	26.80	22.58
P46	Page 24	297.60	238.80
P47	Page 25	255.90	207.60
P49	Page 27	643.90	592.30
Total:		1,364.10	1,177.28

15 It would appear from the details provided, that out of a total of 1,364.10g of intact vegetable matter, Dr Lui subjected only 1,177.28g of the vegetable matter to chemical tests. The remainder ie, 186.82g of the intact branches were not chemically analysed and a question then loomed as to whether the untested intact branches indeed contained the requisite amount of tetra-hydrocannabinol and cannabinol. A similar problem arose in the case of **Public Prosecutor v Abdul Raman** (*supra*) where out of 852.35g of intact material, chemical tests were carried out only on 590.23g. As a result, not being persuaded that the untested portion contained the requisite chemical elements, I amended the charge to one of trafficking in only 590.23g of cannabis. When the decision went up on appeal, the amendment made was expressly approved by the Court of Appeal. Karthigesu JA in delivering the judgment of the Court of Appeal said at page 27C-E.

In our judgment, therefore, what Dr Lee's evidence amounts to is that when he had broken down the compressed block of greenish vegetable matter which weighed 982,38g nett, only 852.35g satisfied the macroscopic and microscopic examinations he carried out for cannabis. *The chemical tests were carried out on 590.23g of the 852.35g which showed the presence of tetrahydrocannabinol and cannabinol above the average of 0.5% and were proved to be cannabis. Since this was over the 500g of cannabis which attracts the death penalty no chemical tests were carried out on the remainder 362.12g, which had been returned to the investigating officer. In the circumstances the learned trial judge rightly amended the trafficking in cannabis charge from 852.3g to 590.23g. [Emphasis added.]*

16 Reverting to the issue at hand, it did not escape my attention that that Dr Lui agreed with a suggestion contained in a leading question by the learned DPP, that even though he had not subjected all the intact branches to chemical tests, he was, nevertheless, confident that all the intact branches were in his view cannabis. In my view, the question was not so much as to whether Dr Lui was confident or certain about his conclusions. What mattered, particularly in a criminal trial such as this involving capital punishment, was whether the prosecution had proven beyond a reasonable doubt that the whole of the 1,364.10g was cannabis. In this case, the absence of chemical tests on portions of the intact branches raised a reasonable doubt as to whether the untested portion of the vegetable matter indeed contained the requisite amount of cannabinol and tetra-hydrocannabinol.

17 As was held by this court as well as the Court of Appeal in **Abdul Raman**, I could only conclude that the analysis carried out by the DSS had established conclusively that the seized substance contained at least 1,177.28g of cannabis and not 1,364.10g of cannabis as averred to in the charge.

18 In the circumstances, the charge the accused faced required an amendment by the deletion of the figure 1,364.10g appearing therein and inserting therefor the figure 1,177.28g which amendment I duly made. However, inasmuch as the amended figure fell way beyond the critical boundary mark of 500g of cannabis and since the amended charge did not in any way alter the character, nature or ingredient of the charge, I found it unnecessary at the closing stage of the proceedings to undertake any other formalities such as reading of the charge, recording a fresh plea and recalling of witnesses. Consequently, having amended the charge and having reviewed all the evidence in its totality, I was satisfied that the prosecution had discharged its ultimate burden in proving the case against the accused beyond a reasonable doubt on the amended charge and that he had not on balance of probabilities established his defence. In the premises the accused was found guilty of the amended charge, convicted and sentenced to the only punishment prescribed under the law.

19 As regards the other charge which was stood down pending the outcome of the trial, the accused was granted a discharge amounting to an acquittal pursuant to s 177 of the Criminal Procedure Code.

Dated this 24th day of May 2000.

M P H Rubin

Judge

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