

Heng Aik Peng v Public Prosecutor
[2002] SGHC 153

Case Number : MA 56/2002
Decision Date : 18 July 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Ramesh Tiwary (Leo Fernando) for the appellant; Christopher Ong Siu Jin (Deputy Public Prosecutor) for the respondent
Parties : Heng Aik Peng — Public Prosecutor

Criminal Procedure and Sentencing – Criminal Procedure and Sentencing – Statements – Discrepancies and minor inconsistencies – Facts in issue relatively immaterial – Whether district judge right in relying on such statements – District judge's findings of fact – Whether any reason to interfere with findings of fact

Evidence – Proof of evidence – Lies – Distinction between relying on accused's lies as corroboration of his guilt and as basis for determining his credibility – Criteria to satisfy before convicting accused on basis of his lies – When to treat accused's lies with caution – Burden of proof – Standard of proof for criminal prosecutions

Judgment

GROUND OF DECISION

Introduction

The appellant, Heng Aik Peng ("Heng"), was charged under s 7 read with s 12 of the Misuse of Drugs Act (Cap 195) for abetting one Peh Gim Chuan ("Peh"), through a conspiracy, to import a controlled drug into Singapore. At the end of the trial, the district judge convicted Heng based on evidence in several statements made by Peh to the Central Narcotics Bureau ("CNB") and sentenced him to 6 years imprisonment and 6 strokes of the cane. He appealed against his conviction and after considering arguments from his counsel, I dismissed the appeal. I now set out my reasons.

Facts

2 On 3 August 2001, CNB officers at Changi Airport suspected several men of being involved in the importation of controlled drugs and arrested them after they returned from Cambodia. Heng and two of his friends, Koh Swee Beng and Goh Thiam Soon, were arrested first. Several minutes later, Peh and another man, Wong Lew Keong ("Wong"), were also arrested. Upon examining Peh's luggage, the CNB officers found, *inter alia*, a 'Johnson's baby powder' bottle which was filled with a suspicious white substance as well as a mineral water bottle. It was later discovered that the substance was the controlled drug, Ketamine, and that this drug was also dissolved in the liquid found in the mineral water bottle. The total amount of drugs in the two containers totalled 119.16 grams of Ketamine.

3 In the early hours of 4 August 2001, Peh made a statement to the CNB officers. Two further statements were recorded on 21 August 2001 and 23 November 2001. In these statements, Peh implicated Heng, alleging that Heng had brought him to Cambodia for the purpose of bringing the Ketamine back into Singapore. According to those statements, Peh met Heng about three months before his arrest. At that time, he was working in a handphone shop and the latter had come to the shop for his phone to be repaired. Peh subsequently left his job with the handphone shop and was in financial trouble, having stood as a guarantor for his friends who had borrowed some money from

loan-sharks. As his friends could not repay the loans, Peh owed the loan-sharks between \$10,000 - \$15,000. Peh approached Heng for financial help, whereupon the latter suggested that he follow him to Cambodia to do business and promised that he would receive about three to four thousand dollars when he returned. Peh agreed and Heng booked and paid for Peh's tickets. The duo left for Cambodia on 31 July 2001, accompanied by several of Heng's friends.

4 The statements also stated that while in Cambodia, Peh, Heng and their friends consumed Ketamine and Heng suggested that they bring some Ketamine back to Singapore. He told Peh that a friend of his would pay him about three to four thousand dollars if he brought the Ketamine back to Singapore. On 3 August 2001, the day that Peh and the others were returning to Singapore, the hotel-keeper gave Peh one small 'Johnson' Baby powder bottle and one large mineral water bottle containing some clear liquid. At the airport, Heng told Peh that the containers held Ketamine and instructed him to be careful when he cleared customs at Changi Airport. Apparently, Heng also told Peh that after he brought the drugs back to Singapore, Heng would contact him by telephone to arrange to get the drugs from him. However, this did not transpire as Peh, Heng and their friends were arrested soon after they arrived in Singapore.

5 At the trial, the prosecution called several witnesses to the stand, including Peh, Heng's friends who had accompanied them to Cambodia, and the CNB officers who had arrested the men and took down Peh's statements. However, apart from Peh's statements, none of the evidence directly implicated Heng as being involved in Peh's trafficking of the drugs. It was therefore significant that Peh retracted his statements at the trial and alleged that he had brought in the drugs on his own accord. Peh testified that before his first statement was recorded, he was told by a Chinese CNB officer that he would be dealt with seriously if he did not tell the truth. Thereafter, he was asked to reveal the identity of the person who told him to commit the offence. Peh thought that he would be beaten up if he did not provide a name and in order to convince the CNB officers that others were involved, he mentioned Heng's name and sought to push all the blame onto him. Apparently, Peh felt that Heng was the most appropriate person to pin the blame on because he was the closest person to him. He also thought that if he "co-operated" with the CNB in this way, he would escape the death penalty.

6 According to Peh, the circumstances relating to his trip to Cambodia were as follows. In March or April 2001, he became acquainted with Heng, who was a friend of his former employer, Dave Gwee Soon Seng ("Dave"), and who used to frequently visit the handphone shop where Peh worked. In July 2001, Peh told Heng that he was going to Cambodia with Dave and asked if he wanted to accompany them. Heng indicated his willingness to follow them and on 31 July, he left for Cambodia with Peh, Dave and several of his friends. The following day, Peh asked a friend, one "Ah Dee", a resident in Cambodia, to get some Ketamine for his friends' and his own consumption. Indeed, the group of men took doses of the drug at a discotheque. However, before they left, Peh took the leftovers and subsequently put it into the 'Johnson's baby powder' bottle that was found in his luggage. Peh paid for all the drugs and when asked why he did this, his reply was that he could not expect his friends to pay for his expenses all the time.

7 As for the mineral water bottle that contained the Ketamine, Peh testified that he had asked Ah Dee to prepare some more drugs for him to bring home. On the third and final day of his trip, a hotel staff came into his room and left the bottle on his table when he was having a bath. When Peh emerged from the toilet, he removed the cap of the bottle and was about to take a drink when he detected a certain smell and realised that it was Ketamine.

8 Apparently, only Heng knew that Peh was carrying drugs back to Singapore. At the Cambodia airport, Peh confided in Heng that he was bringing back some Ketamine for his own consumption

because he heard that it would help him with his weight problem. Upon hearing this, Heng cautioned him, informing him that there had been very stringent checks lately. Apart from this, Heng was not involved in his plan to bring the drugs into Singapore.

9 Heng's defence at the trial was a bare denial. He testified that he had gone to Cambodia with Peh and Dave to look for business opportunities and to gamble. Apparently, he hardly knew Peh, having only met him at Dave's shop. He admitted that he saw Peh at Changi airport where the group of friends met. Moreover, they stayed at the same hotel and also went to the discotheque together. However, he denied abetting Peh to bring the drugs into Singapore, claiming that he did not even know that Peh was bringing drugs into Singapore.

The decision below

10 Despite Peh's retraction of his statement and Heng's protestations of innocence, the trial judge dismissed Heng and Peh's evidence, choosing to believe the account in Peh's statements instead. In particular, he found Heng to be evasive in his oral testimony, and held that Heng only sought to distance himself from any form of association with Peh even though it was obvious that they knew each other. One of the points he relied on for this finding was the fact that in his statement to the CNB recorded on 4 August 2001, Heng gave the impression that he met Peh for the first time at the airport on 31 July 2001. In a further statement he made on 23 August 2001, he even went so far as to state unequivocally that he had not met Peh before the trip. However, when he was cross-examined on the latter statement, he admitted that this was untrue.

11 Furthermore, Heng denied asking Peh to go to Cambodia with his friends, claiming that he was not even aware that Peh was going to Cambodia. However, Dave testified that a week before their departure, Heng had approached Dave with a group of his friends and had asked him to book flight tickets for them. Dave clearly recalled that Peh was also present to place a booking for the tickets. It was therefore apparent that Heng knew that Peh was going to Cambodia.

12 In terms of specific details, Heng's evidence was also less than desirable. For example, he was unable to recall whether he occupied a window seat during his flight back to Singapore but was very certain that Peh was not seated next to him. This was contradicted by Wong, who testified that Heng occupied a window seat and sat beside Peh and one of their friends.

13 As for Peh, the trial judge was satisfied that the evidence suggested that his statements provided a more reliable account of the circumstances surrounding the offence. For instance, Wong testified that on the plane back to Singapore, he heard Heng telling Peh to be careful. While Peh and Heng denied this, the incident was also described in Peh's statement recorded on 23 November 2001 at the Queenstown Remand Prison. Interestingly, this statement was made after Peh was convicted and sentenced on 8 November 2001 and as such, there was no longer any necessity for him to continue shifting the blame on Heng if this was not true. Yet he continued to assert Heng's involvement in his trafficking of the Ketamine. It was also for this reason that the trial judge rejected Peh's claim that he had pinned the blame on Heng because he feared being beaten up and thought that this would do his case some good. While this may have been plausible when he gave his first statement, it really would not have hurt him to tell the truth after he was convicted and sentenced.

14 The trial judge was also unmoved by Peh's protestations that he had "aimlessly" implicated Heng because he was closer to Heng, whereas he was not well acquainted with the others. This contention was illogical and unbelievable. If he had indeed wanted to lie in his statement, the judge was of the opinion that it would have made more sense for Peh to frame the others and not Heng, as they were mere acquaintances of Peh's.

15 Apart from Peh's inexplicable explanations for his statements, the trial judge was of the view that there were no material inconsistencies or contradictions in the statements and that this was a strong indication that they were closer to the truth than Peh and Heng's accounts. Also, as the first statement was taken just several hours after his arrest, the facts would have been fresh in Peh's mind and when confronted with incriminating facts, he would have had little opportunity to concoct a detailed story implicating Heng. Yet he gave explicit details in the statement that only he could have known.

16 Ultimately, the trial judge felt that the statements were a clear, reasonable and logical recollection of the facts, which indicated that they contained a truthful account of the events. Having observed Peh's demeanour and examined the evidence, the trial judge concluded that Peh's oral evidence was unreliable and untruthful. He then impeached Peh's credit and substituted his oral testimony with what he had stated in his statements.

17 As a result of the above conclusions, the trial judge convicted Heng, mindful of the elements required for a person to be convicted for abetment by conspiracy as well as the need to treat the evidence of an accomplice with caution. He then sentenced Heng to an imprisonment term of 6 years and 6 strokes of the cane.

The appeal

18 In his written submissions, Heng challenged the trial judge's decision on a number of grounds. These can be grouped into three main submissions, the most noteworthy one being that the judge failed to adequately consider all the unsatisfactory features in Peh's statements, which cast serious doubt on their reliability and cogency. In this respect, Heng contended that the judge erred in concluding that there were no discrepancies and contradictions in the statements and that these strongly indicated that the statements were untrue. To support this contention, he highlighted a number of points, the significant ones being that:

i In one of the statements, Peh stated that he would be paid between \$3,000 to \$4,000 for carrying the drugs. However in another statement, he did not give an amount but merely said that he would be given "a reward";

ii Peh claimed that he heard Heng and his friends discussing a CNB operation in Singapore. However, this was a bare assertion in the statement totally unsupported by the other witnesses who were present in Cambodia when the conversation allegedly occurred;

iii Peh had given two different versions of when and where Heng told him to be careful when he came out of the customs checkpoint in Singapore. In his first statement of 4 August 2001, Peh stated that Heng told him that the bottles contained Ketamine and cautioned him before they departed for the airport in Cambodia. Yet in his second statement of 21 August 2001, Peh claimed that Heng told him that the two bottles contained Ketamine while they were at the airport in Cambodia;

iv In the statements and oral evidence, the

unchallenged evidence was that Peh and Heng did not have each other's contact numbers. However, in one of the statements, Peh stated that Heng would contact him to collect the drugs after they arrived in Singapore; and

v Peh would not have agreed to bring the drugs into Singapore for only \$3,000 to \$4,000, considering the serious consequences of being arrested for drug trafficking and the fact that the sum would not have alleviated his debts of some \$10,000 to \$15,000.

19 I found point (i) to be entirely unmeritorious since the statements were evidently not inconsistent on this issue. As for points (ii) and (iii), Heng was entitled to raise these issues as they were valid. However, the facts in issue were relatively immaterial and these minor inconsistencies did not convince me that the trial judge's conclusions were thereby unsupportable and wrong. Ultimately, in spite of the minor inconsistency stated in point (iii), what the statements consistently maintain is that Heng had asked Peh to carry the Ketamine into Singapore.

20 Turning to the allegation that Peh and Heng did not have each other's contact numbers, my view on this issue was that it was really a non-starter because there was evidence that at least one of the duo knew the other's handphone number. At the trial, a member of the group, Wong, gave evidence that at Changi Airport, he saw Peh using the phone and Peh told him that he was trying to contact Heng. Flowing from this piece of evidence, two plausible conclusions could be reached. First, Peh knew Heng's number but Heng did not know Peh's number. This would mean that Peh lied in his statement because Heng could not have called Peh. The second possibility is that both parties knew each other's numbers, which would mean that Peh's statement was accurate because Heng could call him. Either alternatives were possible but they were common in one respect – Peh and Heng lied in court when they said that they did not know each other's telephone numbers. As such, this provided the trial judge with yet another ground in concluding that Peh's statement was more credible and believable than Peh and Heng's evidence in court.

21 Finally, in respect of Heng's argument that the statements were untrue as Peh would not have agreed to bring the drugs into Singapore for only \$3,000 to \$4,000, I found it quite plausible that Peh would have agreed to do so, despite his assertion to the contrary at the trial. After all, it was Peh's own evidence that he was heavily indebted to loan-sharks and that the loan amount was increasing. He was desperate and could therefore have consented to carry the drugs for \$3,000 to \$4,000 in order to reduce his debt.

22 Heng's second submission was that even if Peh's explanation for lying was not logical, that did not mean that the statements contained the truth. This was true. However, the burden of proof that the prosecution had to discharge was one of beyond reasonable doubt and not certainty beyond a shadow of doubt: see *Miller v Minister of Pensions* [1947] 2 All ER 372 at 373 and *PP v Ang Soon Huat* [1991] 1 MLJ 1 at 13. As Peh's explanation for making the false statements were not logical, my view was that the judge reasonably concluded that Peh was lying and that the statements were true, or at least that they were closer to the truth than his testimony in court.

23 Heng's third main submission was that the trial judge erred in concluding that he was an evasive witness simply because one aspect of his evidence was not consistent with his statement recorded by the CNB. In his statement, he had stated that he had only met Peh at Changi Airport on the day they departed for Cambodia. In his evidence in Court, however, he admitted that he had met Peh some months before they left for Cambodia and agreed that his statement was untrue. In spite of

this concession, Heng took the position that the judge should not have concluded that he was evasive as he had not lied because of any feelings of guilt but in order to distance himself from Peh, who had been arrested for drug trafficking.

24 In support of his contention that the trial judge should not have found him evasive, Heng's counsel referred to my decision in *Er Joo Nguang v PP* [2000] 3 SLR 645. Unfortunately, he completely misconstrued the principle for which that case stands for. *Er Joo Nguang v PP* was also a case involving conspiracy by abetment. In that case, the first appellant was the managing director of a freight forwarder. The second appellant was the managing director of a retail company, which had purchased certain goods from a Filipino businessman (PW13) that were eventually shipped by the first appellant. Under the terms of payment, the second appellant was to pay for the goods in order to get the bills of lading and thereafter obtain the goods from the first appellant. However, shortly after the goods arrived in Singapore, he contacted the first appellant and told him that he needed the goods urgently and that he would pay for the goods and obtain the duly endorsed bills of lading later. The first appellant duly released the goods and when PW13 contacted him on numerous occasions to ascertain the whereabouts of his goods and to instruct him not to release the goods, he lied to PW13 and assured him that they were still in his custody. Some of the goods were eventually sold by the second appellant and the two appellants were charged for abetting each other to commit criminal breach of trust of the missing goods.

25 After considering the evidence, I allowed the first appellant's appeal and acquitted him. In doing so, I relied on the English Court of Appeal's decision in *R v Lucas* [1981] QB 720 and held that the mere fact that an accused told lies should not be taken as evidence of his guilt, although these lies could, in appropriate circumstances, amount to corroboration when it indicated a consciousness of guilt. However, before such lies could be used as corroborative evidence, I held that four criteria had to be satisfied. First, the lie must be deliberate. Secondly it must relate to a material issue. Thirdly, the motive for the lie must be a realisation of guilt and a fear of the truth. Fourthly the statement must be clearly shown to be a lie by independent evidence. With these principles in mind, I held that the first appellant's lies were not sufficient to indicate any consciousness of guilt for releasing the goods dishonestly because he did not lie due to a realisation of 'guilt' but because of an 'innocent motive', namely to buy time for himself in the hope that PW13 and the second appellant would work out their differences.

26 The circumstances of the present case were clearly not similar to those in *Er Joo Nguang v PP*. In that case, the prosecution sought to rely on the lies told by the first appellant to prove that he was guilty, whereas Heng's lie was merely referred to by the trial judge as a basis for rejecting his evidence for lack of creditworthiness. In my judgment, there was nothing unsound with the trial judge's treatment of Heng's lie. In convicting Heng, the trial judge did not rely on Heng's lie for its evidentiary value as corroborative evidence, which would have necessitated the application of the criteria stated in *Er Joo Nguang v PP*. Instead, he properly used it to determine Heng's credibility as a witness.

27 The distinction between relying on an accused's lies as evidence of guilt and forming a view that his evidence is not creditworthy because of certain lies is an extremely important one. As pointed out by the court in *R v Lucas* [1981] QB 720, an accused person may lie for a variety of reasons not connected with guilt of the offences. As such, it is dangerous to convict an accused person based on the fact that he lied, unless the criteria in *Er Joo Nguang v PP* are satisfied. On the other hand, there can be no objection to a court's reliance on such lies to reach a finding that an accused person's evidence lacks creditworthiness, since the lack of credibility does not automatically lead to his conviction. I found Heng's submission, that *Er Joo Nguang v PP* should be construed to stand for the proposition that so long as an accused person had a valid explanation for lying in court,

a judge should never find him to be evasive and untruthful, to be totally without merit. Such a proposition, which does not appreciate the distinction mentioned above, would cripple the legal process as it would effectively handicap judges, who have always relied on the veracity and accuracy of witness' statements and oral evidence in considering the weight to be placed on their evidence. I should also add that none of the numerous cases that have dealt with the treatment of an accused person's lies, such as *R v Lucas*, *PP v Yeo Choon Poh* [1994] 2 SLR 867 and *R v Goodway* [1993] 4 All ER 894, give any credence to such a proposition. In fact, they clearly state that a court need only treat an accused person's lies with caution when they are being relied on as corroborative evidence.

28 Ultimately, while Heng raised one or two valid points in his submissions, his appeal centred on overturning the trial judge's findings of fact. The principle governing such an appeal is clear: an appellate court will be slow to disturb a trial judge's findings of fact unless they are plainly wrong or against the weight of the evidence: see *Lim Ah Poh v PP* [1992] 1 SLR 713 and *Anthony Ler Wee Teang v PP* [2002] 2 SLR 281. After examining the evidence and scrutinising the trial judge's grounds, I agreed with his conclusions.

29 Apart from the factors raised by the trial judge, I should also add that there were other factors which showed that Peh was not a creditworthy witness. First and foremost, he lied to the court about the source of his financial difficulties, claiming that his debts came about because he stood as a surety for friends who needed to be bailed out of prison. He subsequently admitted that this was untrue and that his debts were sustained when he stood as guarantor to his friends' debts to certain loan-sharks. Quite apart from this, Heng and Peh's oral evidence also led to many unanswered questions. For example, while it is undisputed that Peh was in serious financial trouble and jobless, his evidence was that he purchased Ketamine for the entire group's consumption because he could not expect his friends to pay for everything. Furthermore, while Peh and Heng claimed to have gone to Cambodia for business, their days and nights were mainly centred on gambling and entertainment, activities which Peh could not afford.

30 Bearing these factors in mind, as well as the fact that the trial judge had ample opportunity to consider the demeanour of Heng, Peh and the other witnesses at the trial, I found no basis for saying that the trial judge's findings of fact were plainly wrong or against the weight of the evidence. As such, I dismissed Heng's appeal against his conviction.

Appeal dismissed

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore