

Goh Chye Soon Jimmy v Public Prosecutor
[2001] SGCA 29

Case Number : Cr App 1/2001
Decision Date : 23 April 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Lai Kew Chai J; L P Thean JA
Counsel Name(s) : Peter Fernando (Leo Fernando) and Lee Teck Leng (Tan Peng Chin & Partners) (assigned) for the appellant; David Khoo and Adriel Loh (Deputy Public Prosecutors) for the respondent
Parties : Goh Chye Soon Jimmy — Public Prosecutor

JUDGMENT:

Grounds of Judgment

1. On the evening of 29 May 2000, between 6.00pm to 7.00pm, two policemen found the appellant acting suspiciously at the 6th floor of Blk 321 Yishun Central. The policemen brought him to the void deck and searched him. They found half a sachet of yellow granular substance in his pocket. Suspecting the contents of the sachet to be drugs, the officers arrested the appellant, who was then brought to the Ang Mo Kio police station lock-up.
2. Two days later, a team of officers from the Central Narcotics Bureau (CNB) conducted a search at unit #06-327 of Blk 320, Yishun Central (the flat). The appellant was the tenant of the flat, where he stayed together with his girlfriend, Annie Ng, and their one year old baby. Inside the flat, the officers discovered an array of different controlled drugs. Almost all the drugs were found in a wardrobe inside the master bedroom, with the exception of some ketamine, which was in the drawer of a dressing table in the other bedroom of the flat. The officers also found various paraphernalia designed for the consumption of drugs, both in the wardrobe and on the floor of the master bedroom.
3. The appellant was charged with 16 different charges for various offences under the Misuse of Drugs Act (Cap 185). However, the prosecution proceeded with the first charge and stood down the remaining 15 charges. He was convicted and sentenced to death in the High Court on the first charge which read as follows:

You are charged that you on 31 May 2000 at about 11.35 a.m., inside a wardrobe in the master bedroom of the apartment at Blk 320 Yishun Central #06-327, 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, 80 sachets, 1 brown container, 1 pink container and 1 green container containing a total of 81.73 grams of diamorphine in the said 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) of the Misuse of Drugs Act and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

He appealed against the conviction. We dismissed the appeal and now set out the facts and the reasons.

The Prosecutions Case

4. The case for the prosecution was as follows. Two days after the appellants arrest, on the morning of 31 May 2000, one Sergeant How Pek Kiong (Sgt How) from the CNB was sent down to the Ang Mo Kio police station to interview the appellant.

At that time, Annie Ng was also at the police station visiting the appellant, together with their baby. On the instructions of his superior, Inspector Xavier Lek Lai Ann (Insp Lek), Sgt How placed Annie Ng under arrest as well. Sgt How then interviewed Annie Ng. She confessed to Sgt How that there were still some more drugs in the flat.

5. Following this, at about 11.35am that same day, a team of CNB officers comprising of Insp Lek, Sgt How and four other CNB officers, together with the appellant, Annie Ng and their baby, went to the flat. Using keys seized from the appellant and Annie Ng, the officers gained entry into the flat, where they conducted a search. Inside the master bedroom of the flat was a locked wardrobe. By using one of the keys taken from the appellant, Sgt How opened the wardrobe. He found the drugs inside. Insp Lek asked the appellant what the things inside the wardrobe were. The appellant replied that the wardrobe contained more than a pound of heroin, as well as an assortment of other types of drugs. Insp Lek proceeded to record an oral statement from the appellant. The material portions of the statement are as follows:

Q What are [*sic*] the stuff found in the cupboard in the back bedroom [meaning the master bedroom]?

A Heroin, K, Ecstasy, Up-john, Erimin, Ice

Q What is the quantity of heroin

A More than one pound

Q What is the quantity of K

A About 40 grams

Q What is the quantity of Ecstasy

A About ten tablets

Q What is the quantity of up-john

A About 30 tablets

Q What is the quantity of Ice

A About 10 to 12 grams

Q Who is the owner of these drugs

A I am the one

Q What is the purpose of the drugs

A For my consumption and selling, only the heroin is for sale, the rest of the drugs is for my own consumption

Q Is your wife [meaning Annie Ng] aware that you are selling heroin?

A Dont know

The statement was signed by the appellant.

The Defence

6. The appellants defence was as follows. He had been in financial trouble for some time. Someone by the name of Ah Seng offered to help him by paying for the rent of the appellants flat. In return, Ah Seng was to be allowed to store heroin in the flat. Under this arrangement, Ah Seng was also to supply the appellant with heroin, free of charge, to feed his addiction, but the appellant was not allowed to touch the heroin stored by Ah Seng in the flat.

7. On 29 May 2000, the appellant felt a craving for heroin. He went to the wardrobe in the master bedroom, but found none there. The appellant called Ah Seng and asked for some heroin, and the latter told the appellant that he would pass him some later. After the phone call, the appellant decided to stave off his craving for the time being by resorting to the other drugs that were in the flat. The appellant took one L4A tablet and five Upjohn tablets. Twenty minutes later, the appellant met Ah Seng downstairs, where the latter handed him a Marlboro cigarette box containing the heroin requested for by the appellant. The appellant then made his way back to his flat. However, the Upjohn tablets started to take effect, with the result that the appellant ended up trying to use his key to open the wrong door. This led to his being arrested by the police, who found the heroin in his pocket.

8. Two days after his arrest (*ie* on 31 May 2000), the appellant and Annie Ng followed the CNB officers to the flat, where the search was conducted. When the officers discovered the heroin in the wardrobe, the appellant was shocked. This was because there was no heroin to be found when the appellant last left the flat.

9. At the trial, the appellant suggested that it was probably Ah Seng who had placed the heroin in the wardrobe. Ah Seng had the keys to the flat, and he would visit the flat up to three times a week. Annie Ng also testified that someone entered the flat late one night when she and the appellant were in the bedroom. The appellant had then gone out to talk to the person. It was submitted on the appellants behalf that the person was probably Ah Seng, and that this corroborated the appellants story that Ah Seng had access to the flat.

10. The appellant alleged that Insp Lek fabricated parts of the statement that was purportedly recorded from him. The appellant denied ever having given an unqualified admission to being the owner of the drugs in the wardrobe, as the heroin did not belong to him. The appellant admitted that he did list the various other drugs found in the wardrobe, such as ketamine, ecstasy, up-john, erimin, ice and their respective quantities to Inspector Lek. He could do so because these drugs belonged to him, and were for his consumption. However, he did not list out heroin as being one of the drugs in the wardrobe. Nor did he give Insp Lek the weight of the heroin in the wardrobe.

11. The appellant explained that the statement was in fact obtained by threat. According to the appellant, Sgt How had, after opening the master bedroom wardrobe, inquired of the appellant as to what was inside the wardrobe. When the appellant replied that he did not know, Sgt How hit the appellants back with the flat of his hand, and pushed the appellants head forward. Following this, Insp Lek asked the appellant whom the drugs in the wardrobe belonged to. When the appellant replied that they were not his, Insp Lek threatened to bring a capital charge against Annie Ng and the appellants landlady, unless the appellant admitted to ownership of the drugs. Insp Lek further mentioned that if the appellant co-operated, he himself could avoid facing a capital charge.

The Trial Below

12. The trial of the charge was heard before Choo Han Teck JC. As the voluntariness of the appellants statement to Insp Lek was challenged, the judge conducted a voir dire to determine the statements admissibility. At its conclusion, the judge found

that the statement was not obtained by any threat or inducement, and allowed it to be admitted. On this point, the judge held (at 5):

I was not persuaded by his testimony and after considering the evidence on the whole, including what his counsel had put to the CNB officers in cross-examination, I am satisfied that the statements were made by him without any threat, inducement or promise. In these statements the accused gave a precise account of the type and quantity of the various drugs found in the wardrobe. He also admitted that the drugs belonged to him. He stated that only the heroin were meant for sale but the other drugs were for his personal consumption.

13. At the conclusion of the trial, the judge convicted the appellant. His reason for so doing was as follows (at 7):

The accused admitted that all the drugs found in his wardrobe belonged to him except the heroin. In my view, the way the various drugs were packed and kept made it extremely unlikely that they belonged to different persons. Furthermore, there was the unexplained powdered heroin found in the mortar and pestle inside the wardrobe. Apart from the evidence-in-chief of the accused, there was no other evidence of the existence of Ah Seng or his visits to the accused's flat. Ng Annie mentioned that once at midnight someone came calling and spoke to the accused but this evidence even if true can hardly be given any weight to the specific defence of the accused. I am unable to accept the evidence of the accused and in my judgment, all the drugs in the wardrobe belonged to him and nothing in his evidence persuaded me that the benefit of the doubt ought to be given in his favour.

The Appeal

14. In the present appeal before us, Mr Leo Fernando raised the same two contentions that were advanced at the trial, viz:-

- i) The appellants statement to the judge was not made voluntarily, and the judge erred in admitting it into evidence; and
- ii) The judge erred in rejecting the appellants defence that he had no knowledge of and therefore was not in possession of the heroin in the wardrobe.

The Admissibility of the Statement

15. Section 24 of the Evidence Act (Cap 97) reads:

A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

16. In seeking to impugn the appellants statement to Insp Lek, Mr Fernando relied principally on the case of *Poh Kay Keong v PP* [1996] 1 SLR. In that case, it was held by this court that when an officer threatens to charge an accuseds loved ones so as to coerce the accused into confessing to an offence, this will constitute an inducement or threat falling within the ambit of s 24 of the Evidence Act. The case of *Poh Kay Keong v PP* also states that if an officer makes a promise to an accused not to charge the accused if he cooperates, the promise also falls within the scope of s 24. Therefore, if there was any truth in the appellants allegation that Insp Lek had threatened to charge Annie Ng and his landlady with a capital offence if the appellant refused to admit to ownership of the heroin, the confession recorded by Insp Lek would have to be disregarded. Likewise, it would also have to be disregarded if Insp Lek did in fact tell the appellant that he could avoid a capital charge if he cooperated.

17. During the course of cross-examination, the appellant admitted that when he was being questioned by the CNB officers about the things in the wardrobe, those things had remained as they were found in the wardrobe. The statement was recorded at 12 noon. When ASP Tan Yee Hong from the CNB arrived at the flat at 12.45pm, the contents of the wardrobe still remained undisturbed. As could be seen from the photograph P7, the various containers in the wardrobe were piled up rather messily. At the time of the recording of the statement, it would have been difficult for any to surmise that there was heroin in the wardrobe, let alone that there was more than one pound of it. As such, it was unlikely that Insp Lek could have fabricated the appellants response to the effect that there was heroin in the wardrobe, and that the heroin weighed more than a pound. The possibility of Insp Lek having taken his notebook back to the office to fabricate the statement also has to be ruled out, since the statement bore the appellants own signature.

18. There were other ample evidence to support the finding of fact of the judge. We were thus of the view that the judge could not be said to have erred in admitting the statement.

Should The Conviction Be Upheld?

19. The appellant was charged with having the heroin in his possession for the purpose of trafficking, this being an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act. These provisions read:

s 5(1) Except as authorised by this Act or the regulations, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore to

(a) traffic in a controlled drug;

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

20. The first question is whether the appellant was proven to have the heroin in his possession. For there to have been possession, the appellant must have had knowledge of the drugs: see *R v Warner* [1969] 2 AC 256 at 312.

21. In the present case, the heroin was found in the appellants flat. They were in a locked wardrobe, to which he had the key, and in which some of his personal effects were found. This gave

rise to a strong inference that the heroin in the wardrobe belonged to the appellant, and that he consequently must have been aware of the presence of the heroin. The appellant nevertheless came up with the story of Ah Seng, saying that it was probably Ah Seng who kept the heroin in the wardrobe.

22. This story was rejected by the judge and for good reasons. The appellant himself admitted that he omitted to mention about Ah Seng to any of the CNB officers when they were questioning him and when his statement was being taken down. Surely, a fact as material as Ah Seng's involvement must have been raised to the officers if it were true. Secondly, no attempt was made to locate Ah Seng after the appellants arrest, or to produce Ah Seng at trial. These factors went to indicate that Ah Seng was nothing more than a concoction cooked up by the appellant as an afterthought.

23. Thirdly, as noted by the judge, the manner in which the heroin was packed tended to indicate that they belonged to him, and not to Ah Seng (if there were such a person). Mr Fernando argued that the manner in which the heroin was packed was not probative of the appellants ownership. We would note, however, that part of the heroin was kept in loose powder form in a green container as well as in a pink container. Both containers were found in the cupboard. The appellant admitted quite unequivocally that these containers were his. We also note the fact that the heroin was closely intermingled with the appellants other drug related items in the cupboard. We agree with the finding that the heroin belonged to the appellant and was in his possession.

24. Accordingly, the presumption arises that the heroin in the appellants possession was for the purpose of trafficking under s17 which reads:

17 Any person who is proved to have had in his possession more than

(c) 2 grammes of diamorphine;

whether or not contained in any substance, extract, preparation or mixture shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

25. The judge on the evidence quite rightly rejected the appellants story that the heroin belonged to Ah Seng. We agree that the appellant had possession of the heroin for trafficking.

L P Thean

Chao Hick Tin

Lai Kew Chai

Judge of Appeal

Judge of Appeal

Judge

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