

Ramis a/l Muniandy v Public Prosecutor
[2001] SGCA 51

Case Number : CA 8/2001
Decision Date : 03 August 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Subhas Anandan and Anand Nalachandran (Harry Elias Partnership) and G Dinakaran (Thomas Tham & Co) for the appellant; Lee Lit Cheng and Seah Kim Ming Glenn (Deputy Public Prosecutors) for the respondent
Parties : Ramis a/l Muniandy — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act (Cap 185, 1998 Ed) – Possession of controlled drugs for purpose of trafficking – Proof of possession – Proof of physical control over drugs – Proof of knowledge of drugs – Presumption of trafficking – Whether charge proved – ss 5(1)(a), 5(2) & 17(d) Misuse of Drugs Act (Cap 185, 1998 Ed)

Criminal Procedure and Sentencing – Appeal – Findings of fact – Whether appellate court should to overturn trial judge's findings of fact

Evidence – Weight of evidence – Accused's bare denials – Whether such denials have value

(delivering the grounds of judgment of the court): This was an appeal against the decision of Judicial Commissioner Choo Han Teck, who convicted the appellant, Ramis a/l Muniandy (`Ramis`) of an offence pursuant to s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 1998 Ed) (`the Act`) and sentenced him to suffer the punishment of death. We dismissed the appeal and now give our reasons.

The charge

The charge against Ramis read as follows:

That you, RAMIS A/L MUNIANDY on the 12th day of August 2000, at about 7.55 a.m., at the carpark along Marsiling Industrial Estate Road 2, beside Block 7, 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, 1529.8 grams nett of cannabis, 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, Chapter 185, and punishable under section 33 of the aforesaid Act.

The prosecution`s case

According to the prosecution, a tip-off pertaining to an impending cannabis transaction was received by officers from the Central Narcotics Bureau (`CNB`) in the early hours of 12 August 2000. At 6.45am, a team of seven CNB officers assembled at Causeway Point in Woodlands. The team was led by Senior SSgt Qamarul Zaman (`Zaman`) and the other team members were SSgt Md Azman (`Azman`), Sgt Joe Pang Hee Lim (`Pang`), Cpl Rajkumar (`Rajkumar`), Cpl Chan Seng (`Chan`), Cpl Md Afandy (`Afandy`) and Cpl Abdul Rahman (`Rahman`).

Zaman briefed the team members about the cannabis transaction that was expected to take place between 7.30am and 8am in the vicinity of an Indian temple located along Marsiling Rise. The drug trafficker was believed to be a male Indian Malaysian who would be riding a Malaysian registered `Honda Cub` motorcycle.

The team left Causeway Point at about 7.05am and arrived at the car park of Block 120, Marsiling Rise at about 7.10am. While the rest of the officers remained at the car park, Afandy and Rahman surveyed the vicinity of the temple for suspicious characters but they did not spot any. They returned to the car park after about ten minutes. At about 7.30am, Rajkumar went to the temple to keep watch while Zaman kept watch at the bus stop diagonally opposite the temple. The remaining officers were on standby at the car park. The officers were to keep in contact by mobile phone.

At about 7.50am, both Zaman and Rajkumar spotted a `Honda Cub` motorcycle being ridden by a male Indian travelling along Marsiling Rise and thereafter turning onto Marsiling Industrial Estate Road 2. Zaman noted the registration number of the motorcycle (JFB 3451) and also noticed a `black thing` in the motorcycle`s front carrier basket. Although Zaman lost sight of the motorcycle for a while, Rajkumar walked down the pavement outside the temple towards the direction of the motorcycle so that he would not lose sight of it. He saw the male Indian park the motorcycle at the parking lots next to Block 7 of the industrial estate.

The male Indian then walked towards Marsiling Rise and stopped at the front of Block 7. At this point, he was within Zaman`s line of vision once again, so both Zaman and Rajkumar could see him. He was seen using his mobile phone and was looking at the temple as if he was waiting for someone. Rajkumar then called Azman, giving him the details of what he had just seen. Zaman also called Azman, asking him to come with the party of officers to effect arrest.

At about 7.55am, the remaining five officers, namely Azman, Pang, Chan, Afandy and Rahman, arrived in a CNB staff car at the place where the Indian male was standing and they arrested him. The male Indian was ascertained to be the appellant, Ramis.

Rahman searched him and found, inter alia, a key chain with three keys, one of which was later found to fit the ignition of the motorcycle bearing the registration number JFB 3451, which Ramis arrived on. Ramis was then taken to his motorcycle, which was covered with a dark blue raincoat. Before Zaman removed the raincoat, he asked Ramis the following question in English (which Rajkumar interpreted to Ramis in Tamil):

Q: Do you have anything to surrender on the bike?

A: Nothing.

Zaman then removed the raincoat, revealing a blue helmet and a `Puma` bag which was black and red in colour, in the front carrier basket of the motorcycle. Zaman asked Ramis (interpreted by Rajkumar in Tamil):

Q: This bag belongs to whom?

A: Not mine.

Thereafter, Zaman opened the `Puma` bag. It contained a white `Fuji Grand` plastic bag containing two blocks of compressed greenish vegetable matter in transparent plastic wrapping. Zaman questioned Ramis again (again interpreted by Rajkumar in Tamil):

Q: What is this?

A: `Roke`.

Q: What is the quantity?

A: I do not know.

Q: Does it belong to you?

A: It`s not mine.

Q: Whose is it?

A: I do not know.

Rajkumar testified that the term `roke` is the street jargon to describe cannabis.

Ramis was then brought to the CNB office at the Clementi Police Division HQ. An instant urine test conducted on him revealed traces of cannabis and amphetamine in his urine. At the CNB office, Zaman also reduced into writing the questions posed to and answers given by Ramis earlier. In addition, tests were carried out on the two blocks of greenish vegetable matter found in the motorcycle carrier basket. The first block was found to contain 782.1g of cannabis and 118.4g of cannabis mixture. The second block was found to contain 747.7g of cannabis and 193g of cannabis mixture.

Ramis was charged later in the afternoon. Pursuant to s 122(6) of the Criminal Procedure Code (Cap 68), Ramis made the following statement: `I do not admit to the charges.`

The defence case

The accused elected to give evidence. He testified that on 12 August 2000 he entered Singapore from Johor at about 6.30am. After breakfast at Woodlands Centre, he rode to Marsiling where he parked his motorcycle next to Block 7 in the industrial estate. He arrived at 7.20am, as opposed to 7.50am as testified by the CNB officers. He waited for about 20 minutes and made two telephone calls during this time. This contradicted evidence from the prosecution witnesses that only about five minutes elapsed between the time Ramis arrived and the time of his arrest. His evidence was that from where he was standing he could not see his motorcycle throughout these 20 minutes.

Then, all of a sudden, a car stopped in front of him and he was arrested by the CNB officers. During his examination-in-chief, he testified that upon his arrest the CNB officers had to ask him where his motorcycle was, as opposed to their leading him to his motorcycle. This implied that the CNB officers

had not been keeping an eye on his motorcycle. Ramis also denied that the CNB officers opened the white `Fuji Grand` bag inside the `Puma` bag found in his motorcycle carrier basket. He claimed that they did not see what was in the bag. He further denied that he used the word `roke`, saying that he knew what `ganga` was but did not know what `roke` was. His defence was that he did not know how the `Puma` bag got into the carrier basket of his motorcycle.

During cross-examination, Ramis testified that his purpose in going to the vicinity on the morning of 12 August 2000 was because one Kumar, an ex-colleague, was supposed to pick him up from there to help get him a job. Kumar had told him to wait at the parking lot area near the temple and to arrive between 7.30am and 8am but not later. However, he admitted that he had no way of contacting Kumar.

During closing submissions, counsel for Ramis at the trial, Mr Singa Retnam, submitted that neither the `Puma` bag nor a blue helmet that the CNB officers found in the carrier basket of his motorcycle belonged to him. Mr Retnam said that there could not have been drugs on the motorcycle when Ramis passed through customs that morning because the inference that should be drawn was that `there was a danger of him being caught`. In other words, Mr Retnam was implying that Ramis would not have been so foolish as to pass through customs with drugs on his motorcycle because of the risk that he might be caught. Therefore, Mr Retnam said that the `Puma` bag must have been placed on Ramis`s motorcycle carrier basket by someone else after he had parked it next to Block 7. The defence argument was therefore that Ramis could not see his motorcycle for a span of 20 minutes and nobody really knew what happened during that time period. Moreover, Ramis was wearing a grey jacket and a silver helmet whereas the male riding the motorcycle JFB 3451 was spotted by the CNB officers to be wearing a blue jacket and a blue helmet. It was thus unsafe to convict Ramis on the evidence - `that a bag of drugs found in the open basket of a motorcycle parked in an industrial estate belonged to the accused and no one else`.

The decision below

The judicial commissioner considered the evidence before him and was not persuaded that the defence had raised a reasonable possibility that someone else was the trafficker. Although the defence argued that Ramis was wearing a grey jacket and silver helmet, and not a blue jacket and blue helmet as claimed by the CNB officers, what was relevant and incontrovertible was that the blue helmet and the blue raincoat were both found on the motorcycle together with the cannabis and the motorcycle belonged to Ramis who was the person who rode on it.

The judicial commissioner also accepted the evidence of Rajkumar, who testified that he had the motorcycle in his sight at all times and saw no one approaching it. The judicial commissioner rejected the defence contention that Ramis was waiting for about 20 minutes, accepting the prosecution`s evidence that the arrest was effected within five minutes of Ramis`s arrival. He held that, even if Rajkumar had had a momentary lapse of concentration, there was no reason in the circumstances why anybody would have left the bag on Ramis`s motorcycle. Therefore he did not accept this remote possibility as having sufficient weight to create any doubt that Ramis carried the bag with him as he entered Marsiling Industrial Estate Road 4.

In the event, the judicial commissioner found Ramis guilty as charged and sentenced him to death.

The appeal

Ramis was charged under s 5(1)(a) read with s 5(2) of the Act, which reads as follows:

(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.

To discharge its burden of proof, the prosecution had to prove possession of the drugs on the part of Ramis for the purposes of trafficking. The prosecution sought to rely on the presumption relating to purpose of possession in s 17 of the Act, which reads as follows:

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

...

(d) 15 grammes of cannabis;

...

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.

However, before the prosecution could rely on this presumption, it first had to prove the element of possession. The meaning of `possession` was discussed by Lord Pearce in **Warner v Metropolitan Police Comr** [1969] 2 AC 256, and followed by this court in the case of **Tan Ah Tee v PP** [1978-1979] SLR 211 [1980] 1 MLJ 49. A long line of cases has since followed the ruling in these cases. Essentially, in order to prove possession, the prosecution had to satisfy two elements: firstly, it had to prove that Ramis had physical control of the cannabis and, secondly, that Ramis knew that what he had under his physical control was cannabis: see **Lee Lye Hoe v PP** (Unreported), **Zulfikar bin Mustaffah v PP** [2001] 1 SLR 633 and **Lim Beng Soon v PP** [2000] 4 SLR 589.

Physical control

The main argument in Ramis`s written submissions for the purposes of this appeal was similar to that canvassed at the trial below - that someone else had placed the drugs on his motorcycle when he left it unattended. To support this argument, two main points were raised in the written submissions:

firstly, it was argued that the judicial commissioner should not have accepted Rajkumar's evidence that he had kept the motorcycle in his sight from the time Ramis arrived in the vicinity till the time of his arrest; and secondly, it was contended that the judicial commissioner had not put enough weight on the fact that Ramis denied possession of the drugs from the time of his arrest.

However, before us, counsel for Ramis, Mr Subhas Anandan, conceded that the only argument that was worth pursuing was the fact that Ramis had denied possession. In any case, we could not find any evidence to justify overturning the judicial commissioner's decision to accept Rajkumar's testimony.

As for the argument that Ramis had denied possession from the moment he was arrested, it is clear that an accused's repeated denials do not have any evidentiary value where he does not adduce any other evidence whatsoever to support his account. In the present instance, the self-serving denials and protestations of innocence emanated from only one source, namely, Ramis himself. His sole defence was his bare denial that the 'Puma' bag belonged to him, but his denials were simply bare assertions. He said he did not know how it came to be in his motorcycle carrier basket. However, the incontrovertible facts were that the drugs were found in the 'Puma' bag which was found on the motorcycle, which Ramis had ridden on. The vicinity was quiet and deserted on the morning of the offence. The CNB officers testified that there were no vehicles parked in the bus and motorcycle parking lots in the area. Afandy and Rahman did not spot any suspicious characters when they patrolled the vicinity of the temple. Rajkumar testified that he kept his eyes on the motorcycle throughout the entire period and that nobody approached it while Ramis was standing in front of Block 7. All seven CNB officers were unanimous in their testimony that only about five minutes elapsed between Ramis's arrival and his arrest.

We took the view that this whole matrix of facts led to the irresistible conclusion that Ramis had the bag of drugs in his motorcycle carrier basket when he arrived in the vicinity and parked his motorcycle at the side of Block 7. Other than his bare denials, Ramis did not adduce any evidence whatsoever to support his version of events that the drugs were placed on his motorcycle by somebody else. He claimed he was in the vicinity to meet one Kumar who would get him a job. However, Kumar was not called as a witness to verify this. Moreover, Ramis admitted on cross-examination that he had no way of contacting Kumar.

It was therefore our conclusion that the drugs were already on his motorcycle when he arrived in the vicinity of Marsiling Rise. We did not accept his claim that they were placed in his motorcycle carrier basket by someone else when he was standing in front of Block 7. As such, we had no doubt that he was in physical control of the 'Puma' bag and the drugs contained in it.

Knowledge of drugs

The starting point in the consideration of this issue was that we had already concluded that the drugs were already on Ramis's motorcycle when he entered the vicinity and that he had physical control of the drugs. In the absence of any reasonable explanation by Ramis, these facts were sufficient to lead to a strong inference that Ramis knew that the bag found on his motorcycle contained drugs.

In ***Tan Ah Tee*** (supra), Wee Chong Jin CJ, delivering the judgment of the court, said ([1978-1979] SLR 211 at 217-218; [1980] 1 MLJ 49 at 52):

[E]ven if there were no statutory presumptions available to the prosecution,

once the prosecution had proved the fact of physical control 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.

He then quoted Lord Wilberforce in **Warner** (supra), who said ([1969] 2 AC 256 at 312):

In all such cases, the starting point will be that the accused had physical control of something - a package, a bottle, a container - found to contain the substance. This is evidence - generally strong evidence - of possession. It calls for an explanation: the explanation will be heard and the jury must decide whether there is genuine ignorance of the presence of the substance, or such an acceptance of the package with all that it might contain, or with such opportunity to ascertain what it did contain or such guilty knowledge with regard to it as to make up the statutory possession. Of course it would not be right, or consistent with the terms of the Act, to say that the onus of showing innocent custody rests upon the accused. The prosecution must prove the offence, and establish its ingredients. But one starts from the point that the Act itself has exempted the great majority of cases of innocent possession, so that once the prosecution has proved the fact of physical control in circumstances not covered by an exemption and something of the circumstances in which this was acquired or held, this, in the absence of explanation, may be sufficient to enable a finding of possession to be made.

The strong inference, that an accused had knowledge that what he had physical control over was drugs, can be rebutted. In the words of Lord Pearce in **Warner** (supra at pp 305-306):

*The situation with regard to containers presents further problems. If a man is in possession of the contents of a package, prima facie his possession of the package leads to the strong inference that he is in possession of its contents. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been "planted" in his pocket without his knowledge, so I do not think he is in possession of contents which are quite different in kind from what he believed. Thus the prima facie assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it **and** no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suitcase at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal.*

In the present case, Ramis's only defence was that the bag was not his and that someone else must have put it there. We have rejected this. He did not raise the argument that he was a mere bailee. We were also not satisfied that Ramis had no opportunity to acquaint himself with the contents of the

bag which was found on his motorcycle. We found that the drugs were already on his motorcycle and in his control when he arrived in the vicinity. He had ample opportunity to examine the contents of the bag. Therefore it was our view that Ramis did not raise any explanation to rebut the strong inference that he had knowledge of the drugs on his motorcycle.

We also think that it is necessary to add that this appeal revolved solely around questions of fact that were more appropriately decided by the judicial commissioner who was the trial judge. The principles governing the role of an appellate court in reviewing a trial judge's findings of fact are settled. It is clear that an appellate court will not easily disturb findings of fact unless they are clearly reached against the weight of evidence (see eg [Lim Ah Poh v PP \[1992\] 1 SLR 713](#) and [Sundara Moorthy Lankatharan v PP \[1997\] 3 SLR 464](#)). The appellate court will be particularly slow to overturn the trial judge's findings of fact where they hinge on the trial judge's assessment of the credibility and veracity of witnesses, unless they can be shown to be plainly wrong or against the weight of the evidence (see [Yap Giau Beng Terence v PP \[1998\] 3 SLR 656](#) and [Tan Hung Yeoh v PP \[1999\] 3 SLR 93](#)).

In the present case, the appeal turned on whether Ramis's version of events or the prosecution's version of the events was to be believed. The judicial commissioner heard the testimonies of witnesses from both sides and chose to believe the prosecution's evidence over that of Ramis. Nothing had been adduced in this appeal to show that the judicial commissioner's finding of fact was plainly wrong or against the weight of evidence.

Since it was our decision that Ramis had both physical control and knowledge of the drugs, we found that the element of possession was satisfied. The presumption under s 17 of the Act as to the purpose of possession then kicked in. Thus, by s 17(d) of the Act, he was presumed to have had the cannabis in his possession for the purpose of trafficking. This presumption had not been rebutted by Ramis.

Conclusion

In light of our findings above, we found that the judicial commissioner rightly convicted Ramis of the offence as charged. We therefore dismissed the appeal against conviction and sentence.

Outcome:

Appeal dismissed.