

Abdul Malik bin Abdul Jamil v Public Prosecutor
[2002] SGCA 19

Case Number : Cr App 19/2001
Decision Date : 01 April 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : SS Dhillon (Dhillon Dendroff & Partners) for the appellant; Koy Su Hua Peter (Deputy Public Prosecutor) for the respondent
Parties : Abdul Malik bin Abdul Jamil — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act – Trafficking in controlled drug – Whether appellant raises reasonable doubt – ss 5(1)(a), 5(2) & 17 Misuse of Drugs Act (Cap 185, 1998 Ed)

Evidence – Admissibility of evidence – Involuntariness – Trafficking in controlled drug – Appellant challenging admissibility of self-incriminating statements on ground of involuntariness – Whether statements involuntary – Objective and subjective requirements – Whether failure to offer food or drink for eight hours oppressive – Whether appellant affected even if allegations of pain, hunger and inducement true

Judgment

GROUND OF DECISION

1. The appellant, Abdul Malik bin Abdul Jamil (Malik) was tried and convicted of the offence of trafficking in a controlled drug, namely, that he had on 31 January 2001, in his possession for the purpose of trafficking not less than 31.91 grams of diamorphine, 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 Act. Another person, Norazmi bin Morsit (Norazmi) was also jointly tried with him and Norazmi was convicted of aiding and abetting the appellant in the commission of the offence. Norazmi withdrew his appeal against his conviction and sentence. At the conclusion of the hearing of the appellant's appeal, we dismissed it. We now give our reasons.

The facts

2. On 31 January 2001, pursuant to information received, officers of the Central Narcotics Bureau (CNB) kept surveillance of Norazmi's flat at #07-06 Block 109 Bukit Batok West Avenue 6 (the flat). At about 1.50pm Malik was seen entering the flat and later was seen leaving it at 2.05pm. He walked down the staircase from the seventh storey and stopped at the third storey where he looked over the parapet onto the ground. He then made a call on his mobile phone and thereafter made his way up the block. In the meantime, Norazmi was also seen coming out of the flat and scanning the area. Soon, he went back into the flat.

3. At about 2.15pm, Malik was seen on the tenth floor walking along the corridor towards the lift landing. He then walked down the staircase. He got onto a motorcycle parked in the carpark adjacent to the block and rode off. Four CNB officers tailed him. They arrested him at the junction of Block 625 Bukit Batok Central, when he stopped at a red traffic light.

4. In the meantime, at about 2.20pm, Norazmi left the flat. He was arrested while walking along the void deck of the neighbouring Block 108. Following the arrest of Malik and Norazmi, the CNB officers carried out a search of Block 109 for drugs. A red plastic bag was found hidden at the side of an

abandoned washing machine near the lift staircase landing on the ninth floor. In the bag there were nine envelopes. In total, there were 53 sachets of granular substance in the nine envelopes which, on subsequent analysis, were found to contain not less than 31.91g of diamorphine.

5. At the time of the discovery of the red plastic bag at the side of the washing machine, Malik was showing Station Inspector Ronnie See (SI See) and his officers the grass verge behind Block 109 where Malik claimed that he had thrown down from Block 109 a bag containing heroin. But nothing was found there. At that moment, SI See received a call from ASP Marvin Sim informing him of the discovery on the ninth floor, whereupon SI See asked Malik, "Did you go to the 9th storey of this block and throw the things there?", and Malik answered, "OK, I bring you there." Malik then led SI See and his team of officers to the ninth floor where the disused washing machine and the red plastic bag were. On questioning by SI See, Malik admitted that the drugs in the bag were his.

6. Malik was subsequently brought to his residence at Block 517, Bedok North Avenue 2, #12-145 where a search was carried out. But nothing incriminating was found. Later, he was brought to the CNB, where urine samples were taken from him. On analysis, his urine samples were found to be negative.

7. Malik made numerous statements to the CNB officers, and the following were admitted into evidence at the trial below:-

(1) Statement made to SI See at the void deck of Block 625 Bukit Batok Central on 31 January 2001 (statement A);

(2) Statement made to SI See at the ground floor of Block 109 Bukit Batok West Avenue 6 on 31 January 2001 (statement B);

(3) Statement made to SI See on the ninth floor of Block 109 Bukit Batok West Avenue 6 on 31 January 2001 (statement C);

(4) Cautioned statement recorded by Inspector Saherly, the investigating officer, on 31 January 2001 (statement D);

(5) Statement made to Inspector Saherly on 5 February 2001 (statement E);

(6) Further statement made to Inspector Saherly on 19 March 2001 (statement F);

(7) Further statement made to Inspector Saherly on 30 March 2001 (statement G).

Objection to admission of statements

8. The admissibility of the second segment of statement B i.e., the statement recorded by SI See after he received information from ASP Marvin Sim about his find at the abandoned washing machine, and the whole of statement C, were challenged on the grounds that they were not made voluntarily. In the main, Malik relied upon the following specific allegations to substantiate the challenge:-

(a) he was assaulted (namely, kicked and punched on his back and side) when he was arrested by CNB officers at the traffic light junction.

(b) he was slapped by SI See at the void deck of Block 625;

(c) he was kicked by Cpl Devan at the grass verge behind Block 109 and while being questioned by SI See;

(d) he was punched by SI See on the ninth floor

9. Basically what he complained of was that when he signed the statements he was in pain and in fear. Besides, he was also hungry. Another aspect he complained of was that the recording of the statements by SI See was not accurate. Counsel for Malik canvassed these same points before us.

10. As far as the question of voluntariness of the statements was concerned, the evidence tendered by both the defence and the prosecution was carefully considered by the trial judge before he came to the conclusion that the allegations of assault were unfounded. The judge held that, apart from the denials from the officers, the medical evidence, in particular, undermined the veracity of Malik's complaint that he was kicked and punched by the CNB officers, as neither Dr Victor Ong (who examined him before the cautioned statement was taken) nor Dr John Chiam (who examined him after the statement) found any injuries associated with kicks and punches. Both doctors testified that there was tenderness on his chest wall but no bruising and no visible injuries were found. Dr Chiam further elaborated that it was likely that the tenderness on the chest wall was caused by a fall. This was because when a person suffered a fall the energy would be dissipated, resulting in muscular pain but not in bruising. A punch or a kick, however, would be a focussed and high impact blow which would cause bruising. The medical forms which were completed during the medical examinations indicated that the tenderness was consistent with a fall, like a fall from a motorcycle. Dr Chiam said that Malik told him that he had fallen from a motorcycle.

11. The trial judge did not accept Malik's allegation of assault. This alone would suffice to dispose of the objection. What was interesting to note was that Malik did not challenge the voluntariness and admissibility of statements A and the first part of statement B. But these were the first two statements that were recorded after he had fallen off his motorcycle, and had allegedly been kicked and punched by CNB officers and slapped by SI See. If statement A and the first part of statement B were voluntarily made, it defied logic to allege that only the second part of statement B and statement C were affected by the fall and the alleged assault. This smacked of selective objection, brought about not on account of pain caused by the fall or assaults but by the incriminating nature of those parts of the statements.

12. Thus, on the evidence, not only was there no basis for us to disagree with the trial judge's finding that the statements were voluntarily made, we, in fact, agreed with his conclusion.

13. As regards the allegations that the statements recorded were not accurate, this went to the question of the veracity of the statements, not their admissibility.

14. We now turn to the objection raised as to the admissibility of statement D, the cautioned statement recorded by Inspector Saherly also on 31 January 2001. The bases for this objection were that Malik was suffering from pain at his chest, he was hungry and was further offered inducement by Insp Saherly when the latter said that Malik would be taken to see the doctor if the cautioned statement was completed quickly.

15. According to Malik, after his examination by Dr Ong and before being brought to Insp Saherly's office he told Cpl Anan that he was in pain and was hungry. But when Cpl Anan was cross-examined in the voir dire this allegation was not put to him. Insp Saherly denied that Malik told him about his pain. Neither did he know that Malik was hungry. Nor did he offer any inducement to Malik that he would be allowed to see the doctor if he had made the statement quickly. The evidence of Insp

Saherly was corroborated by Ms Sofia bte Sufri, the Malay interpreter who was present at the recording of the cautioned statement.

16. These allegations were rejected by the trial judge. In this regard, we must observe that Malik had just returned from seeing Dr Ong. He told Dr Ong about his fall from the motorcycle. He did not complain of any serious pain. Dr Ong merely noted that there was "tenderness" on his chest. We did not think there could be any truth in the allegation that Insp Saherly promised to bring him to a doctor if he gave a statement quickly. He was, of course, brought to see Dr Chiam for the normal post-statement examination. Dr Chiam said there was mild right-sided tenderness on the chest wall.

17. As regards the allegation of hunger, according to Malik he had only a slice of bread at 12 noon that day and he was not offered anything to eat or drink right up to the time of the cautioned statement. It is pertinent to point out that there are two requirements which must be satisfied before involuntariness can be successfully raised. This was addressed by this court in *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25 as follows:-

The test of voluntariness is applied in a manner which is partly objective and partly subjective. The objective limb is satisfied if there is a threat inducement or promise, and the subjective limb when the threat, inducement or promise operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge.

18. It is difficult to imagine that a person's will would be sapped by a mere 10 hours (or eight hours from the time of his arrest) of no food or drink so much so that he would even admit to a capital charge. Here, we bore in mind the observations made by this court in *Fung Yuk Shing v PP* [1993] 3 SLR 421:

An accused might be continually grilled for days on end without being given food and drink or he might go without such sustenance for a few hours. The failure to offer sustenance might be a deliberate ploy to weaken the accused's will or it might be a genuine oversight amidst the flurry of investigative activity. The point is, it does not appear to us to be realistic to take the sweeping stand that every failure to offer an accused sustenance constitutes a 'threat' or an 'inducement' of such gravity as to automatically render any statement he makes involuntary.

19. A statement would be inadmissible if it were obtained under oppression and whether there was oppression is a question of fact. Here everything took place well within the day. He was probably very anxious and worried on account of his arrest. But we did not think that a failure to offer Malik food or drink from the time of his arrest until the taking of the cautioned statement, a mere eight hours, could constitute oppression such as to invalidate a statement made.

20. The trial judge found that even on the basis that the allegations of Malik as to pain, hunger and inducement by Insp Saherly were true, he did not think that Malik was really affected by them when he made the cautioned statement:-

Malik was probably frightened when he made his cautioned statement. That would be normal for someone in his position who has been ambushed, arrested and charged with a capital offence. Such a reaction on the part of an accused person would not render any statement that he made involuntarily.

His allegation that Inspector Saherly induced him to give his statement by promising that if he gave it quickly he would be sent to the hospital and he can then rest was denied by Inspector Saherly and the interpreter. Apart from their evidence, I found it difficult to believe that he could

have yielded to such an inducement, assuming that it was made. There was no evidence that he needed medical attention or rest so badly so as to succumb to the inducement.

I did not find any basis for finding that Malik made the disputed statements because of his pain, hunger or fear or that he made the cautioned statement because of Inspector Saherly's offer of medical attention and rest. I therefore ruled that the disputed statements he made to SI See and the cautioned statement were admissible.

21. In the result, we agreed with the finding of the trial judge that the cautioned statement was admissible. Malik had failed to raise any reasonable doubt in relation to both the objective and subjective requirements in order to successfully plead that the statement was not given voluntarily.

The contents of statements

22. In statement A, Malik said that he went to Norazmi's flat at Block 109 that day to collect a gambling debt of \$3,000 which Norazmi owed him. When Norazmi said that he had no money to pay Malik, the latter in anger entered Norazmi's room and grabbed something from a dressing table – two T-shirts, a belt and a plastic bag containing some envelopes. While he did not see what was inside the envelopes he knew they contained heroin. He threw the bag containing the envelopes over the parapet onto the ground.

23. After his arrest and upon being brought to the ground floor of Block 109 he was asked to point out where he threw the bag. But nothing was found there. These were the questions and answers recorded in the first part of statement B:-

"Q: Where are those things you threw?

A: I don't know.

Q: Are you sure this is the place?

A: Yes."

24. The second part of statement B containing a question posed to Malik by SI See upon being informed by ASP Marvin Sim of his find on the 9th floor:-

"Q: Did you go to the 9th storey of this block and throw the things there?

A: OK, I bring you there."

25. Statement C was given by Malik to SI See soon after he was brought to the 9th floor of Blk 109 to see the bag which was hidden by the side of the abandoned washing machine. The answers given were clearly incriminating and they were as follows:-

Q: Is this plastic bag containing the brown envelopes with sachets of heroin yours?

A: Yes, its mine. I took it away from Boy Kamis (i.e., Norazmi) by force as he owes me money.

Q: Do you know the envelopes contain heroin?

A: Yes, when I decided to leave it here, I opened one envelope to see what was inside and discovered it was heroin.

Q: Did you pay Boy Kamis any money?

A: No.

Q: Why did you bring me to the ground floor and not here where you left the heroin?

A: Because I was afraid as I knew it was heroin and it is an offence.

Q: Do you smoke heroin recently?

A: No.

Q: Then what do you intend to do with the heroin?

A: I intend to leave it here at the meantime and think about what to do to these heroin later.

Q: Do you have anything else to say?

A: No.

26. In his cautioned statement (statement D), Malik admitted to the charge and asked for forgiveness:-

I admit guilty to the charge. This is my first time trafficking heroin. Please give me a chance. I do not know what else to say.

27. At this juncture we would also quote the relevant portions of statement E (which admission into evidence was not objected to) as it was a document which the trial judge took into account in arriving at his verdict:-

... In the room, on the carpet, I also saw some aluminium foil and a straw of heroin. Boy then offered me the heroin to consume. I refused the offer as I am going to report for urine test in the evening. He then opened a box and I noticed some sachets of heroin and a few envelopes. He then told me that since I was going to start consuming heroin, it was better (sic) push it at the same time. I refused and just asked him for 5 sachets for my own consumption only. At that point of time, I also took a look at some of the sachets of heroin in the box. Boy then set aside a few envelopes containing heroin inside a plastic bag and gave it to me. I did not know the exact amount of heroin inside the plastic bag. Boy asked me to take the heroin back and do whatever I want to do with them. I told him that I would consume them all. He told me to go ahead and do it. Boy did not ask for any payment as he knows that even if I were to consume all of the heroin, I would call to pay him back. I left soon after.

.. I took the staircase on the right of the house and went down. As I was going down, I look through the envelopes containing the heroin. I began to feel confuse and panic when I look at the numerous amount of heroin. At the third floor, I decided to throw the heroin away. However, I did not do it as I then have to pay for the heroin. I then decided to return the heroin. I then went up the stairs again. I am not sure why I went up to the 10th floor. I then went to the lift landing on the 10th floor still thinking of what to do with the heroin. I then decided to put the

heroin aside first. I went down to the 9th floor to look for a place to keep the plastic bag of heroin. I saw a washing machine on the 9th floor and decided to place the plastic bag behind it. I then left the block on my motorcycle to go for my urine test.

Malik's defence

28. Malik said that he first came to know Norazmi in 1997 at the Moon Crescent Prison when they were both inmates there. After their discharge from prison, they socialized occasionally. Sometime two weeks before their arrest, Norazmi borrowed \$3,000 from him to gamble. On 30 January 2001, when they met at a "Prata" shop along Bencoolen Street, Norazmi promised to pay the debt the following day. Norazmi even offered drugs to Malik but the latter only said he would think about it.

29. On 31 January 2001, at about 11.00am, Malik called Norazmi and the latter asked the former to go to his flat. Malik left on his motorcycle. When Malik arrived at Norazmi's flat, Norazmi's mother opened the door to let him in. In Norazmi's room, Malik was invited to smoke heroin, but he refused. Norazmi did not offer or give him any drugs to sell. When Norazmi told Malik that he could not repay the loan, Malik became very angry. He grabbed a plastic bag on the dressing table and left the flat, promising to return in two or three days' time for the money. He did not know what was in the plastic bag.

30. While walking down the staircase, he opened the plastic bag and found, among other things, a few envelopes. When he opened them, he saw a yellowish substance which he suspected to be heroin. He was shocked and scared by the large amount of drugs. He wanted to return the plastic bag to Norazmi and walked back up the block. In his haste, he missed the level and it was in this panicked state of mind that he threw away the plastic bag from the staircase down to the open field behind Block 109. He did not want to have anything to do with the drugs.

31. Having thrown away the plastic bag, he walked down and left the place on his motorcycle. He did not know that he was being tailed. When he stopped at the junction of Block 625 Bukit Batok Central, he was knocked from behind and he fell onto the ground. Immediately, he was pounced on and kicked and punched by a group of persons who later identified themselves as CNB officers. He suffered pain on his body.

32. After he was arrested, he was brought to the void deck of Block 625 where SI See slapped him on his face. SI See questioned him in English, but he could not understand him as SI See was speaking too fast and Cpl Anan Devan had to interpret the questions in Malay to him. Malik then led SI See and his officers to the grass verge behind Block 109 where he said he had thrown the plastic bag. But nothing was found.

33. At that moment, SI See received a call on his handphone and he then asked Malik from where did he throw the things. Malik indicated that it was from the upper floor of Block 109. SI See asked if that was the block where Norazmi was staying and then told Malik to lead them to the floor from where he threw the things. Malik said he never mentioned anything about the ninth floor.

34. According to Malik, it was SI See who led the way up the stairs. Malik thought that they were going to Norazmi's house. Instead, SI See proceeded to the ninth floor. By a disused washing machine on that floor he saw a plastic bag, which he had never seen before.

Appeal

35. In this appeal, besides reiterating the point that statement B (second part) and statements C and D should not have been admitted into evidence on the ground that they were not made voluntarily, and which we have dealt with above, what counsel for Malik basically argued was that the version of events as recounted by Malik in court was credible, or, at the very least, he had raised a reasonable doubt, particularly in the light of the fact that Norazmi had admitted at the trial that all the drugs belonged to him and that Malik had no connection with drugs. Norazmi also confirmed that he did borrow money from Malik for gambling.

Our decision

36. We would point out that besides incriminating himself in the three statements on which objection as to admissibility was raised, Malik had, as can be seen from 27 above, also incriminated himself in statement E, the admission of which into evidence was not objected to by Malik. However, in the witness box, he retracted some parts of statements B, C and D which were incriminating and said he made them all up. He also claimed that as far as the incriminating parts of statement E were concerned, he stated those things because he was threatened by Norazmi when they were both in court on 2 February 2001. He also said some parts were made at the suggestion of Insp Saherly.

37. In coming to his decision that Malik was guilty of the charge, the trial judge relied in the main upon the following evidence:-

- (i) Malik's admission in his cautioned statement as well as in statement E;
- (ii) Norazmi's statements of 2 February and 19 February 2001 which corroborated the admission of Malik; and
- (iii) the undisputed facts of Malik leaving the flat that day, going down to the third floor, making a call on his hand phone and then going up from the third floor.

38. In Norazmi's statement of 2 February, he stated that he gave Malik about "50 plus packets" of heroin and of that lot, "fifty packets were sold to him for S\$5,000 while the rest were for his ration." He also stated that after Malik left, Malik called "saying that he suspected that there were CNB officers downstairs." In Norazmi's statement of 19 February, he stated that he gave Malik "about 53 packets of heroin. He (Malik) was quite surprised at the large amount of heroin and asked me what it was for. I just told him to take the heroin first and we would talk about it later."

39. The trial judge reviewed the evidence carefully and dealt with the various points raised as follows:-

- (i) the assertion that when Malik gave the cautioned statement, he told the interpreter he was not guilty - the trial judge noted that, this being a very serious allegation, yet it was not raised in the voir dire and neither was it put to the interpreter or Insp Saherly.
- (ii) the assertion that statement E was made because of threats by Norazmi - the trial judge, after observing that the admissibility of statement E was not objected to, said:

"I did not believe that he made those admissions because of any threat from Norazmi. If there was anything that Norazmi wanted from Malik, it would be that Malik not incriminate him with the drugs recovered at the washing machine. It was incredible that if Norazmi threatened him, he just instructed

him to admit to the drugs without also instructing him to leave him out of it. It was equally incredible for Malik to implicate Norazmi falsely if he had received the threat. He could not have thought that he was appeasing Norazmi by doing that"

(iii) the assertion that Malik panicked when he opened the bag and saw the large quantities of drugs - the trial judge commented that Malik's intention of going back to the flat to return the bag to Norazmi, and his making a call to Norazmi on the hand phone, did not indicate panic.

40. The trial judge then dealt with Norazmi's attempt at the trial to take the blame totally when he said that it was he who placed the plastic bag of heroin beside the abandoned washing machine. He held that this was completely inconsistent with his two statements given to the CNB and with the objective facts. Norazmi never told the CNB during investigations that he had so hidden the plastic bag. Whether the court should have believed the evidence of Norazmi given in court must depend on all the circumstances and tested against the objective facts. The judge demolished Norazmi's claim, that it was his practice to hide his drugs there because he did not want the drugs to be found in his own room, with the following observation:-

"He said that he would go to the hiding place when he needed to take some drugs for sale or for consumption. He had no way of knowing when the authorities responsible for the maintenance of the common areas of the block, the owner of the washing machine or the owner of the flat would remove the washing machine or his trove. If he wanted to avoid detection he would not conduct his activities such that he would have to return to the washing machine each time he needed the drugs. He would also not risk losing all those drugs in the event that the washing machine or the bag was taken away. I found this part of his evidence to be entirely unworthy of belief."

There was no reason for us to dissent from this determination.

41. It seemed to us clear that on the basis of statements C, D and E, the movements of Malik at Block 109 that fateful afternoon, and the confessions of Norazmi which unequivocally implicated Malik (which statements were admissible against Malik under s 30 of the Evidence Act, as interpreted by this court in *Chin Seow Noi v PP* [1994] 1 SLR 135), there was ample evidence to warrant the trial judge finding that it was Malik who placed the plastic bag with the drugs beside the abandoned washing machine on the 9th floor and that he was thus in possession of the drugs. Possession having been proven, he was presumed under s 17 to have the drugs for the purposes of trafficking. The charge was therefore established. In the premises, the findings and the verdict recorded by the trial judge were correct and should be upheld and which we did.

Sgd:

YONG PUNG HOW
CHIEF JUSTICE

Sgd:

CHAO HICK TIN
JUDGE OF APPEAL

Sgd:

TAN LEE MENG
JUDGE

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