Muraligeran A/L S Krishnan *v* Public Prosecutor
[2014] SGHC 61

Case Number : Magistrate's Appeal No 289 of 2012

Decision Date : 04 April 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Josephine Choo and Wilbur Lim (WongPartnership LLP) for the appellant; Ong Luan Tze and Tan Yanying (Attorney-General's Chambers) for the respondent.

Parties : Muraligeran A/L S Krishnan — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act

4 April 2014 Judgment reserved.

Choo Han Teck J:

1 The appellant, in this appeal against conviction and sentence, was charged with one count of drug trafficking (DAC 35352 of 2012). He was convicted after three days of trial on 2, 3 October and 5 November 2012 before District Judge Eddy Tham ("the DJ"), and sentenced to six years' imprisonment and six strokes of the cane. His sentence was ordered to commence on 29 October 2010, the date on which he was first remanded.

2 The appellant filed a notice of appeal against sentence on 12 November 2012, and the corresponding petition on 22 January 2013. At the hearing of the appeal against sentence on 8 May 2013 before Chao Hick Tin JA, the appellant indicated he wanted to appeal against his conviction as well. He was subsequently granted leave to file his appeal against conviction out of time, and is now appealing against both conviction and sentence. For the reasons below, the appeal against both conviction and sentence is dismissed.

3 The appellant was convicted of having trafficked in not less than 4.73g of diamorphine. The appellant claimed that he was merely acting on instructions from a friend, "UK", to collect a package of "sex pills" from one party in Singapore and pass it to another, "Abdul Aziz". Shortly after the appellant passed the package to Abdul Aziz, they were arrested.

4 The appellant proceeded on six grounds of appeal. The first five related to his appeal against conviction. They were:

a. the trial judge erred in relying on P6;

b. the trial judge erred in connecting the appellant to the drug package;

c. the trial judge erred in finding that the appellant had the requisite knowledge of the nature of the drug under the presumption in s 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA");

d. the trial judge erred in preferring the evidence of the prosecution's witnesses; and

e. the conduct of the trial was unfair to the appellant.

The last ground concerned the appellant's alternative submission that the sentence imposed was excessive. I will deal with each of these points in turn.

5 The first concerned a statement taken from the appellant immediately after his arrest ("P6"). The appellant was taken into a Central Narcotics Bureau's ("CNB") car and there questioned by Station Inspector Pang Hee Lim ("SI Pang"), the arresting officer. The answers to SI Pang's questions were recorded and admitted in evidence as exhibit P6. SI Pang asked the appellant questions in the English language. Staff Sergeant Saravanan s/o Veerachani ("SSGT Saravanan"), who was seated in the front passenger seat, translated the questions into the Tamil language, and subsequently translated the appellant's replies from the Tamil language to the English language, for SI Pang to record. The appellant argued on appeal that, given the way P6 was recorded, some meanings were lost in translation, foremost of which was whether the appellant had used the word "drug". The appellant argued he had never used the word "drug", and that the word was suggested by SSGT Saravanan. The appellant raised P6 as an issue as he argued that it was crucial in influencing the DJ's decision. Although P6 was indeed the subject of attention in the DJ's Grounds of Decision, I do not think the DJ was unaware of the circumstances in which P6 was recorded. In fact, the DJ noted in his Grounds of Decision (at [18]–[19]) that the word "drug" had indeed originated from SSGT Saravanan. Much of what the appellant sought from this court, namely to exclude P6 and to reconsider the credibility of SSGT Saravanan, involved matters that the DJ had duly considered. In his Grounds of Decision (at [27]), the DJ found that SSGT Saravanan's credibility "withstood scrutiny", and that the dispute over the use of the word "drug" should be resolved in favour of SSGT Saravanan's account. I am not persuaded that the DJ's reasons (at [14]–[35]) ought to be rejected.

6 The second point related to the chain of possession. The DJ found that the appellant had possession of the package before delivering it to Abdul Aziz. The appellant argued before me that the DJ erred in reaching his conclusion as to the chain of possession. Again, this is a matter involving a finding of fact. I am not inclined to cast doubt on the DJ's finding, but I will address three of the issues raised by the appellant.

a. First, the appellant argues that, at trial, he "was not too sure" what the colour of the plastic bag that he carried was. The plastic bag, which originally contained the package in evidence, was a black one. The appellant's position at trial was that he was "not too sure what colour the bag was", but believed it was yellow. This issue, as noted by the Deputy Public Prosecutor ("DPP"), was not critical as the package – containing the drugs – was eventually found, at the time of arrest, in a black pouch belonging to Abdul Aziz, not the appellant's plastic bag. It was also not disputed by the appellant that Abdul Aziz had taken the package from the appellant's plastic bag (whether yellow or black) and put it inside his own pouch bag. The colour of the appellant's bag was hence not critical to the issue of chain of possession.

b. Second, the appellant claimed that the scene during arrest was very chaotic, and that any doubt should be resolved in favour of the appellant. Furthermore, the appellant did not deny handing over the package to Abdul Aziz, the respondent reminded the court that there was at least once CNB officer (SGT Mohamad Hilmi Bin Salim) who had an unobstructed view of the transaction between the appellant and Abdul Aziz. There was hence no doubt as to the chain of possession, notwithstanding the chaos that ensued upon arrest.

c. Third, the appellant argued that an adverse inference should be drawn against the prosecution for not having called Abdul Aziz as a witness during trial. The DPP submitted that

Abdul Aziz was not called upon as a witness as there was little value in doing so. I think this is right. As mentioned in [7(a)], it was undisputed that Abdul Aziz had taken the package from the appellant's bag. It is unlikely that Abdul Aziz's testimony would have changed the finding as to whether the chain of possession was made out.

I am of the view that the DJ did not err in having found a chain of possession.

7 The third point related to the appellant's knowledge of what was in the package. Pursuant to s 18(2) of the MDA, the appellant was presumed to have known the nature of the drug in his possession, until the contrary was proved. The onus was therefore on the appellant to prove, on a balance of probabilities, that he did not have the requisite knowledge. The DJ found the appellant had not proven his case. The appellant sought to convince this court that the DJ erred in making such a finding. Again, I find no reason to disturb the DJ's finding. There were two flaws in the appellant's case – (that he thought all along that the drugs were in fact sex pills).

a. First, the first time the appellant had mentioned "sex pills" was some three weeks after he had been arrested. He had not mentioned "sex pills" in either of the statements taken on the day of his arrest – even when informed that he was informed that he was potentially facing a capital charge (the original charge was for trafficking in 467.97g of diamorphine).

b. Second, the appellant's story that he was merely running an errand for UK did not seem credible. Given the evidence, the DJ found that the appellant had wilfully declined to check the package. The appellant had many opportunities to ascertain the contents of the package but he did not do so. In submissions before me, the appellant argued that because he and UK were colleagues, he had no reason to have been suspicious of UK. Also, he argued that because he had never taken drugs in his life, he had no reason to believe that the package contained anything other than sex pills. I am not persuaded by these arguments that the DJ's conclusion were unsound, I see no reason to disturb his findings.

8 The fourth point related to the DJ's preference for the prosecution's evidence over the appellant's. The DJ found that the appellant was "both inconsistent and illogical" in his answers. The appellant argued that the DJ failed to consider the period of time that had elapsed between the appellant's arrest and the commencement of trial (around two years). Again, assessing credibility of evidence is a matter primarily – and rightly so – within the domain of the trial judge. Nevertheless, I note that the long period between arrest and trial was largely a *non sequitur*, as the DJ had relied on inconsistencies:

a. within the course of the trial itself, whereby the appellant gave contradictory answers during cross-examination, and

b. within the appellant's statements which were taken shortly after arrest (on 19 and 20 November 2010).

9 The fifth point related to the conduct of the trial. The appellant was unrepresented during the trial. On the first day of trial, Mr M Ravi appeared for the appellant. He informed the court that the appellant had not paid him (the minimum sum of $250, as presumably required by his firm); but that he was willing to continue to represent the appellant if he could be given a six week adjournment so as to adequately prepare his case. The court refused to grant an adjournment, and counsel discharged himself. The appellant, a Malaysian, also argued that he was not allowed an adjournment when asked if he could approach the Malaysian Embassy upon having learnt that his counsel had discharged himself. The appellant was represented by Ms Josephine Choo ("Ms Choo") in the appeal before me.

The DPP submitted that the DJ exercised his discretion not to adjourn proceedings correctly. The significant issue in cases where an accused has to conduct proceedings without counsel is whether any real prejudice and unfairness would be caused (see *Tan Chor Jin v PP* [2008] 4 SLR(R) 306 at [59]). In this case, based on the record of proceedings, I do not think that there was any manifest prejudice to the appellant just because he was unrepresented. The DJ had explained the proceedings to the appellant where he was in doubt, and invited him to put forward his version of events. While the appellant complained about the DJ's lack of reasons for having refused the adjournment, it did not mean that there was any prejudice arising from that. The appellant was already spending a long time in remand and the trial ought to be heard quickly in case the appellant was not guilty. Whatever the DJ's intentions may have been, I do not detect – from the Record of Proceedings – any prejudice or unfairness that warranted overturning the appellant's conviction or ordering a retrial.

10 Having dismissed the appellant's appeal against conviction, I now deal with his alternative submission on sentence. Ms Choo argued that, instead of six years' imprisonment and six strokes, the DJ should have imposed only the mandatory minimum of five years' imprisonment and five strokes.

11 The appellant seemed to be relying on the basis that the sentence was "manifestly excessive". In response, the DPP referred to four recent decisions, whereby sentences of eight to ten years' imprisonment and six to eight strokes of the cane were meted out for offences involving trafficking in 4.03g – 6.14g of diamorphine. Three of the cases involved either a first-time offender or an accused with no trafficking antecedent, akin to the case of the appellant. The four cases were:

a. *PP v Norhisham bin Mohamad Dahlan* [2010] SGDC 310;

b. *PP v Sabari bin Jaki* [2012] SGDC 166;

c. *PP v Zakariah bin Mohamed* [2012] SGDC 342; and

d. *PP v Azhar bin Abdul Rahman* (unreported, DAC 27762/2009).

The DJ's sentence was within the range of these recent decisions and there was nothing exceptional in the circumstances of this appellant's case that merited a lower sentence. I am therefore of the view that the DJ's sentence was not manifestly excessive.

12 The appellant's appeal against conviction and sentence is dismissed.