

Mohamad Noor Bin Abdullah and Public Prosecutor
[2001] SGCA 60

Case Number : Criminal Appeal No 12 of 2001
Decision Date : 11 September 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : —
Parties : —

Between

Mohamad Noor Bin Abdullah...appellant

and

Public Prosecutor...respondent

Citation: Criminal Appeal No 12 of 2001

Jurisdiction: Singapore

Date: 2001:09:11

2001:08:20

Court: Court of Appeal

Coram: Yong Pung How, Chief Justice

L P Thean, Judge of Appeal

Chao Hick Tin, Judge of Appeal

Counsel: Ahmad Nizam Bin Abbas (*Muzammil Nizam & Partners*) and Ramli Bin Salehkon (*Ramli & Co*) for the appellant

Peter Koy (*Deputy Public Prosecutor*) for the respondent

Headnotes:

Criminal Law

– Controlled drug – Trafficking – Presumption by possession – Defence of personal consumption – Misuse of Drugs Act (Cap 185) s 17

Criminal Law

– Controlled drug – Trafficking – Relevance of paraphernalia

Criminal Procedure

– Appeal – Appellate court not to disturb findings of fact unless reached against the weight of evidence

Facts

The appellant's flat was raided by the Central Narcotics Bureau and 58.83 grams of diamorphine was recovered along with various drug-trafficking paraphernalia. The appellant's control of the flat at all material times was not in issue. The presumption of trafficking under s 17 of the Misuse of Drugs Act was triggered and the appellant was duly charged with possession of a controlled drug for the purposes of trafficking.

At trial, the appellant raised the defence of consumption, claiming that he was a severe heroin addict and all the heroin recovered was intended for his own personal consumption. Moreover, he had sufficient funds to support his habit such that he did not need to resort to drug-trafficking. The judicial commissioner rejected the defence, disbelieving the appellant's unsubstantiated claims as to the degree of his addiction and preferring the prosecution's evidence that the appellant was only a moderate addict. The judicial commissioner also relied on the appellant's long statement to the police, in which he confessed to be a drug trafficker, and on the drug-trafficking paraphernalia found in the flat. The appellant was sentenced to death and appealed against his conviction.

Held

, dismissing the appeal:

1. An appellate court will not disturb findings of fact made by a trial judge unless they are clearly reached against the weight of evidence – *Lim Ah Poh v PP*, *PP v Hla Win* (see ¶15).
2. The judicial commissioner's finding that the appellant was only a moderate heroin addict could not be faulted. It followed from this finding that the defence of consumption failed as the amount of diamorphine recovered from the appellant's flat amounted to a seven-month supply of heroin for a moderate addict. Furthermore, even if it was believed that the appellant was indeed a severe heroin addict, his

claims as to the amount he consumed could not be accepted as it far exceeded the upper limit of a severe addict's rate of intake. (see ¶13-14).

3. Drug-trafficking paraphernalia is relevant in establishing whether a person is a drug trafficker – *Low Kok Wai v PP*. The judicial commissioner's findings in this regard were clearly correct as the appellant's explanations for the presence of the drug-trafficking paraphernalia were extremely far-fetched (see ¶17).
4. It is clear that an accused person can be convicted solely on his own retracted confession if the court is satisfied of its truth. Here, even if the appellant's grounds of appeals were of merit, the length and detail of his long statement were such as to warrant the dismissal of the appeal (see ¶18).

Case(s) referred to

Jusri v Mohamed Hussain v PP

[1996] 3 SLR 29 (folld)

Lim Ah Poh v PP [1992] 1 SLR 713 (folld)

Low Kok Wai v PP [1994] 1 SLR 676 (folld)

Mohamed Bachu Miah v PP [1993] 1 SLR 249 (folld)

PP v Hla Win [1995] 2 SLR 424 (folld)

Legislation referred to

Criminal Procedure Code (Cap 68) ss 121, 122(6)

Misuse of Drugs Act (Cap 185) ss 5(1), 5(2), 17, 33, Second Schedule

Grounds of Judgment:

Delivered by Yong Pung How

The appellant was tried in the High Court before Choo Han Teck JC on a charge of drug trafficking pursuant to s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185) (the "MDA"). The judicial commissioner convicted the appellant of the charge and sentenced him to death by hanging. We dismissed the appeal against the conviction and now give our reasons.

The facts

2 On 27 November 2000 at about 9.15pm, officers from the Central Narcotics Bureau ("CNB") raided the appellant's flat at Block 331, Woodlands Avenue 1, #04-421. Upon gaining entry, the appellant was spotted dashing into the toilet, from where he was forcibly removed by the CNB officers and arrested. A quantity of yellowish granular substance (the "substance") was recovered from the drainage hole of the said toilet. Apart from the substance, other items seized from the appellant and from various places in the appellant's flat included:-

- (a) Various substances, tablets and powders, including 60 tablets of Erimin 5, one sachet of heroin and one straw of heroin;
- (b) One pager;
- (c) Three handphones;
- (d) One electronic weighing scale;
- (e) One sealer;
- (f) Numerous empty plastic sachets and bags, including "Ziplock" bags;
- (g) One drug supervisee card; and
- (h) Six uncensored video compact discs ("VCDs").

The appellant's control of the flat at all material times was not in issue.

3 Analysis by Dr Saw Chwee Guan of the Department of Scientific Services showed that the 687.3 grams of dried substance contained not less than 58.83 grams of diamorphine.

The prosecution's case

4 The prosecution placed reliance on the appellant's long statement, made pursuant to s 121 of the Criminal Procedure Code (Cap. 68) (the "CPC"), in which the appellant admitted to drug trafficking by assisting one "Ah Chong" in delivering heroin to Ah Chong's purchasers. The appellant also trafficked in heroin by purchasing heroin from Ah Chong for purpose of resale to his fellow addicts. The electronic scale was used to pack heroin for resale. The appellant's clients would use the pager to contact him, while Ah Chong would contact the appellant using one of the handphones. On the day of his arrest, the appellant had collected three bags of heroin from Ah Chong's hireling, one bag of which he delivered. The appellant was holding on to the other two bags, pending further instructions from Ah Chong, when the CNB raided his flat. These two bags of heroin together constituted the substance recovered from the drainage hole.

5 The prosecution also pointed out that the appellant's cautioned statement, made pursuant to s 122(6) of the CPC, disclosed no defence to the charge of trafficking. Instead, the appellant had simply pleaded for leniency as he had an aged mother who had no one to look after her.

6 Finally, the prosecution placed reliance on the evidence of Dr Choo Shiao Hoe ("Dr Choo"), who had treated the appellant for drug withdrawal at Changi Prison Hospital. Dr Choo had testified that based on the withdrawal symptoms exhibited by the appellant upon admission to Changi Prison Hospital, the

appellant was a moderate drug addict. A moderate drug addict would consume between 0.1 gram to 0.27 gram of diamorphine a day, while a severe addict would consume between 0.28 gram to 0.67 gram of diamorphine a day. However, it would not be necessary for an addict to consume such an amount on a daily basis because the 'high' from one session of drug-taking would last the addict a day or two.

The defence

7 The appellant gave evidence on his own behalf. He attempted to rebut the incriminating portions of his long statement by alleging that he had either been "not sober" during the recording sessions, or that he had not appreciated the ramifications of what he had said until it was read out at the trial. The appellant also claimed that he had not mentioned the consumption defence in his s 122(6) statement as he was feeling cold and in a hurry to get the recording of it over with.

8 Instead, the appellant based his defence on two claims. The first claim was that all the substance seized was intended for his own consumption as he was a severe heroin addict who consumed approximately 20 grams of impure substance a day. Moreover, he liked to buy his heroin in big bags, sufficient for one to two months' use, as he had absconded from drug supervision and feared arrest. Second, the appellant claimed that despite his having told the CNB that he made approximately \$800 to \$1200 a month as a security guard, he had not disclosed the additional income that he derived from the sale of VCDs. As such, although he had not worked between 30 June 2000 and his arrest on 27 November 2000, he had amassed \$30,000 in savings with which he supported his drug habit, and did not need to resort to drug trafficking.

The decision below

9 The judicial commissioner rejected the appellant's defence for the following reasons:-

(a) The appellant was admittedly a heroin addict, but had failed to show that the heroin was for his own consumption. The judicial commissioner was dissatisfied by his explanations for the presence of the drug trafficking paraphernalia, finding that they were indicative of a large-scale trafficking activity. He also disbelieved the appellant's claim to be such a severe addict that he required all the heroin for himself.

(b) The defence of consumption was not an elaborate legal defence and he would have expected it to be raised in the s 122(6) statement but it was not.

(c) In the light of the length and detail of the long statement, the judicial commissioner could not accept that the appellant did not intend to make it, or was unaware that he was incriminating himself.

(d) The appellant's financial means were not an issue as he could have derived his money from drug trafficking.

10 The judicial commissioner hence convicted the appellant on the charge. As the amount of diamorphine seized was in excess of 15 grams, the appellant was sentenced to death pursuant to s 33 and the Second Schedule of the MDA.

The appeal

11 The appeal to this court rested on two contentions:-

(a) that the judicial commissioner should not have rejected the consumption defence as raised by the appellant; and

(b) that the judicial commissioner should not have rejected the appellant's explanation for the presence of the drug trafficking paraphernalia found in the appellant's flat.

The defence of consumption

12 The appellant claimed in his written submissions that, contrary to the findings of fact made by the judicial commissioner, there was "ample evidence" to support the defence of consumption. We took the view that this contention could not be supported. The defence of consumption, as raised by the appellant, rested on a single unsubstantiated claim: that he was a severe heroin addict who consumed approximately 20 grams of impure substance a day, such that 687.3 grams accounted for a 34-day supply. However, the appellant was unable to provide any evidence to show that he was indeed a severe heroin addict. The medical reports cited by the appellant in his written submissions could not help him, as they stated that the appellant was at worst only a mild addict, while the prosecution was willing to accept that he was a moderate addict.

13 On the other hand, the prosecution was able to adduce expert evidence, in the form of Dr Choo's testimony, as to the degree of the appellant's addiction, which was unchallenged by the appellant at the appeal. Based on Dr Choo's assessment, this would leave the appellant with approximately 217 days' worth of heroin, a supply that could conceivably have lasted the appellant for over a year. Even allowing for the appellant's unsubstantiated claim that he bought his heroin in amounts sufficient for one to two months' use, this could not explain the extremely large amount of heroin seized from the appellant.

14 The figures provided by Dr Choo on the rate of consumption of a severe heroin addict also meant that even if we accepted that the appellant was a severe addict, we could nevertheless not accept his claim of consuming 20 grams of impure substance a day. As was pointed out by the prosecution in the trial below, the purity of the seized heroin meant that 20 grams of substance would yield approximately 1.71 grams of diamorphine, a figure which is over two-and-a-half times the upper limit of a severe addict's rate of consumption.

15 It is clear from cases such as *Lim Ah Poh v PP* [1992] 1 SLR 713 and *PP v Hla Win* [1995] 2 SLR 424 that an appellate court will not disturb findings of fact made by a trial judge unless they are clearly reached against the weight of evidence. In light of the foregoing, we took the view that the judicial commissioner had been entirely correct to reject the consumption defence.

The drug-trafficking paraphernalia

16 Drug-trafficking paraphernalia is relevant in establishing whether a person is a drug trafficker or not - *Low Kok Wai v PP* [1994] 1 SLR 676. Moreover, it was stated in *Jusri bin Mohamed Hussain v PP* [1996] 3 SLR 29 that "the more directly the item is connected to drug trafficking, the more weighty evidence of possession by the accused of that item is in suggesting that the drugs found in his possession were for the purpose of trafficking."

17 The items seized from the appellant's flat indubitably constituted drug-trafficking paraphernalia. The appellant never disputed that the items belonged to him, but instead tried to offer alternative

explanations for their presence in his home. For example, the appellant had claimed at the trial below that he had bought the electronic scale from an unidentified old man in Sungei Road because he felt sorry for him. As in the case of the consumption defence, we saw no reason to overturn the judicial commissioner's decision in relation to the drug-trafficking paraphernalia. We were of the view that the appellant's explanations were extremely far-fetched. If he was to be believed, it would have been remarkably coincidental that he should have randomly assembled a collection of items which just so happened, when taken together, to constitute paraphernalia commonly used by drug traffickers. We also noted that these claims were all in strict contradiction to the appellant's long statement, where he stated that the paraphernalia in question were used for drug trafficking, and which the judicial commissioner had accepted as true.

Other issues

18 We noted in passing that the judicial commissioner's refusal to accept the appellant's explanations for the incriminating nature of his long statement was not challenged before us. *Mohamed Bachu Miah v PP* [1993] 1 SLR 249 establishes that an accused person may be convicted on his own confession even when it is retracted, if the court is satisfied of its truth. The contents of the long statement were sufficient to warrant the dismissal of the appeal.

Conclusion

19 For the reasons stated above, we found that a case of trafficking in 58.83 grams of diamorphine had been properly made out against the appellant, and dismissed the appeal.

YONG PUNG HOW
CHIEF JUSTICE

L P THEAN
JUDGE OF APPEAL

CHAO HICK TIN
JUDGE OF APPEAL

Copyright © Government of Singapore.