

Public Prosecutor v Mohd Soberi bin Pakari
[2019] SGHC 16

Case Number : Criminal Case No 69 of 2018
Decision Date : 28 January 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Winston Cheng and Shen Wanqin (Attorney-General's Chambers) for the Public Prosecutor; Hassan Esa Almendoar (R Ramason & Almendoar), Diana Foo (Tan See Swan & Co) and Sheik Umar Bin Mohamed Bagushair (Wong & Leow LLC) for the accused.
Parties : Public Prosecutor — Mohd Soberi Bin Pakari

Criminal Law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The Prosecution's appeal in Criminal Appeal No 5 of 2019 and the accused's appeal in Criminal Appeal No 6 of 2019 were dismissed by the Court of Appeal on 24 September 2019 with no written grounds of decision rendered. The Court of Appeal held that in circumstances where the accused person had intimated during the course of the investigations that he did consume drugs and part of the drug consignment in question was for his own consumption, if the investigators wished to pursue this, it was incumbent upon them to explore this with the accused at that stage, and if they choose not to do so, it will not usually be open to the Prosecution to contend that his evidence given at trial on this issue should be rejected on the ground that it had not been put forward earlier. The accused was interviewed without his counsel being present and having told the investigators that part of the drugs were for his consumption, it could not be held against him if he did not expand on this with further details of his own accord. The Judge's conclusions were based on having considered the evidence before him and the Court of Appeal saw no basis for interfering with them. The Court of Appeal also found that there was no basis to disturb the sentence meted out by the trial judge because it was well within the sentencing range that was open to him.]

28 January 2019

Judgment reserved.

Choo Han Teck J:

1 The accused, Mohd Soberi Bin Pakari ("Soberi"), was in a flat with his friends Satari Bin Satimin ("Satari") and Mohamad Yazid Bin Minhat ("Yazid") on the evening of 6 July 2016. The flat belonged to Satari. Soberi is 55 years old, and Satari and Yazid are 52 and 44 years old respectively. They were having a diamorphine equivalent of a Tupperware party that evening. Soberi brought along diamorphine to the flat for everyone (including himself) to smoke. The drugs were also for sale should Satari and Yazid have wished to buy.

2 The party was broken up within an hour into 7 July 2016 when officers of the Central Narcotics Bureau ("CNB") raided the flat and arrested all three men. 59 sachets of drugs were found in the flat, and when analysed, were found to contain not less than 21.38g of diamorphine. Of these, it is undisputed that 1.37g of diamorphine was in the possession of both Satari and Yazid for their personal consumption. Satari and Yazid subsequently pleaded guilty to, among other charges, charges for possession of 1.38g and 1.44g of diamorphine respectively, and this includes the 1.37g mentioned above. Satari was sentenced to 3 years' and 10 months' imprisonment with effect from 8 July 2016.

Yazid was sentenced to 7 years' and 10 months' imprisonment with effect from 8 July 2016, and six strokes of the cane.

3 Soberi was charged for possession of not less than 21.38g of diamorphine for the purposes of trafficking. When the Prosecution closed its case, counsel for Soberi, Mr Hassan Almenoar, submitted that there was no case to answer because two other men, namely, Satari and Yazid, were convicted of possession of 1.38g and 1.44g of diamorphine respectively, and this includes the 1.37g of diamorphine which they had taken from the kitchen table in the flat. Mr Almenoar submitted that that 1.37g must be deducted from the 21.38g of diamorphine that his client is being tried for in this trial. He further submitted that there is incontrovertible evidence that the accused here was also a diamorphine addict, and therefore, there must be a further deduction from the 21.38g for personal consumption. The submissions of counsel indicated that there were questions of law and fact that go towards the culpability or innocence of the accused, but his submission was insufficient at that stage to warrant a dismissal of the prosecution case, or even to amend it. I therefore called upon Soberi to enter his defence.

4 Soberi elected to testify on his own behalf. He had no other witnesses. He did not dispute that he was smoking diamorphine in Satari's flat when they were arrested. Neither did he dispute the fact that he was the one who brought the diamorphine to the flat. On the evidence adduced in the Prosecution's case, his defence was called, and he elected to testify. His defence was that although he was in possession and was trafficking diamorphine, he was not in possession of the entire 21.38g of diamorphine for the purpose of trafficking, the offence that he was charged with.

5 Although the 59 packets of diamorphine were found in the flat when all three men, including Soberi, were arrested, it is not entirely clear whether they were all brought to the flat by Soberi save for the fact that counsel did not challenge this point. Although Soberi accepted that he brought diamorphine to the flat, there seems to be no evidence that he brought them in 59 or more packets. When the CNB raided the flat, the drugs seized were taken from various places. I am not satisfied that it has been proved beyond a reasonable doubt that Soberi brought all 59 packets of drugs that were found to contain the 21.38g of diamorphine as charged. Given that Satari and Yazid had pleaded guilty to and were convicted of possession of the 1.37g of diamorphine that was found on the kitchen table of the flat, I am satisfied that Soberi was in possession of 20.01g (21.38g - 1.37g) of diamorphine. This will be the starting point for my analysis.

6 The question remains as to whether part of that 20.01g cache was meant for his own consumption, and if so, whether that quantity is sufficient to bring the amount below the 15g limit for a capital charge. Mr Almenoar, counsel for Soberi, calculated a rate of consumption by analysing Soberi's withdrawal symptoms (from the medical reports) and his statements, and submitted that Soberi could easily have consumed at least 5.01g of diamorphine himself. This would bring the amount of diamorphine in Soberi's possession for the purposes of trafficking down to 15g, after subtracting the 1.37g of diamorphine which was the amount that both Satari and Yazid admitted to be theirs and had pleaded guilty to be in possession of.

7 In determining the amount of diamorphine that Soberi intended to consume, it is necessary to establish Soberi's daily rate of consumption and his intended consumption period in relation to the 20.01g of diamorphine in his possession. At trial, Soberi detailed his daily consumption schedule and testified that he would smoke eight straws of diamorphine per day. Soberi also testified that he would additionally inject two straws of diamorphine per day, and this is consistent with what he told Dr Xu Bang Yu and Dr Jerome Goh during his medical and psychiatric evaluation. I am satisfied that it is reasonable to conclude that Soberi consumed, via injection and/or inhalation, about eight straws or 0.19g of diamorphine per day.

8 In both Soberi's statements and his testimony at trial, he stated that he had purchased a larger amount of diamorphine on 3 and 5 July 2016 for the purposes of both personal consumption and sale during the Hari Raya period which begins on 6 July 2016 and lasts for 30 days. This purchase was made as Soberi's supplier, "Boy", informed him that he (Boy) would not have "stock" during the Hari Raya season. Although the Prosecution submitted that Soberi's explanation should not be believed, I find no reason to doubt Soberi, who had been consistent in his statements and his testimony at trial in this regard.

9 Therefore, I find that Soberi has proved on a balance of probabilities that he intended to consume about 5.7g of diamorphine ($0.19\text{g} \times 30$ days) out of the 20.01g of diamorphine that he had in his possession. I do hereby amend the charge against Soberi by replacing the quantity of diamorphine stated as not less than 21.38g to not less than 14.99g. I find Soberi guilty on the charge as amended and sentence him to 26 years' imprisonment from the date of his remand, 8 July 2016.

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