Murugesan a/l Arumugam *v* Public Prosecutor
[2021] SGCA 32

Case Number	: Criminal Appeal No 23 of 2020
Decision Date	: 06 April 2021
Tribunal/Court	: Court of Appeal
Coram	: Andrew Phang Boon Leong JCA; Tay Yong Kwang JCA; Quentin Loh JAD
Counsel Name(s)	: The applicant in person; Terence Chua, Regina Lim, Isabella Nubari and Lu Yiwei (Attorney-General's Chambers) for the respondent.
Parties	: Murugesan a/l Arumugam — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2020] SGHC 203.]

6 April 2021

Andrew Phang Boon Leong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 The present case is an appeal against the decision of the High Court judge ("the Judge") in *Public Prosecutor v Murugesan a/l Arumugam* [2020] SGHC 203 ("the GD"). The appellant pleaded guilty to and was convicted on one charge of trafficking in not less than 14.99g of diamorphine under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). He was sentenced to 25 years' imprisonment and 15 strokes of the cane. His sentence was backdated to 26 March 2016 to take account of his time spent in remand. He brings this appeal challenging the sentence imposed.

Facts

2 The facts are uncomplicated and uncontested. On 24 March 2016, at about 12.10pm, the appellant rode a motorcycle bearing license plate number JQR 5667 ("the Bike") into the HDB carpark located at Lengkong Tiga. Separately, about ten minutes later, a co-accused person name Ansari, accompanied by his girlfriend Bella, entered the same HDB car park in a car driven by one Jufri ("the Car"). Ansari and Bella met the appellant at the void deck of Block 106 of Lengkong Tiga where they received two packets in exchange for $5,880. At about 12.25pm, the Central Narcotics Bureau ("CNB") officers arrested all four individuals, namely, the appellant, Ansari, Bella and Jufri.

3 When the CNB conducted its searches, its officers found two things: first, a dark blue sling bag in the front basket of the Bike, containing $5,880; and second, a white plastic bag containing two plastic packets of brown granular substance on the floorboard under the front passenger seat of the Car. Analysis later revealed that the packets contained respectively, 457.7g of granular powdery substance containing not less than 20.55g of diamorphine; and 457.5g of granular powdery substance containing not less than 90.17g of diamorphine.

4 During the course of investigations, the appellant admitted to collecting illicit drugs from an Indian man at Jurong Bird Park on the instructions of one 'Ismail'. He also admitted to having taken instructions to pass the collected drugs to a Malay man – who turned out to be Ansari – at Block 106

Lengkong Tiga. The appellant was promised 500RM for delivering "a packet or two".

Our decision

5 As we pointed out during the hearing, the charge should be amended to delete the concluding words ", and further upon your conviction, you may alternatively be liable to be punished under section 33B of the said Act". This is because the alternative sentencing regime in s 33B of the MDA applies only if the charge contains a capital offence and the offence in the present charge is not a capital one. No prejudice is caused by this error in the charge because the alternative sentencing regime would entail life imprisonment and a minimum of 15 strokes of the cane or life imprisonment without caning if abnormality of mind is proved by the appellant. We therefore order that the charge be amended by deleting the said words.

6 As stated earlier, the appellant pleaded guilty and seeks only to challenge the sentence imposed. For an offence under s 5(1)(*a*) of the MDA – for which the appellant has been charged and convicted of – the second schedule of the MDA states that the unauthorised trafficking of between 10 and 15 grams of diamorphine attracts a maximum of 30 years of imprisonment or imprisonment for life, and a mandatory 15 strokes of the cane. The minimum imprisonment term is 20 years. The sole matter to be decided in the present matter, therefore, is the appropriate custodial sentence to be imposed.

7 The High Court decision in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") set out the general approach to be applied for cases involving trafficking in diamorphine in quantities of up to 9.99 grams. Later, in the High Court decision of *Public Prosecutor v Tan Lye Heng* [2017] SGHC 146, this framework was extended and applied to cases where there was trafficking between 10 and 15 grams of diamorphine. The framework involves three steps.

8 The first step involves identifying an indicative starting point for the appropriate sentence based on the quantity of drugs trafficked. Where someone has been found trafficking between 13.01 and 15 grams of diamorphine, the starting point is between 26 and 29 years of imprisonment. The present case involves trafficking in not less than 14.99 grams of diamorphine, which in turn represents the furthest end of the 13.01 to 15 gram bracket. Accordingly, it warrants a custodial starting point that lies at the far end of the corresponding sentencing range. In our view, 29 years of imprisonment should be the indicative starting point.

9 The second step involves calibrating the sentence based on (a) the culpability of the offender and (b) any mitigating or aggravating factors. As regards the appellant's culpability, we agree with the Judge's finding that the appellant played a minor role in the drug-trafficking operations (see [22] of the GD). Being a mere courier, the appellant cannot be said to be as culpable as say, a kingpin who controls and coordinates these operations. As for the appellant's mitigating factors, we similarly accept the Judge's findings that the appellant was contrite and that his guilty plea was a sign of genuine remorse (see [24] of the GD). Additionally, we agree with the Judge's assessment (and rejection) of aggravating factors proposed by the Prosecution. The suggestion was that the mere fact – without more – of the appellant's involvement in a larger network of drug supply and his facilitation of drug distribution within Singapore were aggravating factors. These cannot credibly be considered aggravating factors. They are a feature of every drug trafficking case. Invariably some sort of (possibly syndicated) supply network is involved. Invariably some sort of drug distribution is facilitated in Singapore. To recognise these as aggravating factors would be to take the very fact of drug trafficking to be an aggravating factor. Needless to say, that would effectively build an aggravating factor into every instance where drug trafficking is made out. Something more would be required and much would, of course, depend on the precise facts and circumstances of the case. We

reject such an approach and find that there are no aggravating factors. We note nonetheless that the appellant was in fact riding while under disqualification on the day of the drug transaction as he had been disqualified in respect of all classes of licence for 24 months on 3 February 2016, less than two months before the drug transaction. The disqualification was imposed because he had been riding without a driving licence and the necessary insurance.

10 In the circumstances of this case, we do not think that the sentence of 25 years' imprisonment can be said to be manifestly excessive. Indeed, we find that the Judge's assessment was broadly in keeping with authorities such as the High Court decisions in *Public Prosecutor v Vashan a/l K Raman* [2019] SGHC 151 and *Public Prosecutor v Hari Krishnan Selvan* [2017] SGHC 168, where similarly-situated accused persons had been sentenced with 25 and 26 years of imprisonment, respectively. For an appellate court to intervene and to correct the sentence imposed, there must have been a *manifestly* excessive or inadequate sentence and, "[i]n this regard, a sentence is only "manifestly excessive" if there is a need for a substantial alteration, rather than an insignificant correction, to the sentence to remedy the injustice" (see the decision of this court in *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 at [79]). The present case does not suggest any *manifestly* excessive or inadequate sentence and, accordingly, we do not think it appropriate to intervene.

11 The third and final step of the analysis involves the courts taking into account, where appropriate, the time that the offender had spent in remand prior to the conviction either by backdating the sentence or discounting the intended sentence. The Judge has already done this by backdating the sentence to 26 March 2016, this being the date of the appellant's remand (see [1] of the GD). We see no reason to disagree with his decision on this particular point either.

Conclusion

12 For the reasons set out above, we uphold the Judge's decision and dismiss the appeal.