Parthiban a/l Kanapathy *v* Public Prosecutor

[2021] SGCA 75

Case Number	: Criminal Appeal No 7 of 2021
Decision Date	: 03 August 2021
Tribunal/Court	: Court of Appeal
Coram	: Andrew Phang Boon Leong JCA; Tay Yong Kwang JCA; Chao Hick Tin SJ
Counsel Name(s)	: Ramesh Chandr Tiwary (Ramesh Tiwary) for the appellant; Senthilkumaran s/o Sabapathy and Deborah Lee (Attorney-General's Chambers) for the respondent.
Parties	: Parthiban a/l Kanapathy — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act

Criminal Procedure and Sentencing – Sentencing – Appeals

Criminal Procedure and Sentencing – Sentencing – Principles

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2019] SGHC 226.]

3 August 2021

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

Introduction

1 The appellant, Parthiban a/l Kanapathy, was tried in the Court below for an offence of importation under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") of not less than 14.99g of diamorphine, a controlled drug. This was a charge that had been reduced unconditionally from a prior capital charge at the commencement of the second tranche of hearings in February 2019 ("the Importation Charge").

2 The High Court Judge ("the Judge") found that the Prosecution had proven the Importation Charge beyond a reasonable doubt and convicted the appellant accordingly. The Judge's decision is reported in *Public Prosecutor v Parthiban Kanapathy* [2019] SGHC 226 ("the Judgment"). Subsequently, the appellant also pleaded guilty to a charge of perverting the course of justice under s 204A of the Penal Code (Cap 224, 2008 Rev Ed) ("the PCJ Charge").

3 The Judge sentenced the appellant to an imprisonment term of 23 years and nine months with 15 strokes of the cane for the Importation Charge, and an imprisonment term of one year and nine months for the PCJ Charge. Both sentences having been ordered to run consecutively, this led to a global sentence of 25 years and six months of imprisonment and 15 strokes of the cane. The sentence was backdated to the date of the appellant's remand, *ie*, 4 February 2012.

4 The appellant now appeals against his conviction in respect of the Importation Charge and the sentences imposed in respect of both the Importation Charge and the PCJ Charge.

Factual background

The Importation Charge

5 We begin with the factual background surrounding the appellant's arrest and the discovery of

the drugs in his motorcycle. This is largely undisputed and is detailed at [94]–[101] of the Judgment.

6 On 4 February 2012, at or about 2.29pm, the appellant was stopped at Woodlands Checkpoint when he entered Singapore on a motorcycle, bearing the Malaysian registration number WUQ 4810. Upon screening by an officer from the Immigration and Checkpoints Authority ("the ICA"), the appellant was detained for further checks. His passport as well as the keys to the motorcycle were seized from him. Subsequently, at around 3.26pm, officers from the ICA, upon unscrewing the fender of the motorcycle, found four plastic wrappers in the form of "Oriental Cheese Balls" packets ("the Packets") hidden in the air filter compartment. Suspecting that the Packets may contain controlled drugs, the appellant was placed under arrest. At about 7.45pm, the Packets were seized and opened in the appellant's presence, each revealing brown granular substances in transparent plastic bags ("the drug exhibits"). The drug exhibits and their attendant packets were photographed. These Packets, along with the drug exhibits, were then handed over to an officer from the Central Narcotics Bureau ("CNB"), Inspector Ong Wee Kang ("Insp Ong"), who brought them back to the CNB for storage, locking it in the safe in his office.

7 On 6 February 2012, after labelling and sealing the drug exhibits, Insp Ong handed over the drug exhibits, along with four submission forms pertaining to each bag, to Dr Yap Thiong Whei Angeline ("Dr Yap"), an analyst in the Health Sciences Authority ("the HSA"). The drug exhibits were later analysed and found to contain not less than 24.95g of diamorphine (see the Judgment at [102]–[115]). The appellant was charged for a capital offence of drug importation under s 7 of the MDA, and on 30 October 2014, was committed to stand trial in the High Court.

The PCJ Charge

8 The facts underlying the PCJ Charge are contained in the Statement of Facts (2nd Charge) (Amended) filed on 17 August 2020. The appellant admitted to the facts without any qualification. Our summary thus need only be brief.

9 In the course of investigations, the appellant incriminated one Muneeshwar Subramaniam ("Muneeshwar") for instigating him to bring the Packets into Singapore. Subsequently, Muneeshwar was charged with the capital offence for abetting the appellant to import drugs under s 7 of the MDA. On 13 December 2016, Muneeshwar was committed to stand trial in the High Court. Both the appellant and Muneeshwar claimed trial to the capital charges.

10 Sometime between 16 February 2017 and 20 February 2017, while the appellant and Muneeshwar were in the midst of the capital trial, the appellant handed Muneeshwar, by way of a fellow prison inmate ("Dominic"), a hand-written note ("the Note"). The Note contained detailed instructions, spanning some 11 paragraphs, for Muneeshwar to falsely testify in a way so as to exonerate himself and the appellant from the capital charges. In particular, the appellant wanted Muneeshwar to testify that Muneeshwar had received the Packets from Muneeshwar's "boss" and that Muneeshwar had passed them to the appellant to bring into Singapore, and that *both* of them had *no knowledge* that the Packets contained drugs. At the end of the Note, the appellant implored Dominic to translate the scripted defence to Muneeshwar in Tamil, since the latter's English proficiency was limited. However, as Dominic did not have an opportunity to see Muneeshwar, one of Muneeshwar's cellmates instead translated the Note to him in Tamil. But neither Muneeshwar nor his cellmate fully understood the contents of the Note.

11 All this came to light on 21 February 2017, when Muneeshwar informed his counsel about having received the Note. Muneeshwar copied the contents of the Note onto another piece of paper and brought the copy to the High Court the next day to show his counsel, who promptly reported the

matter to a CNB officer. The Note was found and seized in Muneeshwar's jail cell.

12 It is to the appellant's appeal proper that we now turn.

Appeal against conviction

13 The appellant's appeal against his conviction is broadly, two-pronged. We highlight first what the appellant's present appeal *is* and *is not* about. He neither challenges the Judge's detailed findings on the admissibility and accuracy of various statements recorded from him subsequent to his arrest, which were the subject of much dispute below so as to warrant an ancillary hearing being called (see the Judgment at [42]–[72]), nor does he challenge the Judge's finding that the three elements of an importation charge under s 7 of the MDA, as recently restated in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254, are made out (see the Judgment at [75] –[88]). Rather, the sole plank of the appellant's appeal on conviction, consistent with his argument below, is that the Prosecution has failed to discharge its burden of proof demonstrating an unbroken chain of custody beyond a reasonable doubt.

14 The legal principles are well-established. It is incumbent on the Prosecution to prove beyond a reasonable doubt the chain of custody of the exhibits, and to account for the movement of the exhibits from the point of seizure to the point of analysis, such that there cannot be a single moment that is not accounted for if this might give rise to a reasonable doubt as to the identity of the exhibits (see the decision of this court in *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Affandi*") at [39]). That said, speculative arguments regarding the mere possibility of contamination is insufficient to raise a reasonable doubt as to the identity of the exhibits (see *Affandi* at [118]).

15 The appellant's first argument relates to the difference between the photographs of the drug exhibits taken at the CNB and those taken at the HSA. In particular, the appellant juxtaposes the HSA photographs that revealed a flap over each transparent plastic bag containing the drugs, while the CNB photographs only showed the front view of the drug exhibits. This, the appellant says, is probative evidence that the drugs that were seized and the drugs that were weighed are not the same. The Judge rejected this argument, after having conducted a physical examination of the exhibits and having heard Dr Yap's evidence. It is clear that the Judge's conclusion was arrived at after a holistic examination of the evidence, and not any one *sole* or *dispositive* indicator, such as the similarity in the shapes of the transparent plastic bags and the similarity of the dimensions of the plastic packaging that contained the drugs. The Judge held that the transparent plastic bags that previously contained the drugs examined by the HSA were the same plastic bags captured in the CNB photograph (see the Judgment at [120]–[124]).

16 The appellant contends that the visual inspection conducted by the Judge might have been misleading, as this exercise was conducted with the knowledge of what the photographs looked like. However, such a possible danger ought not to be overstated and in and of itself, is not objectionable. The Judge gave clear reasons for his conclusion, such as existence of the random horizontal double crease in one of the plastic bags that subsists till this day. The appellant also challenges the accuracy of comparing a live demonstration to a two-dimensional photograph. However, there were good reasons for Dr Yap to have filled the transparent plastic bags with gloves to mimic the shapes of the drug exhibits, as the plastic bags had since been emptied of the drugs upon their removal for analysis. One has to be cognisant of the realities that the trial court sat in: this was the most practical method to ensure fidelity and accuracy for any visual inspection undertaken. The Judge was eminently entitled to do so as fact-finder. He cannot be faulted on this ground.

17 The appellant also objects to the Judge's analysis regarding the similarity of the handwriting on the labels as taken in both sets of photographs, because Dr Yap gave such evidence even though she is not a handwriting expert. But this overlooks the fact that the Judge was quite cognisant of this fact. He pointed out that Dr Yap's "observation about the similarity in handwriting was not challenged by the defence, even though counsel for the Accused was given an opportunity to physically examine the exhibits and their labels during the hearing" (see the Judgment at [124]). In any event, the Judge did not impermissibly place inordinate weight on this one factor. We thus reject this argument.

18 The appellant's second argument relates to the discrepancy in the weight of the drug exhibits weighed at the CNB and at the HSA. Specifically, each of the drug exhibits was heavier at the HSA than those weighed at the CNB. We do not think that this is sufficient to raise a reasonable doubt. The Judge took pains to emphasise that he put the Prosecution to task to explain this discrepancy in weight. The Judge rightly considered the discrepancy to be not only *minute* (of some 1%) but also *consistent* across all four packets. The Judge accepted Dr Yap's testimony as to the possible explanations for such discrepancy: (a) the accuracy of the weighing scale depends on several factors such as the location of its placement and whether it has been regularly maintained and sent for external calibration; (b) the operator's practice could have contributed to the discrepancy and (c) that diamorphine is hygroscopic, although given that the drug exhibits were heat-sealed, she did not consider the weight discrepancy would be greatly affected by this (see the Judgment at [131]–[132]). Dr Yap's testimony was candid and even-handed, and the appellant has failed to point satisfactorily to any reason why Dr Yap's evidence ought to be rejected. Certainly, no external or internal inconsistencies in her evidence have been pointed out. We agree that the consistent weight difference leads to the inference that whatever the reason for the discrepancy, it would not have been caused by a break in the chain of custody (see the Judgment at [134]).

19 That the weighing scale used by the CNB was not tested or produced in Court is, in our view, also a misconceived complaint. As the Judge pertinently observed, the dispute over the weight of the drug exhibits was not raised until the second tranche of hearings in February 2019, some *seven years after* the drug exhibits had been weighed by CNB. It was reasonable for Insp Ong to have proceeded on the assumption that the CNB's weighing scale "gave an indicative weight only" and that the weighing scale he used did not have to be examined (see the Judgment at [139]). Likewise, the appellant's argument that no evidence has been led by the Prosecution to show that other cases at or around that time bore similar differences in weight is too, without merit. This is pure speculation and presupposes, with abject uncertainty, that there are other cases which would have used the *same* weighing scale at the CNB and the *same* weighing scale at the HSA. This also fails to pay heed to Dr Yap's explanation that the operator's practice could have contributed to the discrepancy.

20 We are fortified in our conclusion by the fact that the appellant does not challenge, either at trial or on appeal, the safety protocols *instituted and followed* by Insp Ong and Dr Yap. The appellant did not challenge this point at trial and ought to be taken to accept it (see the decision of this court in *Chan Lie Sian v Public Prosecutor* [2019] 2 SLR 439 at [65]). These include the fact that (a) no one else except Insp Ong had the code to the safe; (b) Insp Ong had only taken the drug exhibits out just prior to handing it over to Dr Yap; (c) Dr Yap issued the acknowledgment receipt confirming that the information on the labels and stickers on each zip-lock bag corresponded with their respective submission forms; and (d) only Dr Yap had keys to the personal cabinet in her office where the drug exhibits were stored. So too, the Prosecution's adduction of detailed records from CNB's and HSA's internal systems to show that Insp Ong only handled one live drug case at the time, and there was no overlap as to the drugs stored. There was thus scant possibility of any contamination or mix-up.

21 Overall, we see no principled basis to disturb the Judge's finding that the Prosecution had succeeded in proving beyond a reasonable doubt that the drugs seized from the appellant were the

drugs weighed and analysed at the HSA. The Judge drew reasonable inferences from the facts available to him, as was his prerogative to do so and his conclusion cannot be said to have been against the weight of evidence. There is simply no basis to impugn the chain of custody of the drugs. The appellant's conviction must therefore be upheld.

Appeal against sentence

22 We turn now to the appellant's appeal against the sentences imposed for both the Importation Charge and the PCJ Charge.

23 In so far as the Importation Charge is concerned, the appellant contends that the sentence imposed by the Judge is manifestly excessive, and that weight ought to be given to the appellant's low culpability as he was not organising or directing drug trade and performed a limited function of a courier. We disagree that the sentence imposed is excessive, much less manifestly so.

24 The indicative starting point for an importation charge of not less than 14.99g of diamorphine is 29 years' imprisonment (see the decision of the High Court in *Public Prosecutor v Lai Teck Guan* [2018] 5 SLR 852 at [42], recently affirmed by this court in *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 at [20]). The parties do not dispute this. It is true that the appellant was a first time-offender and was of a relatively young age at the time of offending, having been 20 years old. Mitigatory weight afforded by these factors must, however, be balanced against the fact that the offence of importation is a serious one, and the predominant sentencing consideration remains that of deterrence. Further, the appellant was motivated by financial advantage and took steps to conceal the drugs in his motorcycle, both indicia of higher culpability (see the decision of the High Court in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [51]–[76]). The Judge clearly turned his mind to the various mitigating and aggravating factors in the case and gave a *considerable* downward adjustment from the indicative starting point of 29 years' imprisonment to 23 years' and nine months imprisonment. Indeed, we note that sentence imposed by the Judge was not far off from the appellant's own submission below, and indeed before us as well, seeking a sentence of 23 years' imprisonment. Hence, we reject the appellant's argument.

25 As for the PCJ Charge, the appellant emphasises, first, that he had committed the offence when he was in fear of his life, given the nature and consequences of the capital charge he was facing at the time, and second, that he had pleaded guilty even though Muneeshwar was not in Singapore to testify against him.

26 The version of s 204A of the Penal Code, which was then in force at the time of the appellant's commission of the offence, reads as follows:

> **Obstructing, preventing, perverting or defeating course of justice**
>
> **204A.** Whoever intentionally obstructs, prevents, perverts or defeats the course of justice shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

We note that the wording of this provision has since been amended with effect from 1 January 2020 pursuant to the Criminal Law Reform Act 2019 (Act 15 of 2019) to expand the requisite *mens rea* element for the offence to be made out so as to include knowledge that the act done that has a tendency to obstruct, prevent, pervert or defeat the course of justice is likely to have that effect. Our observations below nevertheless remain salient with regard to all versions of this provision.

27 Judicial discussion of an offence under s 204A, either at the High Court or Court of Appeal level, has been minimal. We thus take this opportunity to make a few observations.

(a) First, general deterrence ought to be the primary sentencing consideration. This is because offences under s 204A are "offences against the institutions of justice and they contaminate the rule of law" (see *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) at 1080). The role of the Court is to administer justice and such offences strike at the very *fundamental* ability of the legal system to produce order and justice.

(b) Second, while the ways in which a Court may become hampered or impaired in its capacity to do justice are of course manifold, offences under s 204A of the Penal Code may broadly be categorised into two groups: (i) first, situations where offenders seek to obstruct the course of justice by eradicating or fabricating evidence of their own wrongdoing or that of others, whether to conceal acts of another or of one's own transgressions, such as suborning witnesses; and (ii) second, situations where offenders ask others to assume criminal responsibility voluntarily (see the decision of the District Court in *Public Prosecutor v Aida Tay Ai Lin* [2020] SGDC 157 at [42]). The express Parliamentary intention is for this provision to apply whether or not legal proceedings have already been instituted (see *Singapore Parliamentary Debates, Official Report* (22 October 2007) vol 83 at col 2197).

(c) Third, a multitude of factors, both offence-specific and offender-specific, may be considered in determining the relevant sentence to be imposed. For example, in assessing the extent of wrongdoing, the nature of the predicate charge upon which the offender had sought to thwart the course of justice is relevant. The more serious it is, the more serious the act of perverting the course of justice will be (see the decision of the High Court in *Seah Hock Thiam v Public Prosecutor* [2013] SGHC 136 at [8]). Relatedly, the effect of the attempt to pervert the course of justice is also relevant, as is the case where offenders have perverted the course of justice in order to protect their own perceived interests. The degree of persistence, premeditation and sophistication in the commission of the offences may also indicate the culpability of the accused person (see the decision of the District Court in *Public Prosecutor v Lim Chit Foo* [2019] SGDC 48 at [122]).

28 Overall, we are not persuaded by the appellant's arguments in respect of the PCJ Charge. We can hardly begin to impress upon the appellant the gravity of his actions in this case. The predicate offence that the appellant's actions were aimed at subverting – that of a capital charge – is the *most serious* conceivable. And this was the case not just with regard to his *own* capital charge, but in relation to Muneeshwar's as well. While the appellant's actions were discovered prior to any judicial determination, it was only at Muneeshwar's voluntary disclosure that this came to light. The instructions to give false testimony could have potentially led the trial court to have made an erroneous finding. The false testimony was also aimed at matters lying at the heart of the trial court's determination, that is, in relation to the accused persons' respective knowledge of the nature of the drugs, which is inextricably linked with the enquiry on their liability. There was also extensive planning and premeditation, the appellant having devised a way of circumventing the difficulty he faced in meeting Muneeshwar while being remanded in a secured environment, through arranging for Dominic to pass him the Note. The Note was lengthy and detailed and the appellant had elaborately crafted an *entire* story for Muneeshwar to recite.

29 The appellant's conduct, even if motivated by a sense of desperation, was simply and undoubtedly beyond the pale. This carries little mitigatory weight. Likewise, given that the appellant had pleaded guilty to the PCJ Charge, whether or not Muneeshwar was present in Singapore to testify against him does not take his case much further. The Prosecution clearly had other evidence to

support the charge, such as the intermediaries involved and the reporting by Muneeshwar's counsel to the CNB when a copy of the Note was handed over by Muneeshwar to him (see [10]–[11] above). In our judgment, the sentence of one year and nine months' imprisonment appropriately reflects the seriousness of the offence.

30 For completeness, the Judge was also justified in ordering both sentences to run consecutively, given that the offences committed were unrelated (see the decision of the High Court in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [41]–[48]). These were distinct offences, protecting distinct interests, committed at different times. Hence, it plainly cannot be said that the sentences imposed by the Judge are manifestly excessive so as to warrant appellate intervention.

Conclusion

31 For the reasons above, we dismiss the appellant's appeal in its entirety.

32 It leaves us to make one final observation. While the appellant committed the offence when he was of a relatively young age, all relevant mitigating factors have been taken into account. It is never too late and it is hoped that the appellant will avail himself of a time for reflection, reformation and rehabilitation.