Lim Beng Soon v Public Prosecutor
[2000] SGCA 52

Case Number : CA 1/2000

Decision Date : 18 September 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Peter Fernando (Leo Fernando) and Yeo Chee Teck (Ang Jeffrey & Partners) (assigned) for the appellant; Jaswant Singh (Deputy Public Prosecutor) for the respondent

Parties : Lim Beng Soon — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act – Drug trafficking – Possession for purpose of trafficking – Accused possessing drugs in bag but claiming not to know bags contained drugs – Whether he has mens rea that bags contain drugs – Whether possession must be proven before presumption of trafficking can be relied on – ss 5(1)(a) & 17 Misuse of Drugs Act (Cap 185, 1998 Rev Ed)

(delivering the grounds of judgment of the court): The appellant, Lim Beng Soon, and one Henry Tan Kok Hwa (`Tan`) were jointly tried before the High Court on charges under the Misuse of Drugs Act (Cap 185, 1998 Ed) (`the Act`) The appellant was charged with trafficking in 32 slabs of substance containing 49,168 g of opium containing not less than 990.05 g of morphine by having the same in his possession for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) and punishable under s 33 of the Act. Tan was charged with abetting the appellant in a conspiracy with the appellant and others, sometime in April 1999, to traffic in that quantity of opium by arranging for such quantity of opium to be delivered to the appellant in order that the appellant be put in possession thereof for the purpose of trafficking, an offence under s 5(1)(a) read with s 12 and punishable under s 33 of the Act. At the conclusion of the trial, Tan was acquitted of the charge, but the appellant was convicted and was sentenced to suffer death. Against his conviction, he appealed. We dismissed the appeal and now give our reasons.

The prosecution case

Early in the morning, on 11 April 1999, a team of officers from the Central Narcotics Bureau (`CNB`) were keeping a surveillance on the flat, [num]03-111 at Block 31, Dover Road. At about 6.30am, the appellant drove into the car park next to the block and parked his car there. He walked up the block and, a little while later, came down again. He returned to the car, arranged something in the trunk of his car and then drove off. He was trailed by the officers. At about 6.50am, he arrived at Jalan Kukoh and there he stopped his car to allow one Ang Boon Seng (`Ang`) to get into the front passenger seat. However, before the appellant could drive off, the officers moved in and placed both the appellant and Ang under arrest.

Upon the arrest, 32 slabs of substance were recovered from the car. The 32 slabs were placed in two black and purple travel bags (with eight slabs in each bag), two red plastic bags, one blue travel bag and one white jute bag. One of the black and purple travel bags (containing eight slabs) was in the rear seat of the car, while the rest of the bags were in the boot of the car. An analysis of the 32 slabs of substance was subsequently carried out by the Department of Scientific Services, and it was found that the 32 slabs contained 49,168 g of opium containing not less than 990.05 g of morphine.

Evidence of Ang

Ang was an opium addict, and initially he was jointly charged with the appellant for trafficking in the 32 slabs of opium. However, he had since been given a discharge not amounting to an acquittal, upon application of the prosecution. He was called as a witness for the prosecution and his evidence so far as concerned the appellant was as follows. He testified that on the night before the arrest, he spoke to Tan over the telephone and Tan agreed to sell him one `liap` of opium and told him that someone would deliver the opium on the following morning. On the following morning, his pager beeped, and he called that number and spoke to the person and discussed how to take delivery of the `thing` on that morning. He then went downstairs. When he reached the roadside of Jalan Kukoh he saw a blue car coming, and the car stopped at the roadside. He opened the front passenger door and asked the driver whether he was delivering the goods. The driver was the appellant who answered in the affirmative, but before he could say anything they were both arrested.

Evidence of the appellant

The appellant made several statements to the police and all of them were admitted in evidence as having been made voluntarily without any threat, inducement or promise from any of the recording personnel. In his first statement, the appellant said that he was asked by one Ah Seow (also referred to as Ah Shiao) to deliver the `things`, which were seized from his car, and he did not know what those things were, and for delivering them he was to be paid $500. His second statement made reference to a piece of paper, exh P-158, seized from him upon his arrest, which contained particulars as to delivery of the goods. He confirmed that the piece of paper was given to him by Ah Seow. His third statement related to identification of Tan. He disclaimed any knowledge of Tan or one Lim Chew Hing (`Lim`). Lim was arrested together with Tan and both of them were jointly charged for abetting the appellant in a conspiracy to traffic in opium, but later on application of the prosecution Lim was granted a discharge not amounting to acquittal. The appellant also said that neither Tan nor Lim was Ah Seow.

Next, in his cautioned statement recorded pursuant to s 122(6) of the Criminal Procedure Code, he said that someone asked him to make delivery of the things in his car and that he did not know that they were opium. He never smoked opium before, and that was the reason why he did not know that the things were opium.

He gave further three statements, which were recorded over three days. In these statements, he claimed to be an innocent courier engaged to effect delivery of the goods and that he did not know that the goods he was asked to deliver were opium. The material parts of his statements relating to the delivery made on the morning of his arrest were briefly these. On 11 April 1999, which was the day when he was arrested, Ah Seow called him at about 6am and asked him to get ready to deliver the goods. He got himself ready and went down to his car and waited. Ah Seow then telephoned him on his handphone and asked him to go to `the first person written on the piece of paper`, whose address was Block 30 Dover Road. He drove to Dover Road and when he was about to reach there, Ah Seow called him again and gave him the telephone number of the person and asked him to identify himself using the code `6`, as written on the piece of paper and to deliver to that person `the torn bag and a red plastic bag beside it`. Thereafter, he immediately called that number and a woman answered in Hokkien and he identified himself using `code 6`. He was asked to go to the third storey and place the goods at the staircase. When he reached Block 30 Dover Road, he parked the car, went to the boot and took out the torn bag and the red plastic bag beside it. He then walked up the staircase to the third story and placed the torn bag and the plastic bag on the staircase landing. He saw a woman coming out from the flat, but he just walked down the staircase without talking to the woman. That was the first delivery he made that morning.

After that delivery, Ah Seow called him on his handphone again. Ah Seow asked him to get a dark coloured bag from the right side of the boot and place it at the rear seat of his car and to drive to Block 8 Jalan Kukoh and gave him a pager number. Ah Seow also said that he was to call that number and to key in the code 8 or 888 to identify himself, and that an old man would come to meet him. When he was about to reach Jalan Kukoh, he telephoned the number and keyed in the code 888. Upon reaching Jalan Kukoh, he saw one old man standing at the pavement and he stopped the car for the old man to get in. The old man opened the door and asked if he was Ah Seow`s man and whether he was the one who paged him. He answered in the affirmative and the old man got into his car. Just at that moment, he and the old man were arrested.

The defence

The appellant gave evidence in his defence. The thrust of his defence was that he did not know that the several bags seized from his car contained opium. He was merely an innocent courier acting on the instructions of Ah Seow. His evidence so far as relevant was briefly as follows.

Before his arrest the appellant was in the general contracting business, and this included house redecoration as well as removal and delivery of goods. Sometime around Chinese New Year 1999, he was engaged to do some renovation work off Holland Road, Singapore. It was during that period that he met Ah Seow for the very first time. The appellant was having lunch at a hawker centre in the Holland Road area, when Ah Seow came along and occupied a seat at his table. A casual conversation ensued, wherein the appellant spoke about the nature of his work. When the appellant mentioned that he did delivery work, Ah Seow expressed an interest and asked him what his delivery charges were. Subsequently, Ah Seow took the appellant`s name card and went on his way, telling the appellant that he would contact the appellant should he require the appellant`s services.

Sometime at the end of March or beginning of April 1999, Ah Seow telephoned the appellant and expressed his intention to engage his services to deliver some goods. As the job involved delivery to five or six persons, the appellant told Ah Seow that the charge would be $500. Ah Seow then said that he would revert to the appellant, if he wanted the latter`s services.

His evidence as to how he came to deliver the goods for Ah Seow on 11 April 1999 was substantially consistent with his statements as recorded by the police. As his evidence was material in our consideration of the appeal it is necessary to recount it here, though they were in several respects a repetition of what he said in his statements. On the night before the arrest (ie 10 April 1999), at about 9pm, the appellant was at the Woodlands Shopping Centre, when Ah Seow telephoned him on his handphone. Ah Seow asked him whether he could deliver some goods for him (Ah Seow). When he enquired what the goods were, Ah Seow merely replied that they were `dry goods`. The appellant agreed to deliver the goods the next morning. A little while later, at about 9.30pm, the appellant drove to 12 milestone Woodlands Road to collect the goods from Ah Seow. There, the appellant met up with Ah Seow, and Ah Seow proceeded to load the goods into the trunk of the appellant`s car. The goods were kept in five or six travelling bags, and about four plastic bags. The appellant maintained that he honestly thought that the bags contained dry goods. Because of the smell which they emitted, the appellant guessed that they were probably herbs.

When the loading was completed, Ah Seow handed a delivery list, exh P-215 to the appellant. He briefed the appellant as to which bag or packet was to be delivered to which person, and said that he would give the appellant the addresses of the recipients later. According to the appellant, Ah Seow paid him the fee of $500 there and then. When the appellant asked for Ah Seow`s contact number,

the latter did not respond.

Shortly thereafter, the appellant left for Bukit Timah Shopping Centre. While he was there, Ah Seow telephoned him and gave him the addresses and telephone numbers of the persons in the delivery list. The appellant wrote down and subsequently transferred the information to a diary which he had with him. Ah Seow further briefed the appellant as to the sequence in which the deliveries were to be made, saying that the first delivery was to be at Dover Road. The appellant was also told to call the recipient before arriving at the destination. He was further instructed that should the recipient ask, the appellant was to say that the goods were from `Ah Lak`, which was the code for 6.

Having received his instructions, the appellant stored the goods in his lorry that was parked at Bukit Timah Shopping Centre. The appellant then drove to Johor Bahru and spent the night there. He returned to Bukit Timah Shopping Centre in the early hours of 11 April 1999 and loaded the goods into his car. A little while later, at about 6am, Ah Seow telephoned him and instructed him to proceed to Block 31 Dover Road to make the delivery.

Upon reaching Block 31 Dover Road, the appellant telephoned the first recipient. A female voice answered the phone and asked the appellant for his identification. The appellant replied that he was `Ah Lak`. The female then asked him to bring the things to the first staircase landing of level 3 of Block 31. The appellant took out the bags which had been ear-marked for the Dover Road delivery and placed them at the staircase landing as instructed. The appellant then left, without even meeting the recipient.

As the appellant made his way to his car, Ah Seow telephoned him again. He told him to take out one of the travel bags from the trunk and to place it on the rear passenger seat. Presumably, this bag would be for the next recipient. Ah Seow then told the appellant to proceed to Jalan Kukoh. The appellant was also instructed to page the recipient at the latter`s pager and key in the code `88` or `888`. This would be a signal for the recipient to come down and wait for him along Jalan Kukoh. The appellant followed these instructions. When he reached Jalan Kukoh, he saw Ang standing by the road waiting for him. The appellant pulled up his car and allowed Ang to get into the front passenger seat. Ang asked the appellant if he was Ah Seow`s man, and the appellant replied in the affirmative. The appellant then asked Ang where he wanted the goods to be delivered. Before Ang could reply, the CNB officers arrested both of them.

The decision below

The trial judge held that, as the appellant was found to be in possession of the 32 slabs of opium, there arose a presumption under s 18(2) of the Act that he knew of the nature of what he was carrying. Upon reviewing the defence advanced by the appellant, the trial judge found that the presumption had not been rebutted. On the basis of these findings, he found that the appellant was guilty of the charge and convicted him accordingly.

The appeal

It is important to appreciate what the charge was that was brought against the appellant. The appellant was charged with having possession of 32 slabs of substance containing 49,168 g of opium containing 990.05 g of morphine ***for the purpose of trafficking*** . To make good this charge, the prosecution had to prove, first, that the 32 slabs of substance contained the amount of opium and, second, that the appellant had possession of that quantity of opium. As the prosecution was invoking

the presumption as to the purpose of the possession of the opium under s 17 of the Act, it ***had to prove*** that the appellant had possession of the opium. In proving possession, it had to prove (i) that the appellant had physical control of the 32 slabs of substance, and (ii) that he knew that the 32 slabs of substance were opium. What is more, in discharging the burden of proving possession, the prosecution could not invoke any of the presumptions as to possession under the Act: **Low Kok Wai v PP** [1994] 1 SLR 676 , **PP v Wan Yue Kong & Ors** [1995] 1 SLR 417 and **Lim Lye Huat Benny v PP** [1996] 1 SLR 253 .

The learned judge, with respect, did not appear to have appreciated the essence of the charge that was brought against the appellant. He treated the charge as one under s 5(1)(a) simpliciter, namely, that the appellant trafficked in those drugs by way of one or more of the acts of trafficking as defined in s 2 of the Act. This is apparent from his consideration of the issue before him. After recounting the evidence of the prosecution and the defence, and the arguments of counsel, the learned judge said at [para] 76:

> *The fact that the first accused was found to be in possession of 32 slabs of the prohibited drugs as stated in the charge was not disputed by the defence; nor was there any contest as regards the DSS analysis thereto. What was in issue was whether the first accused had on balance of probabilities, rebutted the presumption which arose by virtue of s 18(2) of the MDA.*

Later, he said at [para] 80:

> *Reverting to the case at hand as mentioned earlier by me, neither the fact of possession of the drugs nor the analysis thereof was put in issue by the defence. The only issue for decision was whether the presumption under s 18(2) had been rebutted on a balance of probabilities by the first accused.*

With respect, this approach is not correct. As we have said, the charge against the appellant was that he had possession of the drugs in question for the ***purpose of trafficking*** , and by virtue of s 5(2) of the Act, he had committed the offence of trafficking in those drugs. In seeking to make good the charge the prosecution invoked the presumption as to the purpose of the possession of the drugs under s 17 of the Act, ie that the appellant had possession of the drugs for the purpose of trafficking. However, before that presumption arose, the prosecution had to prove beyond reasonable doubt that the appellant had possession of the drugs: ***Low Kok Wai v PP*** , ***PP v Wan Yue Kong & Ors*** , and ***Lim Lye Huat Benny v PP*** (supra). To prove that the appellant had possession of the drugs, the prosecution had to prove beyond reasonable doubt that (i) the 32 slabs of substance contained the drugs; (ii) the appellant had physical control of the 32 slabs; and (iii) the appellant`s mens rea, ie that he knew that the 32 slabs contained the drugs: **Fun Seong Cheng v PP** [1997] 3 SLR 523 , **Su Chee Kiong v PP** [1999] 1 SLR 782 and **Gulam bin Notan Mohd Shariff Jamalddin & Anor v PP** [1999] 2 SLR 181 .

The learned judge relied on **Yeo Choon Huat v PP** [1998] 1 SLR 217 . With respect, that case could not be of any assistance on the point of `proved` possession. There, the accused was trailed by a group of CNB officers as he drove his car from the car park at Block 505, Bishan Street 11 to the car park at Blocks 405 and 408, Sin Min Avenue. On arrival there, he was arrested, and a quantity of drugs was found in the boot of the car. He was charged for trafficking in that quantity of drugs by ***transporting*** them. In proving the charge, and in particular, his possession of the drugs, the prosecution relied on the presumptions under ss 21 and 18(2) of the Act. The presumption under s 17

of the Act was irrelevant in that case. In this case, however, the prosecution had to invoke the presumption as to the purpose of the possession of opium under s 17 of the Act, and in so doing the prosecution had to prove that the appellant had possession of the opium and could not rely on the presumption as to possession under s 18 or s 21 of the Act.

In this case, the appellant at the time of his arrest was found to have in his control the 32 slabs of substance, and that was proved by the prosecution and was not disputed in the defence. It was also proved, and also not disputed that the 32 slabs of substance contained 49,168 g of opium containing not less than 990.05 g of morphine. What was clearly disputed, which the prosecution ***had to prove*** , was the element of mens rea, ie that the appellant knew that the 32 slabs of substance contained opium. Only when that element was proved, would the presumption under s 17 of the Act arise, and the burden would then be on the appellant to prove, on a balance of probabilities, that the quantity of opium in his possession was for purposes other than trafficking.

We now turn to the issue whether the prosecution had proved that the appellant knew or was aware of the existence of the drugs contained in the travelling bags and plastic bags found in his car. We think that the starting point in the consideration of this issue is that at the material time the appellant had physical control of the bags found in his car, and was in the process of delivering them in a clandestine manner. These primary facts, in the absence of any plausible explanation by the appellant, gave rise to a strong inference of his knowledge that what were contained in the bags were drugs or goods of a similar nature. In the well known case of **Warner v Metropolitan Police Commissioner** [1969] 2 AC 256, 312, Lord Wilberforce said:

> *In all such cases, the starting point will be that the accused had physical control of something - a package, a bottle, a container - found to contain the substance. This is evidence - generally strong evidence - of possession. It calls for an explanation: the explanation will be heard and the jury must decide whether there is genuine ignorance of the presence of the substance, or such an acceptance of the package with all that it might contain, or with such opportunity to ascertain what it did contain or such guilty knowledge with regard to it as to make up the statutory possession. Of course it would not be right, or consistent with the terms of the Act, to say that the onus of showing innocent custody rests upon the accused. The prosecution must prove the offence, and establish its ingredients. But one starts from the point that the Act itself has exempted the great majority of cases of innocent possession, so that once the prosecution has proved the fact of physical control in circumstances not covered by an exemption and something of the circumstances in which this was acquired or held, this, in the absence of explanation, may be sufficient to enable a finding of possession to be made.*

This part of the speech of Lord Wilberforce was quoted with approval by this court in **Tan Ah Tee & Anor v PP** SLR 211 . In that case, T and L were seen walking together to a parked car, and T was carrying a plastic bag. On reaching the car, T handed the plastic bag to L, and they then travelled by car to their destination. On arrival, L was seen carrying the bag and at that point in time both of them were arrested, and drugs were found in the plastic bag. They were jointly charged with trafficking in the quantity of drugs. In proving the charge, the prosecution relied on the presumption as to possession under the then s 16 (now s 18) of the Act. Wee Chong Jin CJ, in delivering the judgment of the court, having dealt with the presumptions, went further and said at p 217:

> *[E]ven if there were no statutory presumptions available to the prosecution, once the prosecution had proved the fact of physical control or possession of the plastic bag and the circumstances in which this was acquired by and*

remained with the second appellant, the trial judges would be justified in finding that she had possession of the contents of the plastic bag within the meaning of the Act unless she gave an explanation of the physical fact which the trial judges accepted or which raised a doubt in their minds that she had possession of the contents within the meaning of the Act.

On this point, we would also refer to the oft-quoted passage of the speech of Lord Pearce in ***Warner*** (supra) at pp 305-306:

If a man is in possession of the contents of a package, prima facie his possession of the package leads to the strong inference that he is in possession of its contents. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been `planted` in his pocket without his knowledge, so I do not think he is in possession of contents which are quite different in kind from what he believed. Thus the prima facie assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suitcase at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal.

This passage of the speech of Lord Pearce was also approved by this court in ***Tan Ah Tee & Anor v PP*** (supra). Wee Chong Jin CJ delivering the judgment of the court said at p 220:

In our opinion the word `possession` in the Act should be construed as that word has been construed by Lord Pearce and we would respectfully adopt his reasons as contained in his speech.

Both ***Tan Ah Tee*** and the above quoted part of the speech of Lord Pearce in ***Warner*** have since been followed by a long line of cases, including cases decided by this court.

The appellant in his evidence sought to show that he was an innocent courier engaged by one Ah Seow to deliver `the goods` for a sum of $500. Purely on the basis of his evidence, the entire course of dealings between him and Ah Seow was gravely suspect. For a start, the appellant had only met Ah Seow once before he was engaged by the latter to deliver the goods in question. He was engaged by Ah Seow on the evening of 10 April 1999 (the day before his arrest), and at that time Ah Seow was for all intents and purposes a stranger to him. Having been so engaged by Ah Seow, he met up with Ah Seow, and trustingly allowed Ah Seow to load the bags of substance into the trunk of his car, apparently without even asking about their contents or checking them. While the bags were being loaded into the car he found that some smell was emitting from the bags; yet he did not check or ask what the goods were. He said that he thought they were herbs. After the bags were loaded, Ah Seow gave no clear and specific instructions as to the addresses of the persons to whom the bags were to be delivered. Instead he was given a slip with cryptic numbers or messages for delivery. Further, Ah

Seow for some inexplicable reasons only gave instructions later as to the addresses of the persons to whom the deliveries were to be made. In these circumstances, it would have been obvious to even the most naÃ¯ve of persons that there was something highly illicit in the goods he was asked to deliver.

Now, in effecting the first delivery, instead of giving his name, the appellant was instructed to identify himself with the code number of `6`, in the event that the recipients of the goods should ask him who he was. What was even more questionable was that in making delivery the appellant did not deliver the goods to the recipient but left them at the staircase, and he never met the woman who came out to collect them. With respect to the second delivery, which was to be made to Ang, he was given a certain number and with that number he was instructed to page Ang and key in his code number of `88` or `888`. That the appellant would so trustingly undertake such a clandestine task on behalf of someone, who was practically a total stranger to him, was highly unbelievable.

Another piece of evidence that belied the appellant`s claim that he was an innocent courier was the piece of paper, exh P-215, that was seized from him at the time of his arrest. That was supposed to contain a list of addresses or instructions for delivery and was given to him by Ah Seow. This list was most cryptic. It contained a series of names with certain numbers written beside them. What is most telling is that according to the appellant he was not told about the purpose of the list, nor did he understand what the numbers there represented. Yet this was given by Ah Seow as representing the delivery instructions. The obvious inference was that the appellant understood the meaning of the hidden messages in the list and his purported inability to understand the list was an obvious pretence.

Having regard to these facts, the inference was irresistible that the appellant knew that the 32 slabs of substance contained drugs or goods of a similar nature. We were reinforced in our conclusion by the evidence of Ang, who was an opium addict. The substance of his evidence, so far as concerned the appellant, was that on the morning of 11 April 1999, he was in communication with the appellant through the pager and the telephone, and following that he left his flat and went to meet the appellant at Jalan Kukoh. On seeing the appellant`s car, he went up and opened the front door and asked whether the appellant was delivering the `goods` to him. At that point, they were both arrested.

In ***Warner*** (supra), Lord Pearce said (at p 306) that the `strong inference` of possession of drugs could be rebutted, if the person in possession was merely a bailee of the package, who had no right to open the package and had no reason to suspect that the package`s contents were illicit or were drugs. Counsel for the appellant, presumably relying on this observation, submitted that the appellant was a bailee and had no right to open the bags and had no reason to suspect that the contents of the bags were illicit. We were unable to agree. It may be that the appellant was a bailee, as his counsel contended, but he was certainly not one who had no right to open the bags that were being loaded into his car, and certainly the circumstances under which he was engaged to deliver the bags for Ah Seow (assuming Ah Seow existed) were not such as to give him no reason to suspect that the contents were not illicit or were not drugs. The circumstances were highly suspect and, in our opinion, led inexorably to the conclusion that he was engaged to deliver drugs or goods of a similar nature.

In our judgment, on the facts before the court, the prosecution had proved that the appellant knew that the bags contained drugs, and in consequence there arose the presumption under s 17 that he had the drugs in his possession for the purpose of trafficking. The appellant had not adduced any evidence to rebut the presumption; nor had he, in his evidence, given any explanation that the drugs in his possession were for purposes other than trafficking.

Even if it could be successfully argued that the prosecution had failed to prove that the appellant had knowledge that the 32 slabs of substance contained opium, the appeal would still fail. The appellant was seen by the CNB officers driving his car from Dover Road to Jalan Kukoh, and at Jalan Kukoh when he was about to pick up Ang, he and Ang were arrested. At the time of his arrest, the officers found in his car 32 slabs of substance which, subsequently on analysis, were found to contain 49,168 g of opium containing 990.05 g of morphine. On these facts, the appellant was not only in physical possession of the drugs. He was doing more than that. He was transporting the drugs from a point unknown to Dover Road and from Dover Road to Jalan Kukoh and was in the process of delivering the drugs to various persons, including Ang. This was not a case of passive possession of the drugs on the part of the appellant, but one where the appellant was found to be transporting or delivering the drugs. On these facts, there was no necessity for the prosecution to invoke s 5(2) of the Act and rely on the presumption under s 17 that the appellant at the material time had possession of the drugs for the ***purpose of trafficking*** . On these facts, the prosecution could have preferred a charge under s 5(1)(a) of the Act that the appellant trafficked in the quantity of opium by transporting or delivering it. If the prosecution had done so, it could invoke the presumption under s 18 of the Act that the drugs were in the possession of the appellant as the owner of the car or as the person in charge of the car at the material time. In such a case, the possession of the drugs would be presumed and not proved. This presumption would operate against the appellant, and the burden would then rest on the appellant to rebut this presumption, on a balance of probabilities. In that the appellant had failed. The learned judge rejected his evidence that he did not know the contents of the 32 slabs of substance. We agreed with the learned judge.

This case bore striking resemblance to ***Lim Lye Huat Benny v PP*** (supra) where this court made similar observations (at pp 260-261) and amended the charge accordingly (at p 263). In this case, however, such amendment was not necessary, and had it been necessary, it would have been made.

Conclusion

In the light of the above, we found that the prosecution had proved the charge beyond reasonable doubt and that the appellant was rightly convicted. We therefore dismissed the appeal.

Outcome:

Appeal dismissed.

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