Yen May Woen v Public Prosecutor
[2003] SGCA 29

Case Number : Cr App 6/2003

Decision Date : 08 July 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Kan Ting Chiu J; Yong Pung How CJ

Counsel Name(s) : Eddy Tham for Public Prosecutor; Christina Goh, Morris Tan (Christina Goh & Co) for the Appellant

Parties : Yen May Woen — Public Prosecutor

Evidence – Weight of evidence – Effect of appellant's physical condition on statements made by her – Whether discrepancies between appellant's evidence at trial and her earlier statements ought to have been viewed on the basis that statements were made while experiencing withdrawal symptoms.

Evidence – Break in chain of evidence – Whether doubt raised as to identity of drug exhibits.

Delivered by Kan Ting Chiu J

1. The appellant Yen May Woen was charged with trafficking in not less than 30.16 grams of diamorphine. She was convicted and was sentenced to suffer death.

2. On 8 May 2002, a team of officers of the Central Narcotics Bureau ("CNB") was instructed to look for her near a taxi stand near Block 179 Toa Payoh Central. They saw her arriving in a taxi which stopped a short distance from the taxi stand. She alighted and brought a black sling bag to the boot of the taxi and closed the boot. She then went to meet a male Chinese near the taxi stand while the taxi remained where it had stopped. The officers moved in and arrested the appellant, the male Chinese and the driver of the taxi.

3 The boot of the taxi was opened in the presence of the appellant. One of the officers, Senior Staff Sergeant Tan Yian Chye saw the sling bag and questioned her. The English transcript of the exchange reads

Q: This bag, does it belong to you?

A: (Accused nods her head)

Q: What is inside the bag?

A: Inside the bag contained more than 30 packets of heroin.

4 The bag was not taken out of the boot at that time. It remained there until Station Inspector Ronnie See Su Khoon arrived. SI See retrieved the sling bag from the boot and handed it to another officer, Woman Corporal Tay Sie Siz. SI See then directed the taxi driver to drive the taxi to a car park at Block 178. W/Cpl Tay and the appellant went to the car park in a CNB car, while SI See went in the taxi.

5 At the car park SI See recorded a statement from the appellant. The statement reads in English

Q: This black colour bag belongs to whom?

A: It's mine.

Q: What is inside?

A: Heroin.

Q: How much heroin?

A: I don't know.

6 SI See then opened the bag. There were two brown paper bags each containing 30 sachets inside one compartment. In another compartment, there was a pouch with another 30 sachets and a brown paper bag with a further 30 sachets. These 120 sachets were analysed subsequently and were found to contain the diamorphine for which the appellant was prosecuted and convicted.

7 SI See then questioned the appellant further

Q: The heroin here belongs to who?

A: It's mine.

Q: What are this heroin meant for?

A: Consume.

Q: Whom you obtained the heroin from?

[Accused shook her head.]

Q: Do you have anything else to say?

[Accused shook her head.]

8 Subsequently the appellant was taken in a CNB car together with SI See and W/Cpl Tay to the CNB Headquarters at the Police Cantonment Complex. There SI See briefed the investigation officer Woman Inspector Neo Ling Sim on the facts of the case, and handed over the drug exhibits to her.

9 In the early hours of the next morning W/Insp Neo recorded a cautioned statement from the appellant under s 122(6) of the Criminal Procedure Code on a charge of trafficking in the 120 sachets of diamorphine. The appellant's statement was "I did not know there was so much heroin. That is all."

10 Subsequently a series of five investigation statements was recorded from her between 10 May and 20 August 2002. In these statements she said that

(i) on the day of arrest a friend "Tua Kang" telephoned her and arranged to return to her some cash and cheque arising from a football bet,

(ii) she called her drug supplier "Jack" and ordered a week's supply of 20-30 sachets of heroin from him, and collected and paid for the drugs at Thomson Plaza, and

(iii) she went from Thomson Plaza to Toa Payoh Central where Tua Kang handed her some cash, and they were both arrested by CNB officers.

11 She also said in her investigation statements that when a CNB officer recovered the sling bag from the boot of the taxi he asked her if the bag belonged to her, she told him that it did and that she had ordered 20-30 sachets of heroin from her supplier. She had ordered 20 sachets of heroin and one sachet of "Ice" from Jack. She had not checked the bag when Jack handed it to her because she was "high". She added that the sling bag was hers and that Jack had borrowed it from her a few weeks previously.

12 When she gave her defence at the trial, she claimed that she had no knowledge of the presence of the diamorphine in the sling bag. On the day of arrest one "Ah Chwee" asked to borrow $4000 from her. She agreed to lend him the money, but asked for the return of her sling bag which she had lent him earlier. They agreed to meet at Thomson Plaza. When she went there she saw him in a car with another male person, and she handed Ah Chwee the money. She saw her sling bag in the back of the car and took it. She brought it with her to the taxi from where it was eventually recovered.

13 She told the officer who recovered it that a friend had returned it to her, and that there was nothing inside it. Subsequently at the car park she told another officer that the bag belonged to her and that there was nothing inside it. When the officer opened the bag and showed her a packet and asked if it belonged to her, she told him it did not.

14 The appellant sought to explain the discrepancies between her testimony in court and her investigation statements. She said she was very frightened and was at a loss when she realised that there was so much heroin in the bag. She felt that she would not be believed if she said the heroin did not belong to her, and thought that if she admitted that 20-30 sachets belonged to her, she would evade the death penalty.

15 The appellant also said that when she made those statements "I did not take heroin for a few days, I felt very lousy." She did not go further and was not asked to elaborate on this. Counsel relied on the evidence of Dr Ranjeet Narulla, a medical officer attached to Changi Women's Prison Hospital instead. The doctor had examined the appellant for drug withdrawal symptoms on 9 and 10 May, and had put up a report that

> [She] was admitted twice to Changi Women's Prison on 9/5/02 and 10/5/02 for withdrawal symptoms. On 9/5/02 she was noted to have mild withdrawal symptoms. She was discharged on 10/5/02.
>
> Re-admitted on 10/5/02 admission – she was noted to have withdrawal symptoms.

16 She was discharged for the second time on 15 May. The doctor explained in court that the appellant was observed to be yawning, sleepy and lethargic. She was not prescribed any medication because her symptoms were quite mild, and she was improving with time, such that by 15 May she was much clearer than she was before and could answer questions.

17 At the conclusion of the trial Woo Bih Li J found that the appellant had not rebutted the presumption under s 17 of the Misuse of Drugs Act that she was in possession of the diamorphine for the purpose of trafficking, and convicted her.

18 Counsel argued before us that the judge should have viewed the discrepancies between

the appellant's evidence and her earlier statements on the basis that the statements were made when she was experiencing withdrawal symptoms.

19 When a person claims that she had made a statement when she was unwell, that assertion may affect the statement in two ways. Firstly, it may render the statement inadmissible in evidence, and secondly, if the statement is found to be admissible, it may affect the weight to be attached to it.

20 A person who gives a statement while he is unwell may be said to have made it under oppression. Oppression may not strictly speaking come under the rubric "inducement, threat or promise" in s 24A of the Evidence Act and s 122(5) of the Criminal Procedure Code as it may not involve external factors as inducements, threats and promises do. Those two provisions state that confessions and statements are inadmissible if they are obtained through inducement, threat or promise.

21 Nevertheless it is recognised that oppression can render a statement involuntary and inadmissible. In *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25 para 48 this court noted that

> Oppression is a circumstance which may render a confession involuntary and thus inadmissible … In *R v Priestley* (1967) 51 Cr App R 1, Sachs LJ, as he then was, said:
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> > [T]his word [oppression] … imports something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary. … Whether or not there is oppression in an individual case depends upon many elements. … They include such things as the length of time of any individual period of questioning, the length of time intervening between periods of questioning, whether the accused person has been given proper refreshment or not, and the characteristics of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of this world may turn out not to be oppressive when one finds that the accused person is of a tough character and an experienced man of the world.
>
> In other words, a statement would not be extracted by oppression unless the accused was in such a state that his will was 'sapped' and he could not resist making a statement which he would otherwise not have made: *PP v Tan Boon Tat* [1990] SLR 375.

22 In *Gulam bin Notan Mohd Shariff Jamalddin v PP* [1999] 2 SLR 181 para 53, this court confirmed that "the common law concept of involuntariness by oppression in *R v Prager* (1972) 56 Cr App R 51 has been subsumed under s 24 of the Evidence Act." In *Prager* the quoted passage from *Priestley* was cited and adopted.

23 From these cases it can be seen that a statement made when oppression has sapped the free will to make a voluntary statement is not admissible.

24 In *PP v Tan Boon Tat* [1990] SLR 375, it was held that when the accused made a statement, he was not in such a state of shock, exhaustion or fatigue that he had no will to resist making a statement he did not wish to make. It was implicit in that decision that shock, exhaustion or fatigue could in a proper case, vitiate voluntariness.

25 The critical determinant whether a person's physical condition renders his statement involuntary is whether it has sapped his will so that he made a statement that he would not have done.

26 Even if the condition falls short of sapping the will, it can have a bearing on the weight to be attached to the statement. A person who is unwell, tired, suffering drug withdrawal symptoms may make mistakes or forget matters when making a statement.

27 When the maker of a statement seeks to rely on her condition to explain errors, omissions or discrepancies in the statement, the severity of her condition and the nature and magnitude of the errors, omissions or discrepancies must be considered to determine whether the former caused the later.

28 Counsel did not contend that the investigation statements were involuntary or inadmissible. However she argued that the trial judge erred in rejecting the appellant's evidence that her admissions in those statements that she knew the sling bag contained heroin was untrue, and that she really did not know the drugs were there.

29 The appellant had said that she made the admission because she was tired when she made the statements, and she was shocked when she learnt of the quantity of heroin recovered and was afraid that she would not be believed if she said she did not know about any drugs at all.

30 The appellant did not explain what she meant when she said she felt "very lousy". It suggested that she felt discomfort, but gave no indication of the nature or intensity of the discomfort or the effect it had on her when she made the statements. The trial judge cannot be faulted for not giving weight to that vague averment.

31 On her evidence that she admitted knowledge because she was afraid on realising the quantity of heroin recovered that it not be believed that she had no knowledge, there was evidence that she had admitted that there was heroin in the sling bag to SSSgt Tan and SI See even before the bag was opened. That undermined the credibility of the assertion, and the judge was right to reject her explanation.

32 It was also argued that there was a break in the chain of evidence relating to the 120 sachets. Counsel contended that there is a break in the chain of evidence, and "the prosecution had not called witnesses to provide the necessary link in the chain of evidence". Several instances of breaks in the evidence were alleged.

33 It was alleged that there was no evidence that W/Cpl Tay had the sling bag with her when she went into the CNB car with the appellant from the place of arrest to the car park. W/Cpl Tay's evidence was that SI See handed over the sling bag to her and instructed her to escort the appellant to the CNB car, and that she and the appellant travelled in that car to the car park. SI See's evidence was that he arrived at the car park in the taxi and recorded a statement from the appellant. In the course of recording the statement he questioned her about the sling bag seized from the boot of the taxi. He also opened the bag and found the 120 sachets therein.

34 There was nothing in her evidence that indicated that W/Cpl Tay parted with the sling bag between receiving it from SI See and arriving at the car park. The question was not raised with her.

35 It was also argued that there was no evidence on the custody of the sling bag during the journey from the car park to the CNB headquarters.

36 SI See's evidence was that after examining the contents of the sling bag and completing the recording of the statement, W/Cpl Tay and the appellant proceeded to the CNB headquarters in the CNB car.

37 There was no direct evidence whether it was in the custody of SI See or W/Cpl Tay or the both of them at that time and conversely no suggestion that the sling bag was not in the custody or possession of either or both of them.

38 Counsel also submitted that there was no evidence that the sling bag was handed over to W/Insp Neo at the CNB headquarters.

39 SI See's evidence was that when he briefed W/Insp Neo at the CNB headquarters at 10.05 pm on the night of the arrest he handed what he described as "the drug exhibits" over to her. SI See did not list the items handed over, but it was clear in the context of his evidence that it included all items connected with the drugs recovered. It was also SI See's evidence that W/Insp Neo instructed that photographs be taken of those exhibits, and the photographs taken showed the sling bag.

40 The last complaint was that there was no evidence that the 120 sachets from the sling bag were handed over to W/Insp Neo. This arose from the basis that SI See did not itemise the "drug exhibits" he handed over to W/Insp Neo. The same observations made on the sling bag apply to the sachets. There was no reason to suppose that SI See did not include the 120 sachets in the description of "drug exhibits" and the photographs taken at the instruction of W/Insp Neo showed the 120 sachets.

41 There was no sufficient basis for counsel to contend that there was a break in the chain of evidence. Counsel did not raise that question with the officers when they gave evidence. Although the evidence could have been more detailed and specific, there were no gaps or breaks on a proper reading of the evidence taken as a whole.

42 We found no merits in all the arguments made before us, and dismissed the appeal.

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