IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 291

Criminal Motion No 40 of 2016

Between

Roslan Bin Bakar

… *Applicant*

And

Public Prosecutor

… *Respondent*

A N D

Criminal Motion No 45 of 2016

Between

Pausi Bin Jefridin

… *Applicant*

And

Public Prosecutor

… *Respondent*

Version No 1: 27 Oct 2020 (22:40 hrs)

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Discretion of court not to impose sentence of death when offender was suffering from an abnormality of mind]

[Criminal Procedure and Sentencing] — [Sentencing] — [Mentally disordered offenders]

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Roslan bin Bakar
v
Public Prosecutor and another matter

[2017] SGHC 291

High Court — Criminal Motion Nos 40 and 45 of 2016
Choo Han Teck J
12, 14–15, 20 September 2017

13 November 2017 Judgment reserved.

Choo Han Teck J:

1 Both applicants applied to this court to consider whether the death sentence meted out to them on 22 April 2010 ought to be substituted with a sentence of life imprisonment, under s 27(6) of the Misuse of Drugs (Amendment) Act 2012 (Act 30 of 2012).

2 The grounds for the applications of both applicants were similarly based on s 33B(3)(*b*) read with s 33B(3) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). Both applicants claimed to be suffering from an abnormality of mind, as defined in this provision, which substantially impaired his mental responsibility for his acts and omissions. In order to escape the death sentence under s 33B, both applicants also had to prove that they were couriers only. The prosecution did not dispute that Pausi was a courier but denied that Roslan was one.

3 Counsel for the applicant in Criminal Motion No. 45 of 2016 ("Pausi"), Mr Chung Ting Fai, submitted that his client had an arrested or retarded development of mind as a result of his exceptionally low and restricted education. He further submitted that Pausi does not possess the average reasoning abilities to think through his actions and consequences thoroughly. Pausi's expert, Mr Danny Ng, assessed Pausi's IQ to be at 67, which would be a mild intellectual disability. According to Mr Chung, the low intelligence of Pausi made him "incapable of resisting any internal rationality that might have dissuaded him from committing the offence".

4 Counsel for the applicant in Criminal Motion No. 40 of 2016 ("Roslan"), Mr Kertar Singh, submitted that his client was a courier and denied that he gave instructions to another to retrieve and deliver the drugs. Mr Singh argued that his client suffered from an abnormality of mind as he had reduced intellectual functioning. He also relied on the experts' opinion that his client had "limited capacity for judgment, decision-making, consequential thinking, impulse control and executive function" due to the underlying cognitive defects. The learned DPP, Ms Christina Koh challenged these findings on various grounds, such as the language used by the defence experts in conducting the psychiatric assessments as well as the limitations of the prison setting under which they were conducted. She argued that Roslan was within the borderline range of intellectual functioning, relying on the testimony of IMH psychiatrists, which she submitted was more accurate.

5 Counsel for prosecution and the applicants could not agree as to how the IQ levels of the two applicants ought to be interpreted. Ms Koh maintained that

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the IQ score alone, is not conclusive because it only assesses cognitive abilities but not one's adaptive functioning abilities.

6 I am of the view that the IQ level of both applicants in this case does not assist them. In some cases, the IQ level may offer corroborative support, but here, the conduct of both applicants were amply shown through the evidence at trial including their own testimonies, that they were functioning in ways no different from people with higher IQ level in relation to the drug offences. Significantly, Roslan was the central figure in the drug transaction. He directed the actions of the others involved and orchestrated its moving parts. Pausi was able to deliver the drugs from outside Singapore and participated in the operation with little difficulty. That conduct and behaviour, cannot be regarded as that of affecting their culpability. A low IQ level alone is not evidence of an abnormality of mind.

7 I find on the evidence at trial that Pausi was probably acting only as a courier but I am satisfied that Roslan was not. This finding is for completeness in dealing with their applications before me. It does not affect the verdict because neither applicant succeeded in proving the second criterion of s 33B(3) of the MDA.

8 For the purposes of s 33B(3), the court cannot ignore the functionality of the mind of an accused person in question. In this case, I find that despite a low score, both applicants had displayed competence and comprehension of what they were doing when they carried out their act of trafficking in the drugs.

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9 Their applications for re-sentencing are therefore dismissed.

- Sgd -
Choo Han Teck
Judge

Christina Koh, Chan Yi Cheng and Samuel Yap (Attorney-General's Chambers) for prosecution
Kertar Singh s/o Guljar Singh (Kertar and Sadhu LLC) for applicant in Criminal Motion No 40 of 2016
Chung Ting Fai (Chung Ting Fai & Co) for applicant in Criminal Motion No 45 of 2016

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