IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 45

Criminal Appeal No 26 of 2017

Between

Hamzah bin Ibrahim

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 29 of 2017

Between

Tika Pesik

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

Version No 2: 27 Oct 2020 (22:40 hrs)

[Criminal procedure and sentencing] — [Appeal] — [Application for adjournment]

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Hamzah bin Ibrahim
v
Public Prosecutor and another appeal

[2018] SGCA 45

Court of Appeal — Criminal Appeals Nos 26 and 29 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Tay Yong Kwang JA
2 August 2018

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Introduction

1 Hamzah bin Ibrahim and Tika Pesik, the appellants in Criminal Appeals Nos 26 and 29 of 2017 respectively, were convicted by the High Court of trafficking in 26.29g of diamorphine under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) after a joint trial. Both appellants were sentenced to death (see *Public Prosecutor v Muhammad Farid bin Sudi and others* [2017] SGHC 228). Tika Pesik (hereafter "the second appellant") appeals against both her conviction and sentence, while Hamzah bin Ibrahim appeals against his sentence only. Both appeals were fixed for hearing on the morning of 2 August 2018.

2 Mr Amarick Gill ("Mr Gill"), who represents the second appellant, wrote to the court on 31 July 2018 requesting an adjournment for a period of

between six and eight weeks so that he might engage the services of a Malay language interpreter to interpret the parties' submissions and court documents to his client. Given that the appeal was only two days away, we directed that he should make any application for an adjournment at the hearing of the appeal itself.

3 At the hearing this morning, Mr Gill made an oral application to adjourn Criminal Appeal No 29 of 2017. He explained that last Thursday, 26 July 2018, he received a call at his office from the prison authorities, informing him that his client did not understand the submissions which had been prepared on her behalf for the appeal. Mr Gill's assisting counsel, Mr Sankar Saminathan ("Mr Sankar"), visited the second appellant in prison and she reiterated that she did not understand the submissions. Unfortunately, Mr Sankar does not speak Malay and was unable to interpret them to her. On 30 July 2018, Mr Gill and Mr Sankar visited the second appellant together. When asked if she understood the Record of Proceedings, she hesitantly replied in the affirmative. She also said she "roughly understood" her submissions as well as those filed by the respondent. Mr Gill and Mr Sankar felt that this did not suffice. They therefore told the second appellant that they would discharge themselves as it would benefit her to be represented by counsel who were more fluent in Malay. Mr Gill and Mr Sankar eventually decided against discharging themselves, but instead sought an adjournment to gain some time to engage a Malay interpreter to interpret the parties' submissions and the Record of Proceedings to the second appellant. Mr Gill also mentioned in his oral submissions to us that his assisting counsel had identified a particular issue, the nature of which was not disclosed to us, from perusing the Record of Proceedings about two weeks ago and this had completely escaped the second appellant. Though further inquiries into that issue had not led anywhere, Mr Gill was concerned that given that this had escaped the second appellant, it

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might signify that she had limited comprehension of the Record of Proceedings and if this were true, it might inhibit her ability to identify other issues arising therefrom, thereby prejudicing the conduct of her appeal.

Our decision

4 We wish to state at the outset that we take a dim view of late applications such as the one before us. This is because they impede the proper administration of justice.

5 In this case, the Record of Proceedings was made available to the parties on 22 November 2017, and Mr Gill collected the Record of Proceedings in time to file the Petition of Appeal on 5 December 2017. Mr Gill did not have conduct of the trial of the matter. In such circumstances, we would have expected him to have promptly taken steps to review the Record of Proceedings expeditiously, and then to take the second appellant's instructions on the Record of Proceedings; on what transpired at the trial; and on the possible grounds of appeal.

6 From the submissions that were made to us this morning, and as we have recounted them above, it appears, however, that Mr Gill first had reason to be concerned as to whether his client properly understood the Record of Proceedings and the parties' submissions only within the last few days. We were told that Mr Gill became so concerned by this that he initially decided to discharge himself in favour of counsel who could speak Malay but then thought the better of it, in part because the second appellant was emphatic in her desire that Mr Gill should continue to represent her. We wish to state for the record that we would have been extremely concerned if Mr Gill had sought to discharge himself on the alleged basis that he had concerns over whether he had the language ability to take instructions. This is so because it comes

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almost eight months after Mr Gill had filed the Petition of Appeal, and despite his evidently having harboured no concerns over his client's understanding of the proceedings in the intervening seven and a half months. Fortunately, as we have observed, Mr Gill thought the better of it and it is not necessary for us to make a finding on the *bona fides* of any such position.

7 For the same reason, we reject the submission that Mr Gill had a reasonable basis for seeking an adjournment in order to have the Record of Proceedings translated. If there was a reasonable basis for counsel to want to have the Record of Proceedings translated in this case, despite the fact that the second appellant was present in court throughout the trial proceedings and had the benefit of a translator, and (as Mr Gill accepted) there was no reason to think anything had gone amiss in the conduct of those proceedings, then the proper time to do that was eight months ago and not on the eve of the appeal. Nothing was put to us to explain this, and we therefore do not accept that this is a valid or sincere request and we reject it as a basis for the adjournment.

8 Mr Gill's final point is that the second appellant also claims not to be able to understand the *submissions* that have been filed. We assume this refers more particularly to the submissions filed by the Prosecution, but we were not told what it is in those submissions that she claims not to be able to understand even with the benefit of Mr Gill's advice and assistance. We note, however, that the Prosecution does not object to this request and we will therefore accede to it on an exceptional basis. However, we wish to state for the record that in future cases of this sort we would require counsel to state precisely what it is that the party claims not to be able to understand even with counsel's assistance, so that we can then consider the validity of such requests. Vague assertions to this effect – which, it has to be said, is the impression we have of the present application – will not suffice.

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9 Finally, we note Mr Kanagavijayan's submission that his client's appeal, Criminal Appeal No 26 of 2017, should proceed, but we do not think that is appropriate. This is because we do not wish to run any risk of arriving at an incorrect decision as a result of our not considering both appeals together when they involve closely connected facts.

Conclusion

10 We therefore adjourn the appeals to an early date to be fixed, such date not to be before 16 August 2018. The Registry will make arrangements to have a Case Management Conference with counsel to take dates.

11 Notwithstanding our decision to allow this adjournment on an exceptional basis, we wish to make it clear that applications to adjourn criminal appeals at the eleventh hour will not simply be granted as a matter of course. Defence counsel owe a duty to the court to ensure that they conduct matters under their charge in such a manner that the schedules fixed by the court are not unduly disrupted. Separately, they owe a duty to their clients, *from the outset*, to take their instructions accurately and comprehensively, and to ensure that their clients fully grasp the issues in the appeal and the arguments being made on their behalf. Any concerns in that regard should be addressed as early as possible. Where counsel consider that an adjournment application is absolutely necessary, they will be expected to identify the precise deficiency in their client's understanding and the prejudice resulting therefrom, and explain why an adjournment is necessary in the interests of justice.

12 We thought it appropriate to issue this judgment in order to ensure that the Bar understands our expectations of counsel involved in criminal cases and of their duty to work with us and in the interests of those they represent, in the

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discharge of the important work of the fair and efficient administration of criminal justice in this country.

Sundaresh Menon	Andrew Phang Boon Leong	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

N Kanagavijayan (Kana & Co) and A Revi Shanker (ARShanker Law Chambers) for the appellant in CCA 26/2017;
Amarick Gill (Amarick Gill LLC), Sankar Saminathan (Sterling Law Corporation) and Debby Lim (Shook Lin & Bok LLP) for the appellant in CCA 29/2017;
Wong Woon Kwong and Shen Wanqin (Attorney-General's Chambers) for the respondent in CCA 26/2017 and CCA 29/2017.

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