

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 77

Criminal Appeal No 64 of 2017

Between

MOHD AZIZ BIN HUSSAIN

... Appellant

And

PUBLIC PROSECUTOR

... Respondent

ORAL JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act (Cap 185, 2008 Rev Ed)]

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Mohd Aziz bin Hussain

v

Public Prosecutor

[2018] SGCA 77

Court of Appeal — Criminal Appeal No 64 of 2017
Judith Prakash JA, Tay Yong Kwang JA and Chao Hick Tin SJ
9 November 2018

15 November 2018

Judgment reserved.

Judith Prakash JA (delivering the oral judgment of the court):

1 The appellant was convicted by the trial judge (“the Judge”) on one charge of possession of not less than 49.98g of diamorphine for the purpose of trafficking under ss 5(1)(a) read with 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”). We heard his appeal against his conviction and sentence on Friday, 9 November 2018, and now render our decision.

2 The appellant advanced three principal arguments on appeal.

3 First, the appellant contended that the Judge placed undue weight on the evidence of two of the Prosecution’s witnesses, Rashid bin Zali (“Mr Rashid”) and Nordiana binte Mohd Yusof (“Ms Nordiana”), who gave evidence implicating the appellant. The appellant submitted that Mr Rashid and Ms Nordiana gave inconsistent evidence, and their accounts were contradicted

by objective evidence. However, in our judgment, the Judge did not err in placing weight on the evidence of these two witnesses. Although there were minor inconsistencies between their accounts, their evidence on the events of the morning of 18 March 2015 was broadly consistent and pointed to the appellant having possessed the drugs at all material times. Both Mr Rashid and Ms Nordiana testified that the appellant left their home that morning with the pink paper bag that contained most of the drugs and that he knew that the drugs were diamorphine.

4 Second, the appellant contended that the Judge placed undue weight on the eight inculpatory statements given by the appellant. He submitted that there were material inconsistencies between the statements and that accordingly, they are all unreliable and so no weight should be accorded to them. We do not accept this submission. Although there are differences between the statements, there is a consistent thread running through them. The appellant admitted in his contemporaneous, cautioned and long statements that he had been in possession of the drugs, knew they were heroin, and had been in possession of them for the purpose of trafficking. As the Judge found, the appellant could not furnish a satisfactory explanation for why he made those admissions if they were untrue. Nor was he able to provide a satisfactory explanation for why he exculpated Mr Rashid and Ms Nordiana in his long statements if, as he claimed at trial, they were the main persons trafficking the drugs and he was unwittingly involved in their activities. The appellant contended that Mr Rashid had coached him on the account contained in his long statements. However, as the Judge noted, the appellant provided a lucid and comprehensive account of the events in the long statements. The Judge found it difficult to believe that Mr Rashid could have coached him to provide such an account. There is no basis on which we can impugn this finding particularly as the appellant never put the allegation of

coaching and coercion to Mr Rashid while the latter was testifying. Furthermore, the appellant's account in his long statements was corroborated by his express statement during his committal hearing, more than a year after his arrest, that he was the one who had brought the drugs, and Mr Rashid and Ms Nordiana were not involved in the matter. This statement carries all the more weight since it was made after the Magistrate had had the charge, including the punishment provision, read to him.

5 Third, the appellant emphasised that none of the CNB officers involved in the stakeout operation on the day of his arrest gave evidence that he had been seen carrying the pink paper bag that contained most of the drugs. The appellant pointed out that although the Judge noted that the view of one witness, Station Inspector Jason Tay, was obscured by a parapet, there were two other CNB officers who had observed the appellant and who did not expressly say in their conditioned statements that they saw him carrying a pink paper bag. In our judgment, however, the evidence of the other two CNB officers is neutral. They did not state expressly that they saw the appellant was *not* carrying the pink paper bag. Indeed, they did not even state what they saw the appellant was carrying. Significantly, the appellant chose not to cross-examine these CNB officers and accordingly, their evidence was not clarified at trial. Therefore, in our judgment, the evidence of the two CNB officers does not advance the appellant's case.

6 For these reasons, we do not accept the arguments that the appellant made to impugn the findings made by the Judge. Indeed, we agree with the reasoning and findings of the Judge. In any event, taking the appellant's case at its very highest, on his own account, he saw the pink paper bag in the van when he entered it after leaving the flat and knew then that the bag contained heroin.

On that basis, the elements of possession and knowledge were satisfied. In those premises, the presumption of trafficking under s 17 of the MDA would have been triggered, and we are satisfied that the appellant has not rebutted that presumption.

7 For all of these reasons, we dismiss the appeal. We would like to record our appreciation of the efforts made on the appellant's behalf by his counsel, Mr Aaron Lee, who did his best in the face of a very difficult case.

Judith Prakash
Judge of Appeal

Tay Yong Kwang
Judge of Appeal

Chao Hick Tin
Senior Judge

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(Allen & Gledhill LLP) and Loo Khee Sheng (KS Loo & Co)
for the appellant;
Tan Zhongshan and Kenny Yang (Attorney-General's Chambers)
for the respondent.
