**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2019] SGHC 23**

Criminal Case No. 72 of 2017

Public Prosecutor

v

Mohammad Azwan bin Bohari

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# JUDGMENT

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[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]

Version No 1: 27 Oct 2020 (22:41 hrs)

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# Public Prosecutor
# v
# Mohammad Azwan bin Bohari

**[2019] SGHC 23**

High Court — Criminal Case No 72 of 2017
Choo Han Teck J
6 November 2017, 9–12 and 16–17 October 2018; 14 January 2019

11 February 2019 Judgment reserved.

**Choo Han Teck J:**

1 The accused, Mohammad Azwan bin Bohari ("Azwan") was arrested by officers of the Central Narcotics Bureau ("CNB") on 17 October 2015 at 8.50pm in the car park of Blk 629 Ang Mo Kio Avenue 4. Moments before, Azwan, apprehending arrest, threw a biscuit tin to the ground. That tin was recovered by CNB officers, and found to contain three packets of drugs, analysed to be 26.5g of diamorphine, forming the subject of the charge in the trial before me. A sling bag was also seized from Azwan and a small amount of drugs were found among other items in the bag. The drugs in the sling bag are not the subject of this trial.

2 Azwan did not dispute the fact that he was in possession of the three packets of diamorphine, but he denies that he had them all for the purposes of trafficking. His defence was that he was a drug addict and would normally set aside 50% of the drugs he obtains for his personal consumption and the other

50% for sale to cover his costs. The doctors who examined Azwan shortly after his arrest testified that Azwan exhibited mild withdrawal symptoms. Dr Munidasa Winslow testified on Azwan's behalf that withdrawal symptoms are not indicative of an addict's rate of consumption as there was no direct correlation between them.

3 Azwan's ex-girlfriend, Nurain Binte Ahmad ("Nurain") was also arrested but not charged for the drugs in this trial. Azwan made three claims regarding Nurain. First, he said that he shared drugs for his personal consumption with her. Secondly, he claimed that he had hidden the three packets of drugs from her in the biscuit tin because he did not want her to think that he was a drug trafficker. Thirdly, he said that he had changed the statements he made to the CNB because he wanted to protect her.

4 Azwan challenged two of the statements he had given to the CNB. They were both made on 22 October 2015. Initially, counsel for the accused, Mr Mohd Muzammil submitted that these statements were inadmissible as Azwan made them only because of a promise made by Assistant Superintendent of Police, Lee Jun Tian ("ASP Billy"). He also claimed that he was threatened by ASP Billy. As the evidence unfolded in the *voir dire*, it became apparent that Azwan was challenging the statements only on the ground of a promise made by ASP Billy. There was no evidence of any coercion or threat, and Mr Muzammil did not pursue that ground in his submissions in the *voir dire*.

5 Azwan started recording his first statement on 22 October 2015 at 11.30am (the "First Statement"). There was a break about 1.45pm and the recording of his second statement resumed at 3.17pm and ended at 5.55pm (the "Second Statement"). These statements were recorded by Investigating Officer Nicholas Quah ("IO Quah") with the assistance of an interpreter, Mr Farhan Bin



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Sani ("Mr Farhan"). Azwan testified that just before paragraph 7 of the First Statement was recorded, ASP Billy spoke to him. Azwan's evidence as to this conversation was not very clear except that it contains the promise made by ASP Billy to Azwan, that caused Azwan to give the statements from paragraph 7 of the First Statement, and the entire Second Statement.

6 What exactly was the promise? That was Azwan's problem. He claimed that ASP Billy told him that he would be allowed to meet Nurain if he "co-operates". Azwan explained that by "co-operate", he understood ASP Billy as saying:

(1) That he (Azwan) must answer all the questions put to him by IO Quah who was recording the statement;

(2) He (Azwan) must not give any trouble; and

(3) He (Azwan) must change his position which in earlier statements he had maintained that the three packets of drugs were only for his consumption and not for trafficking.

ASP Billy promised that if Azwan "co-operates", he (ASP Billy) will let Azwan meet Nurain. Nurain was Azwan's ex-girlfriend of a few months' standing and who was arrested together with Azwan on 17 October 2015 along with four other persons. Nurain and Azwan were charged in court on 19 October 2015 for trafficking in diamorphine. Whereas Nurain's charge was later withdrawn and she was charged for consumption of diamorphine (to which she pleaded guilty), Azwan's charge was not withdrawn and on which he stood trial before me.

7 In the course of his evidence in the *voir dire*, Azwan said that he changed his statements because he wanted to save Nurain. He testified that he was allowed to meet Nurain twice on 22 October 2015, namely almost immediately



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after the recording of the First Statement and the Second Statement, and once on 23 October 2015 at about 3.00pm after he completed recording another statement. Azwan testified that ASP Billy allowed him to meet Nurain for about five to ten minutes on each occasion.

8 IO Quah testified that he "cannot remember" as to (1) whether ASP Billy entered the room during the recording of the First Statement, and (2) whether Azwan was allowed to meet and speak to Nurain after the recording of the Second Statement.

9 Mr Muzammil called Nurain as a defence witness in the *voir dire*, but she only corroborated the Prosecution's case that the only times she met Azwan were the times they waited for transport to the court to be charged and when they went to have their fingerprints taken, and even then, it was only briefly — "one in and one out", as she said in English.

10 ASP Billy denied that he had made any promises to Azwan. He said that he was initially the investigating officer in Azwan's case, but had handed the case to IO Quah, and thereafter, he concentrated on the other accused persons. On 22 October 2015, ASP Billy was recording the statement of one Mohammad Rohaizat, from 5.20pm to 7.25pm and therefore could not have brought Azwan to see Nurain after the recording of the Second Statement.

11 I accept the evidence of all the witnesses over that of Azwan's. His was the only testimony at odds with everyone else's – including his own ex-girlfriend Nurain's. Furthermore, I find it hard to believe that the CNB would allow two persons arrested at the same time to meet each other when investigations had only just begun. I therefore admitted the First Statement and the Second Statement into evidence.



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12 The only statement that had exculpatory value so far as the act of trafficking was concerned, was Azwan's cautioned statement in which he stated:

> Yesterday, I went to Ang Mo Kio not with the intention to traffick. I went there just to meet with my friend, who was also arrested. Nurain was not aware that there was a lot of the substance.

There were numerous parts in Azwan's other statements where he stated that he had been trafficking in drugs to feed his own addiction.

13 The crucial issue that I am required to determine in this case is whether I accept that the three packets seized from the biscuit tin were for the purposes of trafficking, or whether Azwan had sufficiently rebutted the presumption of trafficking under s17 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). If Azwan proved on a balance of probabilities that some of the three packets of drugs were for his consumption, it is necessary to determine whether the amount consumed would bring the trafficking charge to one that is less than 15g of diamorphine.

14 The three packets of drugs were too neatly and uniformly packed for sale rather than for personal consumption. Azwan having put up his case as consuming 50% and selling 50% of the drugs, made no effort to explain where and when he obtained the three packets, and how he was planning to sell half of the three packets. There were some other drugs seized from him that were more loosely packed in much smaller amounts and consistent with drugs for consumption, but those were found in the sling bag and not the biscuit tin. I do not think his bare assertion that he did not want Nurain to think he was a trafficker was at all convincing.



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15 His defence of partial consumption was not given sufficient detail to have much in it to persuade me. Not only were details lacking, it was raised too belatedly to have any persuasive value. By this, I mean that he had not given good reasons nor explained them well enough for me to accept his raising this defence late. When we compare what he says about trafficking in his statements with the details he provided, to his evidence in court in relation to consumption, we can see the conspicuous lack of details in his defence of consumption. To illustrate, in the First Statement, Azwan stated:

> [7] The 3 packets of panas that was seized from the biscuit tin had belonged to me and were *meant for my drug transaction*. When I say drug transaction, I am referring to *selling the panas*. I would sell one packet of the panas at between *$1800 to $1900*. One packet of the panas would weigh 225 grams. I know the weight of the 3 packets of the panas as *I was the one who had weighed and packed* the panas …
>
> [8] … In average, I would e*arn about $1000 in profit* from selling 1 and a half batu of panas …
>
> [9] … In a week, I would *order up to 4 times* of 1 and a half batu of panas. I would only take about *2 to 3 days to sell off* the 1 and a half batu of panas
>
> [Emphasis added].

In the First Statement, Azwan elaborated on his *modus operandi*. He gave details in relation to the price at which he would sell each packet of drugs, how he packed them, the profit that he would earn from selling them, the frequency that he would order the drugs and his rate of sale. In the Second Statement, Azwan further elaborated that he would use a "receipt book to keep track of [his] drug transaction". Azwan had thus provided great detail explaining his drug trafficking *modus operandi* in his statements.

16 On the contrary, Azwan's evidence in court that half of the three packets of drugs were for his own consumption, was not convincing. He made belated and bare assertions that he smoked "about 8 grams a day", and that he bought a



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big amount of diamorphine because he was "a heavy smoker" and it was cheaper to buy in bulk. Crucially, Azwan failed to explain why his supplier, Bai, would instruct him to neatly and uniformly pack the diamorphine into three packets, only for Azwan to then split them into two for his own consumption. Comparing his statements and his evidence in court does not persuade me that Azwan was not trafficking in the three packets as charged. There were nothing more that satisfied me that he had rebutted the presumption of trafficking.

17 I am therefore satisfied that the Prosecution had proved its case beyond a reasonable doubt against Azwan as charged. I therefore convict him and sentence him to suffer death.

- Sgd -
Choo Han Teck
Judge

Ho Yan-Qing Kelly and Esther Tang Jia Le (Attorney-General's Chambers) for Prosecution.
Mohamed Muzammil Bin Mohamed (Muzammil & Company) and Luo Ling Ling (RHTLaw Taylor Wessing LLP) for the Accused.



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