

Rusli Bin Sembayang v Public Prosecutor
[2003] SGCA 11

Case Number : Cr App 16/2002
Decision Date : 12 March 2003
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ
Counsel Name(s) : Amolat Singh (Amolat & Partners), Lim Swee Tee (Lim Swee Tee & Co) for the Appellant; Lim Yew Jin, Tan Wee Soon (DPP's) for the Respondent
Parties : Rusli Bin Sembayang — Public Prosecutor

Criminal Law – Controlled drugs – Trafficking – Accused claimed that the drugs belonged to another person – Failure to provide any details of alleged owner of the drugs – Whether the accused was a trafficker

Criminal Law – Controlled drugs – Trafficking – Possession – Accused admitted to throwing white plastic bag and slabs of drugs outside flat – White plastic bag and bundles containing drugs recovered from ground floor of accused's flat – Whether prosecution had proved possession of drugs by accused beyond reasonable doubt

Evidence – Confession – Confession retracted – Inconsistency between confessions and evidence at trial – No good explanation offered – Whether accused may be convicted solely on the strength of his retracted confession

Delivered by Yong Pung How CJ

1 The appellant, Rusli bin Sembayang, was a 44 year old Singaporean. He was tried and convicted on the following charge:

That you, RUSLI BIN SEMBAYANG, are charged that on or about the 11th day of April 2002, at about 1.20 am, at Blk 125 Hougang Avenue 1 #07-1476, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking, 1100.2 grams of cannabis, without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act, Chapter 185, and punishable under section 33 of the Misuse of Drugs Act.

Rusli also faced a second charge of trafficking in 959.31 grams of cannabis resin which was stood down during the trial below.

2 On 11 April 2002, police and Central Narcotics Bureau officers arrived at Rusli's flat at Block 125, Hougang Avenue 1. The officers identified themselves and demanded entry into the flat. The officers saw Rusli briefly emerge from the master bedroom. He did not open the door. Instead, he simply muttered an apology to the officers and retreated back into the master bedroom.

3 Rusli was then seen climbing down the side of the block by one of the officers stationed at the scene. When Rusli reached the ground floor, he was approached by that officer who identified himself and told him to stop. Rusli promptly ran away and managed to board a taxi. After a chase and some resistance, he was eventually apprehended at Geylang Serai.

4 The officers found a white plastic bag at the ground floor of Rusli's block. Inside the plastic bag were a brown slab of drugs and a broken paper cutter. Three other slabs and a square block of drugs were found lying nearby. The officers also recovered portions of a broken mobile phone. Analysis showed that the packages of drugs recovered contained a total of 1100.2 grams of cannabis. Loose fragments of cannabis and records of drug transactions were also found inside Rusli's flat.

5 Several statements were recorded from Rusli following his arrest. The voluntariness of these statements was not challenged. In these statements, Rusli claimed that the drugs belonged to a friend of his named 'Ahmad'. He claimed that Ahmad was a known cannabis trafficker who had brought the drugs to the flat. In his statements, Rusli admitted that he had previously assisted Ahmad in cutting, weighing and packing slabs of cannabis. Rusli also claimed that he did not know that Ahmad had brought such a large quantity of drugs into his flat until the day of his arrest.

6 Rusli's version of events was that Ahmad was physically present in the flat when the officers first arrived. He alleged that Ahmad had climbed out of the window upon realising that a raid was in progress, but the officer stationed at the foot of the block had somehow failed to notice him. Rusli further alleged that only after Ahmad had climbed out of the window did he realise such a large quantity of drugs had been left in his flat. In a fit of panic, he grabbed Ahmad's drugs and threw them out of the flat's window.

7 The prosecution's case was that Rusli was in possession of the cannabis for the purpose of trafficking, and that he was in the process of packing the drugs when the officers arrived at his flat. He threw out the evidence of his trafficking activities, which were the items subsequently found on the ground floor. Rusli then climbed out of the window, hoping to escape. When finally arrested, he concocted a fictitious character named Ahmad in order to rebut the presumption that his possession of the cannabis was for the purpose of trafficking.

8 During the trial below, Rusli attempted to retract most of the incriminating portions of his earlier statements. He did not retract the portions of his statements which alleged that the drugs belonged to Ahmad.

The decision below

9 The trial judge held that Rusli's account of Ahmad's presence and escape from the flat was pure fabrication. The evidence showed that Ahmad was nothing more than a fictitious character. The trial judge noted that Rusli was unable to provide the address, contact number or whereabouts of Ahmad. This severely damaged the credibility of his story, since he claimed that Ahmad was a childhood friend and had been a frequent visitor to his flat.

10 In addition, the trial judge held that there was compelling evidence that Rusli was involved in the trafficking of cannabis. In his statements, Rusli had repeatedly referred to the cutting, weighing and packing of cannabis. The evidence seized during the arrest showed that Rusli had notes of the price of the drugs, records of sales transactions and even a specific code word for cannabis. The trial judge also found Rusli's retraction of his incriminating statements to be an afterthought, and noted that the court was entitled to convict him on the strength of his retracted confessions as long as it was satisfied as to the truth of the retracted portions.

11 The trial judge thus held that the prosecution had proved its case beyond a reasonable doubt, and Rusli had not, on a balance of probabilities, rebutted the presumption under the Misuse of Drugs Act that the cannabis found in his possession was for the purpose of trafficking. Under s 17 of the Act, a person is presumed to be a trafficker if he has in his possession more than 15 grams of cannabis. In the present case, Rusli had in his possession more than 1000 grams of cannabis, which clearly brought the presumption into operation. Rusli had failed to establish his defence as he was unable to prove the existence of Ahmad. He was consequently found guilty and sentenced to death under s 33 of the Act.

Issues arising on appeal

12 The main issue before us was whether the trial judge had erred in holding that Ahmad was merely a fictitious character. The other issues arising on appeal were whether the trial judge had erred in finding that Rusli was in possession of the cannabis in question, and whether there was any error in the trial judge's rejection of Rusli's attempt to retract the incriminating portions of his statements. We dismissed the appeal, and now give our reasons.

The existence of Ahmad

13 Rusli's entire defence revolved around the existence of Ahmad. His sole rebuttal to the presumption of trafficking was that the drugs did not belong to him. Counsel for the appellant in fact characterised the appeal in the following terms: if Ahmad exists, that makes up the defence; but if that fails, the entire defence crumbles.

14 In the court below, the trial judge was not impressed by Rusli's defence, and unequivocally rejected his version of events:

In my finding, the accused's accounts as to the existence as well as the presence of Ahmad at his flat were entirely unconvincing. The defence of the accused that the drugs belonged to someone else and not to him was, in my determination, a complete fabrication.

15 We saw no reason to disturb the trial judge's decision on this point. In our view, the trial judge could not be faulted for holding that Ahmad was nothing more than a fictitious character.

16 Rusli had portrayed the relationship between Ahmad and himself as a close one. Ahmad was allegedly a childhood friend whom he had grown up with in Geylang, and who had in the past year been a regular visitor to the flat. Rusli also testified that he had previously helped Ahmad in the preparation of cannabis, and had kept business records of Ahmad's drug transactions.

17 Given their allegedly close relationship, we found it inconceivable that Rusli was unable to furnish any of Ahmad's details or particulars. In fact, Rusli repeatedly stated that he had no evidence to prove Ahmad's existence. In his statement recorded on 16 April 2002, Rusli stated:

I do not have anything to show (Ahmad) exists. I do not know his family. I do not have any photos of him. I do not know where he works or what he does ... I am not able to give any particulars of any real existing person who knows Ahmad. (emphasis added)

18 In his statement recorded on 22 May 2002, Rusli stated:

I have nothing to show that Ahmad exists except for his slippers which are there. I cannot remember what the slippers look like ... *I do not have anything to prove that Ahmad exists*. No telephone numbers, no photograph, nothing. I have no way of reaching him. (emphasis added)

19 This inability to provide Ahmad's details was particularly incredible in light of the fact that Ahmad's existence was the entire foundation of Rusli's defence to a capital charge. This inexplicable failure to provide any details led us inexorably to the same conclusion reached by the trial judge: Ahmad simply did not exist.

20 Rusli did attempt to explain his ignorance. He argued that his inability to provide particulars was a natural consequence of Ahmad's involvement in illegal drug-related activities. As a drug trafficker, Ahmad would not divulge his personal details to anyone, in order to reduce the risk of his being traced by the authorities.

21 Ultimately, we found this argument to be without merit. It failed to account for Rusli's own evidence that he was actively involved in Ahmad's drug activities. In his statements, Rusli claimed to have kept records of Ahmad's drug transactions, assisted in the packing of the drugs, and even allowed his flat to be used for drug-related activities. His relationship with Ahmad was far more than that of a casual friend – it was akin to that of a business partner or an accomplice. Under such circumstances, we found it implausible that Ahmad would not provide Rusli with at least some means of contacting him, especially for business purposes. We found it equally implausible that Rusli could remain so blatantly ignorant of Ahmad's particulars even after their prolonged interaction in both social and business contexts.

22 We found no merit in Rusli's argument that the officer concerned had failed to see Ahmad climbing down the block and running away, and that the trial judge had thus erred in giving no weight to his account of Ahmad's escape. We agreed with the trial judge that Ahmad was a mere fabrication. It would thus be ludicrous to suggest that the trial judge had erred when he gave no weight to the account of an imaginary person's escape from the flat.

23 We also noted that Rusli did not mention Ahmad's presence or escape to the officers when he was questioned immediately after his arrest. Rusli had been given ample opportunity to inform the questioning officers that the drugs in his flat belonged to Ahmad, but he chose not to do so. In fact, his first reference to Ahmad was in a statement recorded on 16 April 2002, five days after his arrest. The trial judge held that, if indeed Ahmad was present on the day of Rusli's arrest, he would have mentioned this fact at the very first opportunity. Rusli's explanation for this glaring omission was that no officer had asked him specifically about Ahmad. In our opinion, this explanation was patently unsatisfactory. We accordingly held that there was no reason to disturb the trial judge's finding on this point.

24 Rusli's inability to prove that Ahmad was an actual person was fatal to his defence that the drugs in his possession belonged to someone else. We accordingly held that Rusli had failed to rebut the presumption that his possession of the cannabis was for the purpose of trafficking. The appeal was dismissed on this ground.

Rusli's admission of possession of the drugs

25 Rusli also appealed against the trial judge's finding that he was in possession of the drugs found at the bottom of the flat. The trial judge relied on an admission made in a previous statement in which Rusli said:

I admitted that the cannabis found below was mine but I was not in a proper frame of mind ... I feel that there was some paranormal influence on me. (emphasis added)

26 During the trial, Rusli retracted this portion of his statement and claimed that he had never made any such admission. He made no attempt to explain the nature of the "paranormal influence" that was affecting him, nor did he explain why this allegedly false admission had appeared in his statement. The trial judge disregarded Rusli's retraction, and held that his admission of ownership was a convincing piece of evidence which showed that he was in possession of the cannabis. We saw no reason to disturb the finding of the trial judge.

27 In any case, we saw absolutely no merit in the allegation that Rusli was not in possession of the drugs in question. It was not disputed that the white plastic bag and the packets of drugs were found on the ground floor of the block, and were not found inside Rusli's flat or on his person. However, it was similarly not disputed that it was Rusli who had thrown these items out of his flat's window.

28 The case of *Lim Swee Seng v Public Prosecutor* [1995] 1 SLR 425 was instructive on this point. In *Lim Swee Seng*, the appellant had also thrown a white plastic bag containing drugs out of a window. The bag was subsequently recovered from a grass patch below the balcony of the flat. The appellant in that case had also admitted in a previous statement that he had thrown the items out of his flat. The Court of Appeal upheld the trial judge's decision that the evidence was sufficient to prove the element of possession. In our opinion, the case law fully supported the trial judge's finding that Rusli was proved to be in possession of the drugs which formed the subject matter of the present charge.

29 Moreover, Rusli's argument on possession was premised entirely on his allegation that the drugs belonged to Ahmad, and that he had merely discarded them in a state of panic. In our opinion, this argument lost all semblance of credibility in light of the trial judge's finding that Ahmad did not exist in the first place.

The trial judge's rejection of Rusli's attempts to retract the incriminating portions of his statements

30 In court, Rusli attempted to retract those portions of his statements which suggested that he had been a trafficker in cannabis. He denied telling the recording officer that he had helped Ahmad pack, weigh and store the cannabis. He also denied saying that he had helped Ahmad sell cannabis by keeping accounts of the transactions and actively seeking out potential buyers. The trial judge characterised Rusli's retraction of the incriminating portions of his statements as "pure afterthoughts", and held that the retracted portions reflected the truth of the events narrated.

31 Rusli took issue with the trial judge's characterisation, and argued that it was unfair to call his retractions "afterthoughts" merely because he sought to retract only the incriminating portions of his statements. We saw no merit in this argument. In our opinion, Rusli misunderstood the trial judge's decision. The trial judge did not reject the retractions merely because he considered them to be "afterthoughts". Rusli's attempt to disown his incriminating statements was unsuccessful because the trial judge was convinced that those incriminating statements reflected the truth of the events – save, of course, for the fabrication of Ahmad's existence. He held that the retracted statements gave a convincing and consistent account of Rusli's trafficking activities. In doing so, the trial judge made it clear that he had come to this decision after reviewing all the evidence before him.

32 It is settled law that an accused's retraction of his confession does not prevent that confession from being relied on to convict him if the judge believes that it represents the truth. The law applicable to retracted confessions was clearly stated by the Malayan Union Court of Appeal in the case of *Yap Sow Keong v PP* [1947] MLJ 90 and was subsequently upheld by the Court of Appeal in cases such as *Ismail bin UK Abdul Rahman v PP* [1972-1974] SLR 232 and *Thongthot Yordsa-Art & Anor v Public Prosecutor* [2002] 4 SLR 161:

In our view the law as to the admissibility of retracted confessions in evidence is clear, and put shortly it is that an accused person can be convicted on his own confession, even when it is retracted, if the court is satisfied of its truth. We do not agree with those Indian decisions which lay down that before a person can be convicted on his retracted confession there must be corroborative evidence to support it.

Conclusion

33 For the reasons given above, we dismissed the appeal.

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