

Han Kim Hwa v Public Prosecutor
[2013] SGHC 29

Case Number : Magistrate's Appeal No 338 of 2010 (DAC No 37365, 37367, 40040 and 40041 of 2009)
Decision Date : 30 January 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ramesh Tiwary (Ramesh Tiwary) for the appellant; Ramu Miyapan (Attorney-General's Chambers) for the respondent.
Parties : Han Kim Hwa — Public Prosecutor

Criminal Law

30 January 2013

Choo Han Teck J:

1 This was an appeal by the appellant who was convicted on four charges under the Misuse of Drugs Act. They were charges for possession of drugs for the purposes of trafficking. The trial lasted 16 days and after the appellant was convicted on those charges he pleaded guilty to five other charges and agreed to have 12 others taken into account for the purposes of sentencing. The appellant appealed against conviction and sentence in respect of the four charges he had claimed trial to. The first, DAC 37365 of 2009, concerned 2.45g of diamorphine. He was sentenced to seven years' imprisonment and five strokes of the cane. The second charge, DAC 37367 of 2009, concerned 2380 tablets of nimetazepan (Erimin) and he was sentenced to two years' imprisonment and two strokes of the cane. The third charge, DAC 40040 of 2009, concerned 12.83g of ecstasy and he was sentenced to six years' imprisonment and five strokes of the cane. The fourth charge, DAC 40041 of 2009 concerned 36.73g of methamphetamine and he was sentenced to six years' and five strokes of the cane. He was also sentenced for the seventh and eighth charges which he had pleaded guilty to (DAC 1784 of 2010 and DAC 13453 of 2010) and was sentenced to three years' imprisonment for the seventh charge and five years' imprisonment and three strokes of the cane in respect of the eighth charge. The terms of imprisonment in respect of the first, seventh and eighth charges were ordered to run consecutively while the terms of imprisonment for the remaining charges (second, third, fourth, fifth, sixth and ninth) were to run concurrently with the terms of imprisonment for the first, seventh and eighth charges. The total length of imprisonment ordered was thus 15 years and the total number of strokes of the cane was 20.

2 Mr Ramesh argued on behalf of the appellant that the convictions ought to be set aside because the trial judge found that the defence of consumption was not supported by expert evidence. Counsel submitted that experts are expensive and the appellant could not afford one. He submitted that in respect of the second charge, the judge was wrong to have found the appellant's evidence inconsistent because of only one inconsistency which arose only when the appellant's statement was admitted after the appellant had finished his testimony.

3 I agree with counsel that expert evidence is not necessary for the trial judge to accept the defence of consumption. The trial judge, however, must have regard to all the evidence taken as a whole. In this case, he was clearly of the view that the appellant had exaggerated his claims and

thus he was not believed. The evidence shows that the trial judge was justified in rejecting the appellant's claim that all the drugs were for his own consumption. First, the appellant claimed that he had given up heroin and the heroin found were the remnants of his old stock. He needed to be very convincing to persuade the court that he had given up heroin. It is widely accepted that drug addicts progress from softer drugs to harder drugs and not the other way round. Hence, the evidence of the accused did not appear sufficiently persuasive as he had nothing more "than his say so", to use the words of the trial judge.

4 Secondly, the diverse varieties of drugs found in his possession indicated that he was more likely to be a trafficker than an addict. He had a stock of diverse drugs as if he was running a drug mini-supermarket. He had to be convincing to persuade the court that he consumed all those drugs in the four charges on which he was tried. This he failed to do. In perusing the record after his conviction, the appellate court is entitled to see whether the other charges to which the appellant pleaded guilty to or agreed to have taken into account for sentencing affected or reinforced the findings and sentencing by the trial judge. In this case, those charges indicated that the trial judge was not wrong in his decision.

5 In respect of his appeal against the sentences imposed, I am of the view that they were not manifestly excessive since he was not a first offender. Further, he had committed some of the offences concerned in the trial below while he was out on bail.

6 For the reasons above, the appeals against conviction and sentence were dismissed.