IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 15

Criminal Appeal No 31 of 2020

Between

Kannan s/o Birasenggam

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing]

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Kannan s/o Birasenggam
v
Public Prosecutor

[2021] SGCA 15

Court of Appeal — Criminal Appeal No 31 of 2020
Judith Prakash JCA, Tay Yong Kwang JCA, Woo Bih Li JAD
26 February 2021

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Tay Yong Kwang JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 The appellant is a Singapore citizen who is now 32 years old. On 11 September 2020, he pleaded guilty to one charge of trafficking in not less than 499.99g of cannabis and one charge of trafficking in not less than 14.99g of diamorphine. He was sentenced by the High Court to concurrent imprisonment terms of 26 years and 15 strokes of the cane on each charge. However, the High Court deducted five months from each of the imprisonment terms in circumstances that will be explained below. The result was an aggregate sentence of imprisonment for 25 years and seven months backdated to the date of remand on 5 September 2017 and the maximum of 24 strokes of the cane as mandated by the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

The background facts

2 On 5 September 2017, the appellant was informed by a Malaysian known to him as Raja about a delivery of drugs. The appellant booked a Grab ride for a trip from Bendemeer Road to Marsiling Drive. The appellant sat in the front passenger seat of the Grab car. Along the way, the appellant asked the driver to go to Woodlands Town Garden instead.

3 Upon reaching a carpark in Woodlands Town Garden, the appellant told the Grab driver to enter it and drive around the carpark once and then to stop near the back of a bus stop. Two men who had arrived at the same carpark on a Malaysian motorcycle were waiting for him. One of them walked towards the car. The appellant instructed that man to ride his motorcycle to the car and to pass the bundles of drugs to him. When that man walked towards the motorcycle, the appellant told the Grab driver to drive around the carpark and to stop at the other side of the carpark. The man rode the motorcycle to where the car had stopped and passed a bag containing the drugs to the appellant and then rode to pick up the second man near the bus stop.

4 The appellant placed the bag on the floorboard of the car and told the Grab driver to drive him back to Bendemeer Road. The car left the carpark. When the motorcycle was about to exit the carpark, the two men were arrested by officers from the Central Narcotics Bureau ("CNB"). During the journey to Bendemeer Road, the car was stopped and the appellant was also arrested by CNB officers.

The decision of the High Court

5 The Prosecution submitted that the sentence should be an aggregate of 30 years' imprisonment and the maximum of 24 strokes of the cane, applying

the sentencing framework set out in the Court of Appeal's decision in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 and the High Court's decision in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122. The Prosecution also highlighted that the appellant was remanded from 9 November 2016 to 25 March 2017 (about four and a half months) ("the earlier period of remand") for some unrelated matters before he was released on bail. The drug offences took place while the appellant was on bail but since his arrest on 5 September 2017, he had been in remand.

6 The appellant was represented by counsel in the High Court. His counsel made a mitigation plea in writing and also submitted orally before the High Court. His counsel informed the High Court that the appellant was extremely remorseful and had chosen to plead guilty and accept his punishment. He had cooperated with the CNB and was willing to be a Prosecution witness against the two men who had delivered the bag of drugs. There was no payment made to him for the drug offences. The appellant was only doing a favour for Raja, an old friend who had helped him financially in the past. The appellant has elderly parents who are divorced. He also has three young children (two of whom are twins) born out of wedlock. The twins are living with foster parents. The male twin has been adopted by his foster parents despite the objections by the appellant and the twin's mother. The youngest child is being taken care of by the child's mother and her family. The appellant hoped to enrol in a diploma course while serving his sentence in order to lead a purposeful life after his release. The appellant's counsel therefore urged the High Court to impose 20 to 23 years' imprisonment and 15 strokes of the cane for each charge with the imprisonment terms to run concurrently. His counsel also asked that the imprisonment be backdated to 5 September 2017 and that the court take into consideration the earlier period of remand.

7 In sentencing, the High Court judge ("the Judge") gave a brief oral judgment. The Judge referred to the relevant case law and used the indicative starting point of 29 years' imprisonment as he noted that the quantity of drugs "was of the very top of the weight range". He considered the appellant's culpability and noted that his role in the offences was limited as he was acting on instructions and there was no evidence of monetary reward. The Judge then mentioned that there was "one aggravating factor" which was the fact that the appellant offended while on bail. He also referred to "one mitigating factor" which was the plea of guilt. The Judge concluded that the sentence should be 26 years' imprisonment with the mandatory 15 strokes of the cane. He then decided to deduct five months from each of the imprisonment terms to take into account the earlier period of remand.

The decision of the Court of Appeal

8 The appellant is not represented by counsel before us. In his written submissions, he highlights essentially the same mitigating factors as his previous counsel did in the High Court. He refers to several sentencing precedents and submits that the "indicative starting point of 28 years imprisonment should be applied". "Being a notional first time offender", the appellant argues that there must be a difference between him and a repeat offender. He also submits that he "was never a drug trafficker but a drug addict who was an incidental participant who got involved with a foolish thought" and that his mitigating factors outweigh the one aggravating factor of offending while on bail. He argues that his culpability was the lowest when compared to other cases he cited. His "role was merely to transport a brown bag from point A to B" and this was a "one-off incident" where he thought he would show his gratitude to his old friend, Raja. He also argues that the Judge "totally ignored or rather failed to attach any weight to the relevant mitigating factors" submitted

by his former counsel. He therefore asks for a "modest downward adjustment" of his sentence and submits that 20 to 23 years' imprisonment "would be appropriate and sufficient to provide a deterrent effect without being overly crushing".

9 The Prosecution's written response repeated in essence its submissions made in the High Court.

10 In our opinion, the Judge took into consideration all relevant factors in arriving at his decision. Far from ignoring the mitigating factors raised, he took them into account when he decided that the appellant had a limited role in the drug transaction. Hardship to the family is a natural consequence when a family's breadwinner decides to commit an offence and is imprisoned for it. The hardship highlighted here is not exceptional. It is regrettable but can hardly ever be a mitigating factor especially in an extremely serious case such as the present. In any event, bearing in mind that there were two Class A drugs involved and that the quantity involved in each charge was at the highest end of the ranges before the offences become capital ones, we do not see how the sentences imposed by the High Court could be regarded as manifestly excessive. Further, committing offences while on bail (and the offences are very serious ones here) is certainly an aggravating factor, as acknowledged by the appellant. It shows his attitude towards law and order. The earlier period of remand was rightly taken into consideration by the High Court and the imprisonment terms were backdated and made to run concurrently. In all the circumstances here, the sentence was not manifestly excessive.

11 We are heartened to hear that the appellant wishes to pursue a diploma course while serving imprisonment. We hope he will do so with all determination and fortitude for his and his family's future. He has the advantage

of being relatively young and hopefully will receive a remission in his imprisonment term in due course.

12 As for his appeal, we are unable to reduce the imprisonment term for the reasons we have given. The appeal against sentence is therefore dismissed.

Judith Prakash
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

The appellant in person;
John Lu and Regina Lim (Attorney-General's Chambers) for the respondent.