

**DALAM MAHKAMAH PERSEKUTUAN MALAYSIA**

**(BIDANG KUASA RAYUAN)**

**RAYUAN JENAYAH NO. 05-64-2006 (J)**

ANTARA

**PENDAKWA RAYA ... PERAYU**

DAN

**SA'ARI BIN JUSOH ... RESPONDEN**

[ Dalam Mahkamah Rayuan Malaysia  
(Bidang Kuasa Rayuan)  
Rayuan Jenayah No. J-05-121-1995

Antara

**SA'ARI BIN JUSOH ... PERAYU**

Dan

**PENDAKWA RAYA ... RESPONDEN**

Dalam Mahkamah Tinggi Malaya di Johor Bahru  
Perbicaraan Jenayah No. 47-2-1992

Antara

**PENDAKWA RAYA**

Dan

**SA'ARI BIN JUSOH ]**

**Coram:** ALAUDDIN MOHD SHERIFF, FCJ  
NIK HASHIM NIK AB RAHMAN, FCJ  
AUGUSTINE PAUL, FCJ  
ABDUL AZIZ MOHAMAD, FCJ  
HASHIM YUSOFF, FCJ

## **JUDGMENT**

I have had the opportunity of reading in draft the judgment of my learned brother Augustine Paul FCJ. I agree that the appeal be allowed and that the orders made by the Court of Appeal be quashed and the conviction of the respondent, and the sentence imposed, by the High Court be reinstated. I also agree with the decision of my learned brother on the two issues and with his reasons for the decision, except in one respect.

It concerns the question of “selling”. I wish, first of all, to observe that the Court of Appeal did not cite any authority for holding that to constitute “selling” in the definition of “trafficking” in section 2 of the Dangerous Drugs Act 1952, there must be not only “an actual delivery of the drugs”, which happened in this case, but also “the physical handing over of the agreed price”, which did not happen in this case. Neither was Encik Karpal Singh, the respondent’s counsel, able to cite any authority that requires the delivery of the price. He informed us that there is no such authority.

I agree with my learned brother that we have first to ascertain the ordinary meaning of “selling” and to do that by looking at the dictionary meaning of the root word “sell”. My learned brother refers to *Webster’s*

and two meanings that it gives, and says, after considering also the definition in *Butterworths Australian Legal Dictionary* and I believe by taking into account *Webster's* meaning No. 2 as well, that “selling” is “of wide import” and “starts with the offering for sale of something till it is sold” and therefore includes offering to sell and doing, or offering to do, an act preparatory to or for the purpose of selling, which are already offences under paragraphs (b) and (c) of section 39B(1), and which for that reason must be excluded in construing the word “selling” in the definition of “trafficking”.

I am of the view that to determine the ordinary meaning of a word in a statute one ought not to look at the definition of the word in a legal dictionary because the legal dictionary is apt to include meanings that have been extended by particular statutes beyond their ordinary meaning to give effect to the policy behind the statutes. In *Butterworths*, for example, the entry for “sell” ends with the words “for example (NSW) Liquor Act 1982 s 4”.

As to meaning No. 2 in *Webster's*, I am of the view that it is looking not to specific acts but basically to the pursuit of a vocation or trade or business, as may be understood from the given example of “a store that sells hardware”. I see a shop or a man and ask what the shop sells or what

the man does, and someone tells me that the store sells hardware or the man sells hardware, although at the particular time the store is closed and no activity is going on in it or the man is drinking coffee in a restaurant and is not anywhere near any hardware or doing anything about hardware. That, I think, is what meaning No. 2 has in mind. It is akin to what is stated in *The Oxford English Dictionary*, Second Edition, Vol. XIV, at page 935 under meaning No. 3a: “Also, in habitual sense, of a shopkeeper, etc.: To deal in or keep for sale (a particular commodity)”.

For my part, in considering the dictionary meaning of “sell” for the purpose of determining the ordinary meaning of “selling” in the definition of “trafficking”, I would reject *Webster’s* meaning No. 2, without having to resort to the existence of paragraphs (b) and (c) of section 39B(1), as one that could not have been intended by the legislature. The meaning intended is meaning No. 1, which for the present case is “to ... deliver ... goods ... for money”. So long as the delivery is for money – which the delivery in this case was – as opposed to delivery as a gift or on some other basis, it is selling even though the money for which the goods are delivered has not passed to the seller.

Finally, I would add that in my view the passage cited by my learned brother from *Wong Hong Leong David v Noor Azman bin Adnan*

[1992] 3 MLJ 283 2003 does not assist in determining the question that has arisen in this case, namely, whether one can be said to “sell” goods when one delivers the goods but has not received the price for them. The passage, and the example given in it of an agreement to mow a lawn for reward, is intended to drive home the point that the consideration to support an agreement need not always be executed. It would no doubt be correct to say, as my learned brother does, using the analogy of the agreement to mow a lawn, that “Where the property has been transferred and the price has not been paid the contract becomes executed with a cause of action for the unpaid price”, provided it is a contract to transfer property for a price. But where it is an agreement to sell goods, that statement is not equivalent to saying that at the time of transfer or delivery of the goods the act of selling takes place. I am of course of the view that the act of selling takes place once the goods are transferred or delivered even though the price has not been paid, but it would not be in reliance on anything in the passage.

My learned brother, Alauddin Mohd. Sheriff FCJ, who has seen this judgment in draft, has indicated that he agrees with what I have said.

Dated: 30 January 2007

**DATO' ABDUL AZIZ BIN MOHAMAD**

Judge

Federal Court Malaysia

For the appellant: Wong Chiang Kiat  
Timbalan Pendakwa Raya  
Jabatan Peguam Negara, Malaysia

Counsel for the respondent: Karpal Singh (Ramkarpal Singh with him)

Solicitors for the respondent: Karpal Singh & Co.