

IN THE FEDERAL COURT OF MALAYSIA
CRIMINAL APPEAL NO. 05-40-2005 (W)

BETWEEN

PUBLIC PROSECUTOR ... APPELLANT

AND

REZA MOHD SHAH BIN AHMAD SHAH ... RESPONDENT

(In the Court of Appeal
Criminal Appeal No: W-05-34-2002)

Between

Reza Mohd Shah Bin Ahmad Shah

And

Public Prosecutor)

Coram: Zaki Bin Tun Azmi, PCA (now CJ)
Abdul Aziz Bin Mohamad, FCJ
Hashim Bin Dato' Hj. Yusoff, FCJ

JUDGMENT

(of Hashim Bin Dato' Hj. Yusoff, FCJ)

1. The Respondent was convicted and sentenced to death by the High Court for an offence of trafficking 795.3 grammes of

cannabis. On appeal, the Court of Appeal substituted the conviction under 39B(2) Dangerous Drugs Act 1952 (“the Act”) with one under Section 6 of the Act and imposed a sentence of 18 years imprisonment with effect from his date of arrest i.e. 14/08/2000, plus the minimum of 10 strokes of whipping under section 39A(2) of the Act. The Public Prosecutor is now appealing against the decision of the Court of Appeal.

2. The brief facts are quite straight forward. The Respondent was seen by Inspector Mohamad Alpiyang bin Ali (PW2) carrying in his right hand exhibit P3, a plastic bag for some distance. When PW2 shouted “police”, the Respondent immediately ran and was seen throwing exhibit P3 away. Upon recovery of exhibit P3 by PW2, it was found to contain the offending 795.3 grammes of cannabis.
3. The crux of this appeal revolves on the issue whether the accused/Respondent, without the aid of the statutory presumption under section 37(d) of the Act of “deemed possession” had knowledge of the nature of the dangerous drugs.
4. The learned DPP submitted that the Court of Appeal was of the view that just because the Respondent took flight and threw the plastic bag containing the dangerous drugs did not point to the one and only conclusion that he knew what he was carrying was the dangerous drug, cannabis. In the circumstances, other inferences can be made such as that he did so because he may be carrying any other prohibited goods other than

cannabis or that he was panicky and therefore chose to run away and throw away the bag he was carrying more so, in this case, when the police who confronted him were not in uniform. (See: paragraph 11 of the Grounds of Judgment of the Court of Appeal).

5. It is the learned DPP's submission that the prosecution is not relying on Section 37(d) of the Act for the presumption of knowledge against the Respondent. The prosecution is basing its case simply on the conduct of the Respondent which offers no other explanation but that he knew he was carrying dangerous drugs.
6. Learned counsel for the Respondent however submitted that the trial Judge found that *"it is not necessary for the prosecution to prove that the accused had knowledge of the nature of the drugs. It follows that the inferences drawn from the direct evidence are sufficient to show that the accused had possession of the cannabis."* (See page 22 – 23 of the Appeal Record). He then referred to several local authorities which have interpreted that "actual possession" requires proof that the possessor must have known the nature of the drug which was being carried. (See: **Tan Teck Chew v PP [2002] 2 MLJ 321**; **Taib Bin Mohamed v PP [2002] 3 MLJ 476, 480-481** and **Toh Su Kuan v PP [2005] 3 CLJ 740, 744-745**).
7. In the instant appeal, the learned trial Judge had said in his Grounds of Judgment (at page 11 of the Appeal Record) that, relying on the case of **PP v Phua Keng Tong [1988] 2 MLJ**

279, as proof of knowledge is very often a matter of inference, the conduct of the Respondent prior to his arrest is brought into sharp focus. The fact that the accused was carrying exhibit P3 with its contents followed by the speed at which he ran and threw it upon being confronted by the police, show that there is a clear nexus between his conduct and the offence in question i.e. that he wanted to part possession with what constituted the offence. It is a clear indication of his guilty mind. This is sufficient to infer that the accused had knowledge of the existence of the dangerous drugs in exhibit P3. I agree with the learned trial Judge on this point.

8. In the case of **Warner v Metropolitan Police Commissioner [1968] 2 ALL ER 356**, the appellant was tried on a charge that he had in his possession a substance specified in the schedule to the Drugs (Prevention of Misuse) Act 1964 namely 20,000 tablets containing amphetamine sulphate. Lord Reid at page 367, had this to say: *“Further it would be pedantic to hold that it must be shown that the accused knew precisely which drugs he had in his possession. Ignorance of the law is no defence and in fact virtually everyone knows that there are prohibited drugs. So it would be quite sufficient to prove facts from which it would properly be inferred that the accused knew that he had a prohibited drug in his possession.”*

9. The case of **Abdullah Zawawi Bin Yusof v PP [1993] 3 MLJ 1** is distinguishable because in that case the Appellant took to his heels as soon as he had heard DPC Mohd Hashim’s announcement of the discovery of the wooden box containing a

plastic bag wherein the cannabis was found. In the instant appeal, the Respondent already threw the plastic bag (P3) away even before its cannabis contents were discovered by the police.

10. I am also unable to agree with the Court of Appeal on its finding that on the facts of this case, that it could not be inferred the Respondent did have the knowledge that what he possessed was the dangerous drug, cannabis for reasons as stated earlier above. Clearly on the evidence before the trial Judge, the Respondent was in possession and having custody and control of the plastic bag which contained the cannabis. His running away and throwing away the plastic bag (P3) are the overt acts from which the learned trial Judge had correctly inferred that the Respondent knew the nature of the contents of the said plastic bag (P3) to be cannabis. The learned trial Judge also came to the conclusion that the Respondent's defence was in the nature of a bare denial and doubted the credibility of his evidence that he was not carrying exhibit P3. As such he was unable to accept the defence advanced by the Respondent that PW2 was not at the scene as PW2 was cross-examined at length on the basis that he was at the scene.
11. The learned trial Judge had appropriately considered the defence and gave his reasons why he had rejected it. The statutory presumption of trafficking under section 37(da) is applicable in this case as the amount of cannabis is more than 200 grammes in weight. The Respondent was also held by the trial Judge to have failed to rebut the said presumption against

him and that the prosecution had proved its case, beyond reasonable doubt.

12. On the evidence available in this case I am of the view that the Court of Appeal had erred in disturbing the findings of facts by the trial Judge. For the reasons adumbrated above, I therefore allow this appeal and set aside the order of the Court of Appeal and restore the conviction and sentence imposed by the High Court.

Dated this 16th day of January, 2009

Signed.
(DATO' HASHIM BIN DATO' HJ. YUSOFF)
Judge
Federal Court Of Malaysia
Putrajaya

Parties:

For the Appellant: Pn. Nurulhuda Nuraini Bt. Mohd Noor
Deputy Public Prosecutor
Jabatan Peguam Negara

For the Respondent: Edward Boon Tai Soon
Nik Mohamed Ikhwan
Tetuan Chooi & Company

Cases referred to:

Tan Teck Chew v PP [2002] 2 MLJ 321;

Taib Bin Mohamed v PP [2002] 3 MLJ 476;

Toh Su Kuan v PP [2005] 3 CLJ 740;

PP v Phua Keng Tong [1988] 2 MLJ 279;

Warner v Metropolitan Police Commissioner [1968] 2 ALL ER 356;

Abdullah Zawawi Bin Yusof v PP [1993] 3 MLJ 1