Judgment 4 of 1978

No. 38 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF CRIMINAL APPEAL IN THE REPUBLIC OF SINGAPORE

BETWEEN :

TEO HOOK SENG — Appellant

- and -

THE PUBLIC PROSECUTOR — Respondent

CASE FOR THE APPELLANT

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1. This Appeal is against conviction by special leave in forma pauperis dated 21st November, 1977. p.539.

2. The substantial questions raised by this Appeal can be summarised as follows :

(1) Whether the refusal of the learned trial Judges to grant an adjournment to the Appellant to enable an expert witness to complete his evidence constituted a denial of justice to the Appellant;

(2) whether in ruling a confession statement admissable without hearing Counsel for the Appellant the trial Judges acted contrary to justice;

(3) whether and if so to what extent the learned trial Judges misconstrued Section 15 of the Misuse of Drugs Act, 1973, and thereby erred in law in convicting the Appellant;

(4) whether the combined effect of (1), (2) and (3) above is such that the Appellant's conviction should not be allowed to stand;

3. The Appellant was charged with unlawfully trafficking in a controlled drug specified in Class A of the First Schedule of the Misuse of Drugs Act, 1973. He was tried in the Supreme p.3

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Court of Singapore (Chua J., and D'Cotta, J) and was convicted and sentenced to death.

4. The Appellant appealed to the Court of Criminal Appeal in the Republic of Singapore against his
p.534 conviction. By his Petition of Appeal he claimed inter alia, that there had been a miscarriage of justice by reason of the rejection of his application for an adjournment and further that the trial Judges had erred in basing their conviction of the Appellant upon the presumption created by section 15 of the Misuse of Drugs Act, 1973. On the 17th January, 1977 the Court of Criminal Appeal (Wee Chong Jin, C.J., Kulasekoranm J., and Choor Singh,
p.537 J.) dismissed the appeal.

5. On the 9th January, 1976 the Appellant was a passenger in a taxi which was searched at a Customs Check Point. Two small blocks of a brownish substance weighing about 75 grammes, wrapped in paper were found inside his right sock. The blocks were analysed by a Government chemist (Mr. Lim Han Yong) and were certified to contain morphine hydrochloride, and when pulverised to contain 46.38 grammes of morphine in its pure form. Codeine was also present.

6. The Appellant gave evidence on oath to the effect that he had been given the parcel by a friend, was asked to deliver it, being told that it was medicine for the stomach. It was concealed to avoid payment of duty.

7. The trial began on Monday, 5th July, 1976.
At the outset Counsel for the Appellant informed
p. 1 - 5. the Court that he would be calling a chemist, that the results of an analysis the chemist (Dr. Rintoul) intended carrying out were not yet known, but should be ready by Wednesday or Thursday of
p. 4 that week. In the course of discussion the possible need for an adjournment was adumbrated but the arrangements were left as follows :

> "Chua, J. I think we had better proceed with this trial fixed for 5 days and we should try and get the report as soon as possible. Can
p. 4F the chemist try and get it ready by Wednesday?
>
p. 5A Dr. Rintoul : I shall do my best "

8. The trial proceeded and on Tuesday, 6th July, 1976 Lawrence Doray (Acting Superintendent of the
p. 81 Customs and Excise Department) gave evidence. Inter alia, he was to prove the contents of a cautioned statement alleged to have been made by the Appellant. He was cross examined by Counsel

for the Appellant and it was agreed that after the witnesses had been examined Counsel for the Appellant could make a submission :

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> "Chua J. And then you can make your submission and you can call the accused and make your submission". p.127 D-E

9. At the close of the evidence on the "trial within a trial" the learned Judges immediately ruled : p. 208

> "Chua J. We find the Accused understood the charge that was read to him and we find that the statement that he made he made voluntarily. So the statement is admitted".

When it was pointed out that no submission had been made, it was at first suggested that such a submission was not necessary as "we have made up out minds ..." After further protest the Court decided as follows : p.208 13 - C

> ".. we have made a ruling but we will allow you to make a submission and we will see whether you are able to change our views. We will hear you now".

After a submission the Court stated as follows :

> "Chua J. We have not changed our views the statement is admitted". p. 233 B

10. The prosecution called a chemist (Mr. Lim Han Yong) who gave the results of an analysis carried out by him. He certified that the blocks contained morphine hydrochloride, and when pulverised were found to contain 46.38 grammes of morphine in its pure form. Counsel for the Appellant did not have the advantage of having Dr. Rintoul in court during the examination-in-chief of Mr. Lim, nor for the cross examination. Notwithstanding those difficulties the Court was anxious from the beginning not to embark on an examination of detail unless satisfied that it was necessary. The Court advised as follows :

> "... you copy down the evidence and consult your chemist and he will be able to advise you and if you want further details of this, he will tell you. You ask him and if it is not necessary, it seems a waste of time goung through the process". p. 235 D - F 236 A - B

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11. Dr. Rintoul began his evidence-in-chief on Friday 9th July, 1976. He put in to the Court
p. 406 a Preliminary Report, in writing. In his Report
p. 454-7 and in evidence he explained that he had only had sufficient time to carry out a qualitative analysis and that he desired to carry out a qualitative analysis. Further he stated that he had not been able to determine which impurities, if any, were present, an exercise he considered important so as to determine whether any methyl morphine (codeine) had been converted into pure morphine. In answer to repeated questions from the Court he stated tht he would hope to have his quantitative analysis completed within a week. The significance of the quantitative analysis in such a trial is that the weight of morphine being "trafficked" determines the sentence. If it is 30 grammes or more the death sentence is mandatory.

12. At the close of Dr. Rintoul's evidence a discussion took place in open court, as a result of which Counsel for the Appellant made an application that the trial be adjourned until Dr.
p. 512-5 Rintoul had completed his quantitative analysis. The learned Judges rejected the application. To the submission (which was begun but not completed before being interrupted) that the Appellant" was facing a very serious offence", the learned trial Judges replied :

> "I don't think that is a very good ground. I don't know the purpose of your calling this chemist. All I can see is that the only purpose is to try and establish that there is a possibility or probability that there are less than 30 grammes."

In their Written Grounds of Decision, delivered later, the learned Judges stated in relation to the
p. 519 application, that Dr. Rintoul had been of "no assistance to the Court". That he "had not challenged or repudiated Mr. Lim's figures", and that he had "failed to throw any doubt whatsoever on the accuracy of Dr. Lim's analysis". The learned Judges therefore accepted Mr. Lim's results.

13. The learned Judges considered the terms of Section 15 Misuse of Drugs Act, 1973 in their
p. 525 Grounds of Decision. They held that since possession had been proved it was to be presumed that the Appellant had the morphine" in his possession for the purpose of trafficking therein", and consequently the burden moved to the Appellant to
p. 527 rebut that presumption. In addition they held that even if the presumptions set out in the Act did

not arise, the evidence and in particular, the cautioned statement established a prima facie case of unlawfully trafficking.

14. It is respectfully submitted as follows :

(1) that the learned trial Judges fell into grave error in refusing the Appellant's application for an adjournment. The refusal constituted a breach of the rules of natural justice, was based upon inadmissable considerations and was reached without taking account of relevant matters. It is submitted that the evidence which the Appellant desired to call went to a relevant issue in the case and was central so far as the Courts' power to sentence was concerned. It would have been quite wrong and unprofessional for Dr. Rintoul to have attacked Mr. Lim's evidence before he had completed his own analysis. The learned Judges therefore should not have considered the absence of such attack as a ground for refusing the adjournment. It is submitted that the learned trial Judges should have considered:

(a) whether the evidence proposed to be called was relevant to any issue in the case and

(b) whether justice required that an opportunity should be given for the evidence to be given.

Since the issue was relevant, indeed crucial, and considerable time had already been devoted to Dr. Rintoul's evidence it is submitted the application should have been granted.

15. It is submitted that the learned trial Judges misdirected themselves in their construction of Section 15 of the Misuse of Drugs Act, 1973. The presumption does not prove the offence of unlawfully trafficking in drugs. It is submitted that there is a difference between a person unlawfully trafficking in drugs and a person having drugs in his possession for the purpose of unlawfully trafficking therein. (see Poon Soh Har and another v. Public Prosecutor. Criminal Appeal No. 16 of 1976. Court of Criminal Appeal, Singapore). It is submitted that the prosecution still have to prove by evidence that on the occasion in question the accused person was actually trafficking in the drugs. Having misdirected themselves on the primary basis upon

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which they convicted the Appellant it is submitted that it would be unsafe for the conviction to remain upon the alternative basis, namely that there was other evidence. A fortiori it is submitted that such is the case where the other evidence consists of a confession statement :

(a) admitted before the substantive procedural requirements had been met, alternatively after a serious breach in procedure;

(b) where the statement is relied upon for its literal English meaning although the statement is only a translation of what had been said by the accused in another language.

16. Alternatively it is submitted that all the above defects when taken together render the Appellant's trial so unsatisfactory that the conviction should not be allowed to stand. Further, that the refusal of an adjournment cannot be properly rectified by an order for re-trial where there is no certainty that the analysis which the Appellant desired to have done could after such a passage of time be done with any accuracy. To the date of this Case there is no information as to whether the prosecution have retained the substances found on the Appellant, nor whether they have been kept in conditions which would have preserved their condition for the purpose of analysis.

17. The Appellant appealed to the Court of Criminal
p. 538 Appeal but his appeal was dismissed.
p. 539

18. By reason of the foregoing it is humbly submitted that this Appeal should be allowed and the Judgment and Order of the Court of Criminal Appeal should be reversed, and the conviction and sentence of the Appellant be set aside for the following among other

R E A S O N S

(1) BECAUSE the Appellant should not have been refused an adjournment;

(2) BECAUSE the learned trial Judges misdirected themselves, as to the effect of Section 15 Misuse of Drugs Act, 1973;

(3) BECAUSE the learned trial Judges should not have ruled upon the admission of the Appellant's confession statement before hearing a submission from the Appellant's Counsel;

(4) BECAUSE the confession statement was insufficient to found a conviction;

(5) BECAUSE the trial of the Appellant was subject to such defects the cumulative effect of which renders the conviction contrary to justice.

GEORGE NEWMAN

No. 38 of 1977

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COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD.

Solicitor for the Appellant