Privy Council Appeal No. 25 of 1989

Abdool Cader Abdool Gaffoor *Appellant*

v.

The Queen *Respondent*

FROM

THE SUPREME COURT OF MAURITIUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND OCTOBER 1990

Present at the hearing:-

LORD KEITH OF KINKEL
LORD ROSKILL
LORD TEMPLEMAN
LORD GOFF OF CHIEVELEY
SIR ROBIN COOKE

*[Delivered by **Lord Keith of Kinkel**]*

The appellant was charged upon an information alleging possession on 22nd January 1987 of 150 grams of heroin, in contravention of section 28(1)(a)(i) of the Dangerous Drugs Act 1986. The information averred that in the circumstances of the possession the appellant was a drug trafficker.

Section 28(1)(a)(i), as read with section 28(2)(b), makes it an offence for a person unlawfully to have in his possession *inter alia* heroin, and provides for the penalty on conviction of a fine not exceeding 5000 rupees and of imprisonment for a term not exceeding 8 years. Section 38(1) of the Act enacts that the court which tries a person for an offence under *inter alia* section 28 shall make a finding whether the accused person is a trafficker in drugs, and section 38(2) provides that a person shall be a trafficker where having regard to all the circumstances of the case against him it can be reasonably inferred that he was engaged in trafficking in drugs. By section 38(3) a person who is found to be a trafficker under sub-section (1) is made liable on first conviction to a fine not exceeding 100,000 rupees together with penal servitude for a term not exceeding 20 years, and to more severe penalties on a second or subsequent conviction. The Act contains no definition of trafficking in drugs.

The appellant's trial took place before the Intermediate Court (P. Lam Shung Leen and Mrs. A.F. Chui Yew Cheong) on 14th August 1987. Evidence was led by the prosecution to the effect that on 22nd January 1987 the appellant's house was raided by police officers acting under a warrant, and that there was found behind a sofa in the living room a blue plastic bag containing a white plastic bag containing a quantity of brownish substance. This substance was subsequently analysed by a scientific officer and found to weigh 150 grams and to contain some heroin. He did not, however, determine the weight of heroin in the substance, saying that this would have taken a long time and required a more sophisticated apparatus than was available in his laboratory. The appellant gave evidence denying all knowledge of the presence in his house of the package of brown substance and suggesting that someone might have planted it on him.

The Intermediate Court gave judgment on 22nd September 1987. They found that the appellant knew of the presence of the package of brown substance in his living room, disbelieving his evidence to the contrary. In the light of the scientific officer's testimony they found that the prosecution had not proved that the package had contained 150 grams of heroin, but only that the substance in it weighed 150 grams and that some heroin was present in that substance. They accordingly found the appellant guilty of possession of a certain quantity of heroin and further found that it had not been established that he was a trafficker in drugs. Observing that the appellant had no previous convictions for drug offences, they sentenced him to a fine of 1000 rupees and found him liable for 200 rupees of costs.

The Director of Public Prosecutions requested the Intermediate Court to state a case for the opinion of the Supreme Court, posing the question, among others, whether the Intermediate Court had erred in law in finding that the appellant was not a drug trafficker. None of the other questions is relevant for purpose of this appeal. At the same time the appellant appealed against his conviction for possession.

The Director's appeal by way of case stated was heard by the Supreme Court (Glover A.C.J. and Lallah J.) on 18th January 1988. On 1st July 1988 the Supreme Court delivered judgment quashing the sentence imposed on the appellant by the Intermediate Court and directing that Court to find that the appellant was a trafficker in drugs and to sentence him accordingly. Their view was, in effect, that no reasonable tribunal could properly, on the evidence, have reached a different conclusion. The Intermediate Court had failed to give any, or any proper, weight to the significance of the quantity of the substance in which heroin had been found to be present, it being within common, and hence judicial, knowledge in Mauritius

that heroin was regularly sold there, not in pure form, but mixed with a brown substance under the trade name of "brown sugar" or "brown". The precise amount of heroin in the brown substance was irrelevant to the question whether or not the appellant was a trafficker in drugs. The material circumstances were that the appellant was in possession of a substantial quantity of a substance which contained heroin and which was in the form commonly in use in the drug trade, that the substance was concealed behind furniture and that the appellant offered no explanation of its presence apart from the suggestion, which was disbelieved, that it had been planted on him. On the same date the Supreme Court dismissed the appellant's appeal against his conviction for possession.

On 18th July 1988 consideration of the case was resumed by the Intermediate Court, which following the directions of the Supreme Court gave judgment finding the appellant to be a trafficker in drugs and sentencing him under section 38(3) of the Act of 1986 to penal servitude for a term of 8 years and to pay a fine of 50,000 rupees. The appellant appealed to the Supreme Court against this judgment. The grounds of appeal did not include a contention that the sentence was excessive. The appeal was dismissed on 21st October 1988. The appellant now appeals to Her Majesty in Council, as of right, under section 75A of the Courts Act.

The appeal is in substance against the decision of 18th January 1988 whereby the Supreme Court directed the Intermediate Court to find that the appellant was a trafficker in drugs and to sentence him accordingly. As this Board recently reaffirmed in *Buxoo v. The Queen* [1987] 1 W.L.R. 820, P.C., its practice, when dealing with an appeal as of right from the Supreme Court of Mauritius in a criminal case under section 75A of the Courts Act, is to apply the principles traditionally in use as regards applications for special leave to appeal in criminal cases generally. An appeal will only be allowed if the Board are satisfied that they can properly advise Her Majesty that a really serious miscarriage of justice has occurred, by reason of misconduct of the trial or upon some other cogent ground. There is no question here of any procedural irregularity. The Supreme Court, in the exercise of its powers under section 105 of the District and Intermediate Courts (Criminal Jurisdiction) Act, had jurisdiction in disposing of the appeal by case stated to direct the Intermediate Court as it did. The Supreme Court took the view that in all the circumstances appearing from the evidence given at the trial the only reasonable inference capable of being drawn was that the appellant was a trafficker in drugs, and that the magistrates of the Intermediate Court were perverse in not drawing that inference. The only issue in the appeal is whether in taking that view the Supreme Court acted quite wrongly and so perpetrated a

serious miscarriage of justice. Their Lordships are of opinion that they did not. The decision of the Supreme Court was to some extent based upon what they stated to be common public knowledge in Mauritius, namely that heroin is regularly traded there mixed in with a brownish substance known as "brown sugar" or "brown". Their Lordships must accept the Supreme Court's statement of what is common public knowledge in Mauritius, and hence within judicial knowledge there. It follows that what the appellant had in his possession, in a place of concealment, was a commodity of a nature which is the subject of trading among drug dealers and their customers in Mauritius. The quantity of that commodity of which the appellant was in possession was a substantial one. The precise amount of heroin in it was not of real significance. The appellant was, of course, under no obligation to give evidence. It was for the prosecution to prove its case against him. But the appellant did give evidence of lack of knowledge of the presence of the incriminating package and was disbelieved. Although it may have been possible to envisage some explanation for the presence of this substantial quantity of incriminating substance which was consistent with a purpose other than trafficking, no such explanation was in fact put forward. The Supreme Court was entitled to reach the decision it did.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed.