IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 64

Criminal Appeal No 30 of 2018

Between

Saridewi Binte Djamani

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 15 of 2019

Between

Saridewi Binte Djamani

… *Applicant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 28 of 2018

Between

Saridewi Binte Djamani

And

Public Prosecutor

EX TEMPORE JUDGMENT

[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Criminal Procedure and Sentencing — Statements — Admissibility]

Saridewi bte Djamani
v
Public Prosecutor and another matter

[2022] SGCA 64

Court of Appeal — Criminal Appeal No 30 of 2018 and Criminal Motion No 15 of 2019
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Tay Yong Kwang JCA
6 October 2022

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Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Introduction

1 In HC/CC 28/2018 ("CC 28"), the appellant, Saridewi binte Djamani ("Saridewi"), was charged with possession of six packets and seven straws of not less than 1,084.37g of powdery substance which was found to contain a total of 30.72g of diamorphine for the purpose of trafficking under ss 5(1)(*a*) and 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The packets were of various sizes and contained varying amounts of diamorphine as detailed at [9]–[0] below. She claimed trial and contended in her defence that a substantial portion of the diamorphine was not meant for trafficking. Instead, she claimed that the package containing more of the diamorphine and said to be of "better quality" was intended for her own consumption. The High Court judge ("Judge") rejected her defence and convicted her. She was sentenced to

suffer death: see *Public Prosecutor v Saridewi Bte Djamani and another* [2018] SGHC 204 ("the Main Judgment").

2 CA/CCA 30/2018 ("CCA 30") is Saridewi's appeal against her conviction and sentence. The conviction was based in part on the contents of the statements she gave in the course of investigations. She argues that the Judge erred in rejecting her defence in relation to one packet in particular, that was marked A1A2A (see [9(a)] below), to the effect that this was for her own consumption. CA/CM 15/2019 ("CM 15") is Saridewi's application for leave to adduce fresh evidence in the form of a medical report by Dr Rajesh Jacob ("Dr Rajesh") dated 13 July 2019, that purports to show that her state of mind was impaired at the time her statements were taken.

3 On 16 September 2020, we heard the parties and adjourned CM 15 and CCA 30. We remitted some specific questions to the Judge regarding whether Saridewi was suffering from methamphetamine withdrawal between 18 and 24 June 2016 (this being the period immediately after her arrest), and whether this had implications on her ability to give reliable statements.

4 On 28 June 2022, the Judge issued his findings on remittal: see *Public Prosecutor v Saridewi bte Djamani* [2022] SGHC 150 ("the Remittal Judgment"). The Judge found that Saridewi had at most been suffering from mild to moderate methamphetamine withdrawal during the period in question. However, he also concluded that the totality of the further evidence did not affect his earlier findings or rulings in relation to Saridewi's statements. In all the circumstances, the Judge saw no reason to depart from his conclusion at the trial in relation to Saridewi's guilt.

5 After considering the parties' submissions, we are satisfied that the appeal is without merit and falls far short of the threshold required to rebut the presumption in s 17 of the MDA that Saridewi possessed the diamorphine for the purpose of trafficking. We therefore dismiss the appeal for the reasons that follow.

Facts

6 The facts have been comprehensively set out at [3]–[9] of the Main Judgment. We only set out the material facts for present purposes.

7 On 17 June 2016, various Central Narcotic Bureau ("CNB") officers were deployed in the vicinity of Block 350, Anchorvale Road, Singapore as part of a covert operation. At about 3.35pm, one Muhammad Haikal Bin Abdullah ("Haikal") rode a motorcycle ("the Motorcycle") into the carpark of Block 350. After parking, Haikal retrieved a white plastic bag from the Motorcycle and took the lift of Block 350 up to the 17th floor. There, he met Saridewi and handed a white plastic bag over to her. In exchange, Saridewi handed him an envelope with the marking "10.000". After the exchange, they parted ways. Haikal returned to the Motorcycle and Saridewi returned to the unit where she resided ("the Unit") (see Main Judgment at [4]).

8 Haikal rode off on the Motorcycle at about 3.45pm, and was intercepted and arrested by CNB officers shortly after. Meanwhile, at about 3.50pm, CNB officers congregated near the Unit. Saridewi, upon hearing their movements and voices outside her door, suspected the presence of CNB officers and threw various items out of the kitchen window of the Unit (see Main Judgment at [6]). The CNB officers attempted to saw open the gate to the Unit, but before they

managed to do so, Saridewi let them into the Unit. She was then placed under arrest.

9 The CNB officers conducted a search of the Unit. They seized various items such as packets of crystalline substance, numerous glass tubes, a slab of tablets, numerous empty packets and straws, several unused envelopes, one digital weighing scale and a heat sealer. They also seized four mobile communication devices and a notebook from Saridewi, and they recovered the following items, among others, from the vicinity of the Unit (see Main Judgment at [6]):

(a) from the construction site adjacent to Block 350, a white "SKP" plastic bag ("A1") containing another white "SKP" plastic bag ("A1A") which contained two plastic packets ("A1A1" and "A1A2"), each containing one packet of granular powdery substance ("A1A1A" and "A1A2A" respectively); and

(b) from the ground floor of Block 350, two stained packets ("B1"), some loose brown granular substance ("C1"), one packet ("D1") which was found to contain eight packets of crystalline substance ("D1A"), one packet containing three packets of granular/powdery substance ("D2A"), one packet containing two white straws and five blue straws each containing granular/powdery substance ("D3A"), and one digital weighing scale ("D5").

10 These items were sent to the Health Sciences Authority ("HSA") for analysis. The HSA's analyses in respect of the recovered items that contain diamorphine revealed the following:

S/N	**Exhibit Marking**	**Weight of substance**	**Quantity of Diamorphine**
1	A1A1A (1 packet)	557.5g (damp) 450.0g (dry)	Not less than 9.39g
2	A1A2A (1 packet)	455.6g	Not less than 18.83g
3	C1 (loose granular substance)	45.52g	Not less than 1.77g
4	D2A (3 packets)	19.43g	Not less than 0.55g
5	D3A (7 straws)	6.32g	Not less than 0.18g

The 30.72g of diamorphine in Saridewi's charge corresponds to the total amount of diamorphine found in A1A1A, A1A2A, C1, D2A and D3A.

Issue

11 The central issue in CCA 30 is whether Saridewi has made out her defence that she intended to keep A1A2A for her own consumption.

Our decision

The law

12 We set out the correct approach to examining the defence of consumption in *Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 at [29]–[31]. The court must examine the totality of the circumstances to determine whether an accused person has rebutted the statutory presumption under s 17 of the MDA. The relevant circumstances in this regard include his rate of consumption, the frequency with which he could and typically did obtain his supply, his ability to afford the drugs at the alleged rate of consumption, and whether there were any admissions in any of the accused person's statements that the whole quantity of drugs was for sale.

13 We also recently clarified that the "key pillar and essential foundation" of a consumption defence is the *rate of consumption* (*A Steven s/o Paul Raj v Public Prosecutor* [2022] SGCA 39). Other factors such as the accused person's financial ability to support his drug habit, how he came to be in possession of the drugs, and his possession of drug trafficking paraphernalia are secondary factors (at [25]). The accused person's *rate of consumption is foundational* because all the secondary factors flow from it. Put another way, the accused person's rate of consumption is necessarily anterior to any analysis of the secondary factors. That therefore serves as the logical starting point for the inquiry. To that end, it is for the accused person alleging such a rate of consumption to establish that rate with credible evidence (*Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [117]).

The psychiatric evidence on remittal does not support Saridewi's case

14 We first consider whether Saridewi's statements are admissible. The further evidence given at the remittal hearing establishes that Saridewi had methamphetamine withdrawal. As to the extent of her methamphetamine withdrawal, we are prepared to accept that it was moderate despite there being a slight disagreement between the experts. Dr Rajesh, the defence's expert, opined in his medical reports dated 25 May 2020 and 27 May 2021 that Saridewi "probably" had moderate withdrawal symptoms. Dr Mohamed Zakir Karuvetil ("Dr Zakir"), the Prosecution's expert, opined in his reports dated 15 April 2020, 25 May 2020 and 27 May 2021 that Saridewi's withdrawal symptoms had likely been mild to moderate. However, the experts agree that Saridewi did not suffer from severe methamphetamine withdrawal.

15 Even accepting that there was moderate methamphetamine withdrawal, the evidence does not establish that this affected Saridewi's ability to give reliable statements, and there is therefore no basis for excluding all her statements. When we remitted specific questions to the Judge, we pointedly asked the experts to set out "[w]hat are the implications [of Saridewi's diagnosis on her] ability to give a reliable statement" and "[w]hat particular and specific symptoms would have impeded her ability to provide such a statement". Dr Rajesh's response to this, with respect, was unhelpful. Essentially, he opined in his report dated 27 May 2021 that the greater the severity of withdrawal, the more the cognitive processes, such as a lack of focus and of poor concentration and suggestibility, can be affected. But nowhere does he tie this to *Saridewi's* claims. Nor does he explain which parts of her statements are therefore to be disregarded. Nor for that matter does he explain the shifting nature of her consumption defence, as we will shortly demonstrate.

16 Most importantly, the surrounding evidence of the doctors and nurses who examined her at the time does not show that she had any serious manifestations of withdrawal such that it would interfere with her ability to give a statement. As correctly observed by the Judge, Saridewi did not raise any complaints or exhibit symptoms of drug withdrawal to the four doctors who assessed her. The doctors themselves did not observe Saridewi to have any observable or noticeable withdrawal symptoms or signs of distress. Saridewi was able to respond and communicate with them in a lucid and coherent fashion at all material times. She was also observed to be alert and oriented (see Remittal Judgment at [36]–[51] and [83]). Therefore, we find that the Judge did not err having regard to Saridewi's statements in coming to his decision.

17 That said, we also note that in the end, nothing turns on this because Saridewi's case even before us today was that she was not a heavy consumer of diamorphine at the time of her arrest. Her case, as clarified by her counsel before us this morning, Mr Daniel Koh, is that she had resumed consuming diamorphine a month or so before her arrest and during that time, she was consuming one or two straws every three days or so. According to Mr Koh, based on her past experience, she believed this rate would in time escalate to a daily rate of around 8 to 12g of material containing diamorphine. Mr Koh accepted that Saridewi's consumption defence had to be assessed in this light.

There is no merit in Saridewi's consumption defence

18 We turn then to the merits of Saridewi's consumption defence. We are satisfied that the Judge did not err in rejecting Saridewi's consumption defence because her case was materially inconsistent and to that event was indicative of fabrications and afterthoughts (see Main Judgment at [69]). Saridewi made at least these various claims:

(a) In her contemporaneous statement on 17 June 2016, she claimed that some of the diamorphine was for her consumption while some of it was for sale.

(b) In her statement recorded on 23 June 2016, she claimed that she had not started consuming diamorphine at the time of her arrest, and indeed had not resumed since she was released from prison in 2014, but she ordered diamorphine because she "may want to smoke and maybe sell [diamorphine]".

(c) In July 2016, she told Dr Jason Lee, a psychiatrist from the Institute of Mental Health who conducted a forensic psychiatric evaluation on Saridewi, that she started consuming diamorphine a week before her arrest at a rate of a half-straw on one or two days that week.

(d) In a statement recorded on 14 November 2016, she claimed that she had been consuming diamorphine since March 2016 and consumed about 7–8g of material containing diamorphine every two weeks.

(e) In a statement dated 17 January 2017, she claimed that *all* the diamorphine she threw out of her window on the day of her arrest was meant for her personal consumption.

(f) During the trial, she claimed that she relapsed into consuming diamorphine a month or so before her arrest (meaning May 2016) and that she consumed one to two straws every three days or so.

In the light of the manifest inconsistencies between these various claims, as to (i) whether a part or all of the drugs in her possession at the time of her arrest was meant for her personal consumption, (ii) whether she had resumed consuming diamorphine prior to her arrest and (iii) if so when she had resumed doing so, and (iv) at what rate she was consuming diamorphine at the material time, none of them stands out as being supported by credible evidence.

19 Nonetheless, even taking her case at its highest, Saridewi's evidence *in no way* supports the notion that she was a heavy diamorphine addict at the material time who would credibly need to stockpile the large quantity of diamorphine contained in A1A2A for her own personal consumption. The evidence showed that Saridewi either had not been consuming diamorphine at all at the material time or she was a light user of diamorphine then. Pertinently, her urine test yielded a negative result for diamorphine (see Main Judgment at [53]–[55] and Remittal Judgment at [68]), which suggests that she had not consumed diamorphine for at least three days prior to her arrest. Her own medical evidence advanced by Dr Rajesh on her withdrawal symptoms was only directed at showing that she was a heavy abuser of methamphetamine and suffered methamphetamine withdrawal instead of diamorphine withdrawal. Hence, this too does not assist her defence.

20 As we have observed, her erratic and inconsistent claims as to whether she had consumed diamorphine at all, *when* she allegedly relapsed into diamorphine consumption and the rate of her alleged diamorphine consumption all lead towards the correctness of the Judge's conclusion that her defence is a

fabricated one. This is especially so when seen in the context that Saridewi first mounted her consumption defence from the time of her contemporaneous statement. If she had truly intended from the outset to retain A1A2A for her own consumption, it is inconceivable that she would have been so inconsistent in her various accounts as detailed above at [18]. The material period was the time period very shortly before her arrest and when her statements were taken. We observe that her accounts closer to her arrest reported a lower rate of consumption and her later accounts generally reported a higher rate of consumption, which points to a tale that was evolving with time to fit in with her intended defence. It is also telling that Saridewi did not report diamorphine consumption to any of the attending doctors who examined her after the arrest. Thus, the "key pillar and essential foundation" of her consumption defence is untenable.

21 Saridewi's consumption defence becomes even more bizarre when we examine the amount of diamorphine she claims was kept for her personal consumption. A1A2A contained around 455.6g of powder containing 18.83g of diamorphine. Saridewi's claim that A1A2A was intended for her consumption only surfaced at trial after the results of the forensic tests were reported by the HSA. If she had claimed it was A1A1A (which contained a slightly smaller amount of 450.0g of dried powder but containing not less than 9.39g of diamorphine) instead that was intended for consumption, her consumption defence would not result in the quantity of diamorphine being trafficked falling below the capital threshold.

22 Based on the amount of diamorphine in A1A2A, this would equate to more than 75 weeks' supply assuming she was consuming two straws (each straw containing 1g of material containing diamorphine) every three days based on her claimed rate of actual consumption at trial (see [18(f)] above) and which

seemed to be the position that was taken before us today. This is a massive amount to stockpile and this claim is simply incredible when the evidence shows that she had been getting supplies from a drug dealer, one Bobby, on a few occasions. This is even more incredible given that she was either not yet a consumer of diamorphine at the time or, taking her case at its highest, she was a light consumer of diamorphine which makes it untenable to suggest that there would even be a need for any stockpiling.

23 Mr Koh submitted that Saridewi's assertion as to the amount of diamorphine she wanted to stockpile should be seen as reasonable because based on her past experience, Saridewi believed her rate of consumption would grow dramatically. As to this, the learned Deputy Public Prosecutor, Mr Marcus Foo pointed however, that Saridewi had been cross-examined on this point and it had been put to her that this was inconsistent with her claim that she had been managing her rate of diamorphine consumption, and limiting this to no more than one or two straws every three days in order to avoid the painful withdrawal symptoms that would beset her if she increased her rate of consumption dramatically. Saridewi could not respond to this meaningfully except to suggest that she expected to revert to a heavy rate of consumption once she started consuming diamorphine. The short point, however, is that taking Saridewi's case at its highest, she had resumed consuming diamorphine and had successfully restricted her rate of consumption in the month preceding her arrest and avoided any such uncontrolled increase in the rate of consumption and it made no sense in the circumstances for her to have ordered such a large quantity in anticipation of a projected dramatic increase in consumption that she thought "may" occur at an unknown and unspecified time in the future.

24 More fundamentally, if we were to accept such a weak claim, any drug trafficker could claim a personal consumption defence in respect of any amount of drugs simply by saying that a particular amount needed to bring his or her quantity below the capital threshold is what he or she might theoretically need to consume in the future. As we pointed out to Mr Koh, our jurisprudence on this issue places the onus on the offender to establish the foundational fact of the actual rate of consumption and this has invariably referred to the rate at the time when the order was placed. We cannot see any basis for extending the principles reflected in that jurisprudence to cover a situation such as the present, where the projected rate of increase or when it might take place or how quickly were all not known. On the totality of the evidence, we are satisfied that the Judge was correct that Saridewi had not intended to keep A1A2A for her own personal consumption at the material time.

25 While we note that the Judge relied on *R v Lucas* [1981] QB 720 (as approved in *Ng Beng Siang and others v Public Prosecutor* [2003] SGCA 17 at [52]) and found that Saridewi's lies in her statements corroborated her guilt (see Main Judgment at [68]–[69]), we do not rely on this because it is unnecessary and in our judgment, Saridewi's case fails because of the untenability of her own defence.

26 In all the circumstances, we agree with the Judge that the statutory presumption under s 17 of the MDA was not rebutted and the Prosecution has therefore succeeded in proving its case beyond a reasonable doubt. Consequently, Saridewi's appeal against her conviction fails. Saridewi's appeal against her sentence also fails since it is not in dispute that she was not a courier and the only punishment available is the mandatory death penalty.

Conclusion

27 For the foregoing reasons, we dismiss CCA 30. For completeness, no order needs to be made in relation to CM 15.

28 Finally, we record our appreciation to Mr Koh who put his points across as forcefully as he could but in a measured way and with utmost courtesy, and to Mr Foo who assisted us with his direct responses to the points we put to him.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

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