

**Salmalisa Bte Salim
Sewadin Bin Mattamin**

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 33 of 2017)**

Hon. Gareth John Lugar-Mawson, J.C.
20th February, 2019.

Section 3A of the Misuse of Drugs Act, Cap. 27 possession of a class A controlled drug for the purpose of trafficking - application of presumption under section 16(1)(a) of the Misuse of Drugs Act - discharge of Court's duty to be satisfied of the voluntariness of out of court statements by a defendant.

Mr Hj Mohd Rozaiman (M/S ZICO Rozaiman Abdul Rahman) for 1st and 2nd Appellants.
DPP Farhanah Bte Pehin Suhaili for Public Prosecutor.

J U D G M E N T

Lugar-Mawson, J.C.:

1. The 1st Appellant faced two charges, one under section 3A of the Misuse of Drugs Act, Cap. 27 for possession of 5.1066 grams of Methyl amphetamine, a class A controlled drug for the purpose of trafficking; the other under section 6(b) of the Misuse of Drugs Act for consuming Methyl amphetamine.
2. The 2nd Appellant faced one charge under section 3A of the Misuse of Drugs Act for possession of 5.1066 grams of Methyl amphetamine for the purpose of trafficking.
3. Both pleaded not guilty to the charges, but were convicted after trial. The 1st Appellant was sentenced to 5 years and 6 months imprisonment. The 2nd Appellant was sentenced to 6 years and 6 months with 6 strokes of the whip.
4. Both now appeal against their convictions, the 2nd Appellant also appeals against his sentence.

5. Three grounds of appeal are advanced on their behalf. First it is submitted that the Magistrate erred in principle and in fact on deciding the issue of possession by applying the presumption contained in section 16(1)(a) of the Misuse of Drugs Act, Cap. 27.
6. The Magistrate was justified in relying upon the presumption. The 1st and 2nd Appellants resided, together with the 3rd Defendant at trial, at house No. 17, Simpang 5, Jln Kalijau, Panaga, Seria. That they were arrested in a room of that house was agreed at para 6 of the Statement of Agreed Facts.
7. That they were arrested in the same room as that in which the drugs were found came from the evidence of (PW1), Duidi Bin Mustaffa, who gave evidence that on the day of the offence (28 November 2011) he had gone to the house to buy drugs worth \$50. Upon arrival the 1st Appellant and the 3rd Defendant opened the door to him and the 2nd Appellant invited him in. All four went upstairs to a bedroom where he was shown drugs and the 2nd Appellant told him their price. There was evidence that this room was the 3rd Defendant's bedroom. About 10 minutes later NCB officers raided the premises.
8. The Magistrate was entitled to disbelieve the Appellants' evidence that they were arrested in another bedroom.
9. Section 16(4) of the Misuse of Drugs Act provides that where one of two or more persons, with the knowledge and consent of the rest, has any controlled drug in his possession it shall be deemed to be in possession of each and all of them.
10. It was argued at the hearing of the appeal that the Magistrate was wrong in principle to rely on PW1's evidence, as he was an informer or an agent provocateur.
11. There is nothing to suggest that PW1 was an informer or an agent provocateur, although as a self-confessed purchaser and user of drugs, he was certainly a person whose evidence should have been treated, with great caution.
12. It was his evidence that he went to the house because he wanted to buy drugs from the Appellants. He was aware that the 1st and 2nd Appellants were involved in selling drugs as when he first bought drugs from them, they told him that they sell 'syabu'. He said that he had always bought drugs from the Appellant and had met them for the first time on 28 November 2011, when he went to buy drugs from them.
13. The Magistrate was alive to the need to treat PW1's evidence with great care and that he did so may be seen from his Judgment. With that in mind, the Magistrate accepted that PW1 was a credible and truthful witness who was not telling lies. It was the Magistrate's job to decide which witnesses and which evidence he believed, and his decision to accept PW1's evidence cannot be faulted.

14. Secondly, it is submitted that the Magistrate erred in law and in principle in relying on the evidence of the Investigating Officer, who provided an opinion that the quantity of drugs found at the premises could be indicative of trafficking.
15. Although such evidence was given, there is nothing to suggest in the Judgment that the Magistrate relied on it. He certainly did not say that he did.
16. There was other evidence pointing towards the irresistible inference that the drugs were there for trafficking. It is found in PW1's evidence of going to the house to buy drugs, the finding of empty straws and weighing scales found to be contaminated with Methyl amphetamine and Ketamine, as well as the value of the drugs (\$4,680.89) on the black market.
17. Thirdly, it is submitted that the Magistrate erred in law and in principle in admitting as evidence the out of court statements of the Appellants, which were included in the Statement of Agreed Facts, without ascertaining whether they had made those statements voluntarily.
18. In fact, the Magistrate took great care to ensure that the Appellants understood the Statement of Agreed Facts before admitting it as evidence at the trial. Each paragraph of the Facts were read to them in open court and translated by the court interpreter, and each of the Appellants were asked whether they understood each paragraph and were given the opportunity to make any amendments they wished. This is clear from the Magistrate's notes of proceedings, as well as being referred to in paragraph 11 at page 4 of the Judgment.
19. The notes of proceedings show that when the Magistrate asked the 1st Appellant whether any force, inducements, or promises had been made to him when he had made his statement, he confirmed that there had been none. He gave an explanation of what he meant when he said that he *"...felt pressured"*, saying *"...at that time, I was given a choice to give a statement then or in court but I felt that I wanted to get it over quickly so I gave my statement then."*
20. The notes of proceedings also show that the 2nd Appellant had no objections to her statement being tendered and that she too confirmed to the Magistrate that she had given this voluntarily and had not been forced to do so, or induced or promised anything.
21. As to the 2nd Appellant's appeal against sentence; his counsel now accepts that both the 3rd Defendant and he received the same sentence, and this appeal was not prosecuted further.

22. The appeals are dismissed, I make no order as to costs.

HON. GARETH JOHN LUGAR-MAWSON
Judicial Commissioner