

HONG KONG / JUDGMENT

HKSAR v. SANKAR BABU raajeshwari

COURT

Court of Appeal

DECIDED

16 January 2007

CASE / FILE NUMBER

CACC238/2006

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bjbj CACC 238/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL criminal APPEAL NO. 238 OF 2006 (ON APPEAL FROM HCCC 297 of 2005)

BETWEEN hksar Respondent and SANKAR BABU raajeshwari Applicant

Before: Hon Yeung JA, Burrell J and McMahon J in Court Date of Hearing: 16 January 2007 Date of Judgment: 16 January 2007 J U D G M E N T Hon Yeung JA (giving the judgment of the Court): On 29 July 2005, the applicant Sankar Babu Raajeshwari, an Indian lady arrived at the Hong Kong International Airport from Kuala Lumpur, Malaysia and was allowed to enter Hong Kong as a visitor. A Customs officer selected the applicant for a baggage search and her suitcase was found to contain four plastic bottles and six metal cans with an aggregate quantity of 4.93 kilogrammes of a mixture containing 4.19 kilogrammes of ketamine. The applicant subsequently appeared in the High Court before Deputy Judge Longley on a charge of trafficking in the 4.19 kilogrammes of ketamine. The applicant pleaded not guilty to the charge, but was convicted by the jury. The judge sentenced her to 13 years imprisonment. The judge accepted that the applicant was just a courier delivering drugs to Hong Kong for a financial reward. It was also accepted that the tariff sentence for trafficking in ketamine should be the same as trafficking in ecstasy . The judge was aware that the applicant has two teenage boys aged 16 and 18, and one of them is an epileptic. The judge was also told that both of the applicant s parents are seriously disabled. The judge pointed out that the case involved a very large quantity of ketamine, far exceeding the upper tariff bracket of 8 years for 800 grammes of ecstasy . The judge took the view that a proper starting point was 13 years imprisonment. As there was no other mitigating factor, the judge sentenced the applicant to 13 years imprisonment. The applicant now seeks leave to appeal against sentence. In her written submission, the applicant said she realized her mistake and would like to change her plea to guilty . She said she was 37 years old and it was the first time she committed such an offence. The applicant said her husband had passed away and she was concerned about the welfare of her young children. She asked the court to have mercy on her children and her parents, and urged

the court to reduce her sentence. She also says in court that she has a health problem and that she wishes to be sent back to India to serve her term of imprisonment. We have sympathy for the predicaments of the applicant's children and parents who no doubt will face considerable hardship arising from the applicant's lengthy imprisonment. However, trafficking in dangerous drugs is a very serious offence and whoever commits such an offence must expect a heavy sentence together with its usual consequences. In *HKSAR v Siu Wai Kam* [2003] 3 HKC 338, the defendant pleaded guilty to two counts of trafficking in dangerous drugs, involving respectively 1.72 kg of ketamine, 33.45 g of cocaine and 0.96g of cannabis, and 5.34 kg of ketamine. The Court of Appeal was of the view that a total starting point of 18 years imprisonment was appropriate and for the count involving 5.34 kg of ketamine, the appropriate starting point was 15 years imprisonment. The 13 years starting point adopted by the judge, far from being manifestly excessive, is in fact quite a lenient sentence, considering that the applicant was in fact importing the dangerous drugs into Hong Kong. The applicant chose to plead not guilty before the judge and had therefore deprived herself of the one-third discount of sentence available on a guilty plea. This was her own making and she cannot now turn back the clock. Her wish to be sent back to India to serve her term of imprisonment is a matter to be sorted out between the administrations of the two Governments. Hopefully the matter will be properly attended to, as promised by Mr Reading SC for the respondent. There is no valid ground upon which we can interfere with the sentence imposed by the judge. The application for leave to appeal against sentence is therefore dismissed. (Wally Yeung) (M.P. Burrell) (M.A. McMahon) Justice of Appeal Judge of the Court of First Instance Judge of the Court of First Instance Mr John Reading, SC, DDPP and Ms Winnie Lam, GC of the Department of Justice for the Respondent. Applicant: In person, Present. PAGE - A B C D E F G H I J K L M N 1udk 1udk 1Vt^ H; < & 6" ABC final.dot setup Microsoft Word 9.0 N!)@ N!)@ Judiciary Title Source Erica 8)@ 8)@ 8)@ Microsoft Word Document MSWordDoc Word.Document.8

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