

Public Prosecutor v Shahary bin Sulaiman
[2004] SGHC 135

Case Number : CC 42/2003
Decision Date : 24 June 2004
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Benjamin Yim and Tan Wee Soon (Deputy Public Prosecutors) for public prosecutor; Surinder Singh Dhillon (Dhillon Dendroff and Partners) and Ramli Salehkon (Ramli and Co) for accused
Parties : Public Prosecutor — Shahary bin Sulaiman

Criminal Law – Statutory offences – Misuse of Drugs Act – Trafficking of controlled drugs – ss 5(1)(a), 5(2), 33 Misuse of Drugs Act (Cap 185, 2001 Rev Ed)

24 June 2004

Kan Ting Chiu J:

1 The accused was tried before me on the charge that he:

on the 14th day of April 2003, inside motor van GU 9114 C, at about 12:10 a.m. along Hougang Avenue 7, Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in [his] possession for the purpose of trafficking, 1 large packet, 56 mini packets and 12 straws of yellow powdery substance, containing a total of not less than 35.19 grams of diamorphine, without any authorisation under the said Act or the regulations made thereunder and [he has] thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act, Chapter 185 and punishable under section 33 of the Misuse of Drugs Act.

The arrest

2 The Central Narcotics Bureau (“CNB”) did not initiate investigations against him. There was no stakeout, surveillance or ambush. The CNB became involved only after he was arrested and the drugs were recovered.

3 In the early hours of 13 April 2003, two police officers, Sgt Pek Chee Keong (“Sgt Pek”) and Cpl Yeo Kee Hwa (“Cpl Yeo”), were doing mobile patrol duties in police car QX 4617 when they spotted a van travelling along Hougang Avenue 7 without its headlights switched on. They decided to make a check. They stopped the van registration number GU 9114 C. There were two persons in it. The accused, Shahary bin Sulaiman, was the driver, and another male person, Sazali bin Omar (“Sazali”, also known as “Awie”), was the passenger.

4 Sgt Pek did a quick search of the van. He found nothing incriminating in the back compartment of the van. When he searched the front compartment of the van, he found a sachet of a yellowish substance in the ashtray. At that moment Sazali threw something on to the ground, and he and the accused ran off in different directions. Sgt Pek and Cpl Yeo pursued and apprehended the accused and brought him back to the van. Sazali was arrested later by other police officers who came as reinforcements for the two officers, and was also taken back to the van.

Recovery of the drugs

5 Sgt Pek then made another search of the van in the presence of the accused and Sazali. At this stage, it is useful to know the layout of the van. It is a cargo van made up of two compartments, the front cabin which the driver and passengers occupy, and the cargo compartment at the rear. The two compartments are separated by a metal partition. The front cabin is accessible by two doors, one on each side. There is a seat for the driver, the backrest of which can be tilted forward. Next to it is a longer passenger seat with a fixed backrest. The ashtray is on the dashboard behind the windscreen. The cargo compartment is accessible by a sliding door on the left side of the vehicle and a rear door.

6 Sgt Pek found three bags. They are:

- (a) a black Lafuma brand bag ("Lafuma bag"), which is a haversack or backpack with two straps;[\[1\]](#)
- (b) a black Hayrer brand bag ("Hayrer bag"), which is a sling bag with one strap;[\[2\]](#) and
- (c) a white Soo Kee Jewellery paper bag ("Soo Kee bag").[\[3\]](#)

On the ground in front of the van, Sgt Pek recovered three sachets of a yellowish substance.

7 Sgt Pek's description of the location from which the bags were located was not consistent. In his conditioned statement,[\[4\]](#) he stated that they were found behind the middle front passenger seat. When he recounted the events in court, doubts arose whether there was a middle front passenger seat. In the police car logsheet,[\[5\]](#) filled up at the end of the patrol at 7.00am on 14 April, it was recorded that a black Lafuma haversack, a Hayrer sling bag and a Soo Kee paper bag were found behind the driver's seat.

8 The confusion was compounded by the absence of photographs of the place from which the bags were recovered, or of the ashtray. In the course of the trial, counsel and the investigation officer had to make two trips to take photographs of the cabin.[\[6\]](#) It was fortunate that the van was still available in the same condition after it had been released to its owner. The additional photographs showed that there was a driver's seat and a longer passenger seat, and no middle seat, and Sgt Pek clarified that the three bags were found in the space between the backrest of the seats and the metal partition shown in the additional photographs.[\[7\]](#)

9 The omission to take proper contemporaneous photographs of the location of the bags could have created great difficulties. However, in this case the accused accepted that the Hayrer and Soo Kee bags were kept by him in the space between the seats and the metal partition and that he had placed the sachet in the ashtray. The dispute was over whether the Lafuma bag was found in the same place as the other two bags.

10 After the bags were discovered, the CNB was alerted and its officers took over the investigations. Inspector Sim Wai Tong ("Insp Sim") and his team of officers were the first to arrive. Insp Sim went through the contents of the three bags in the presence of the accused and Sazali with the assistance of Cpl Hoe Yee Seng ("Cpl Hoe").[\[8\]](#) This was not disputed by defence counsel when Insp Sim and Cpl Hoe gave their evidence and was also not contradicted by the accused when he gave his defence.

11 The contents of the Lafuma bag included:

- (a) one large packet of suspected heroin;

- (b) a plastic bag containing 30 sachets (also described as mini-packets) of suspected heroin;
- (c) a plastic bag containing 12 sachets of suspected heroin;
- (d) a Ziploc bag containing seven sachets of suspected heroin; and
- (e) a digital weighing scale and its paper container.

12 The Hayrer bag was found to contain:

- (a) a plastic bag containing six sachets of heroin;
- (b) a plastic bag containing several smaller plastic bags;
- (c) 12 straws of heroin and 13 empty straws; and
- (d) a plastic bag containing 10 white tablets;

and the Soo Kee paper bag held a Ziploc bag containing crystalline substances and a container containing crystalline substances.

13 At about 3.40am Insp Sim spoke to the accused with the assistance of a Malay interpreter who recorded the exchange between them.^[9] The answers to the first seven questions are of particular significance:

Pointing to the black haversack,

Q1: Whose bag is this?

A1: It is mine.

Q2: What is inside this bag?

A2: Drugs.

Q3: What kind of drugs?

A3: Heroin.

Q4: Whom does all these drugs belong to?

A4: They are mine.

Pointing to the small ziploc bag with some straws in it

Q5: What does the straws contain?

A5: They contain heroin.

Pointing to the white Soo Kee Jewellery paper bag

Q6: What is inside the bag?

A6: Some substance called 'Tawas'.

Q7: Whose is it?

A7: It is mine.

(The "tawas" is not a controlled drug and is not part of the subject matter of the charge against the accused.)

14 It is noteworthy that from this early stage the accused's attention was drawn to the haversack. Insp Sim clarified in his evidence in court that the haversack he pointed to was the Lafuma bag.^[10] The Ziploc bag with straws referred to in the fifth question were from the Hayrer bag, as that is the only bag which contained these items.^[11] These questions and answers show that Insp Sim showed the accused the Lafuma and Soo Kee bags and some of the contents of the Hayrer bag when Insp Sim questioned him.

15 The investigation officer ASP Omer Ali Saifudeen arrived at the scene at about 4.37am and took over custody of the accused, Sazali and the items recovered. The investigation officer also directed photographs to be taken of the van, the sachet recovered from the ashtray of the van, the three sachets recovered from the ground, the Hayrer bag and its contents, and the Lafuma bag and its contents.^[12]

16 There were lapses in the investigations. As I have noted, no photographs were taken to show the place from which the three bags were recovered. Likewise, the ashtray and the Soo Kee bag and its contents were not photographed. No attempt was made to lift fingerprints from any of the exhibits on the assumption that any prints would be smudged or covered over.^[13]

17 The accused, Sazali and the seized items were eventually brought back to the CNB offices at the Police Cantonment Complex. At about 10.00am the investigation officer weighed the suspected heroin. Eight weighings were done of:

- (a) the sachet from the ashtray;
- (b) the three sachets on the ground;
- (c) the six sachets from the Hayrer bag;
- (d) the 12 straws from the Hayrer bag;
- (e) the packet from the Lafuma bag;
- (f) the 30 sachets from the Lafuma bag;
- (g) the 12 sachets from the Lafuma bag; and
- (h) the seven sachets from the Lafuma bag.

The total weight was 583.04g. The accused confirmed that he witnessed the weighing of all the items, and that he remembered that the investigation officer told him the total weight.

The cautioned and investigation statements

18 At about 11.40am, the investigation officer commenced recording a cautioned statement from the accused with the assistance of a Malay interpreter. The charge preferred was a joint charge against him and Sazali for trafficking all the heroin recovered, *ie*, "one large packet, fifty nine mini packets and 12 straws of yellow powdery substance believed to be diamorphine weighing approximately 583.04g." [14] (The charge the accused faced at the trial was for the net quantity of diamorphine in the Lafuma and Hayrer bags and the sachet in the ashtray, but not the three sachets on the road.) No objection was raised over the admission of the statement which reads:

The heroin belongs to me. Sazali has nothing to do with the heroin. I want to plead for leniency as this is the first time encounter with this kind of stuff. That's all.

19 It is to be noted that by the time he made the cautioned statement, the accused knew that he was charged with trafficking 583.04g of heroin made up of all the items weighed, consisting one packet, 59 sachets and 12 straws.

20 The cautioned statement was followed by three investigation statements. All three statements were admitted in evidence without objection from the accused. The first was recorded on the same day between 12.06pm and 1.15pm. In this statement [15] the accused stated that he was a small-time heroin trafficker selling in straw and sachet form. He met a Chinese male he knew as Ah Seng three weeks previously at a coffee shop at Woodlands Central. Ah Seng offered to sell him one "batu" of heroin for \$15,000. He thought that was a good bargain, and they arranged to meet again in a week.

21 He went to meet Ah Seng a week later in a rented van GU 9114 C. He paid Ah Seng the money and received the heroin which was in a chunky granular form. He took the heroin to his house. A few days later, he repacked it into sachets and straws under the Benjamin Sheares Bridge. He went on to state that:

6 I kept the heroin in the black slingbag and black haversack hidden at the Benjamin [Sheares] bridge. Yesterday, I collected the bags containing heroin about 9pm plus. I then went down to Awie's house at Marine Parade as he wanted to buy 3 sachets of heroin from me. I sold it to him for a total of \$1000/-. I offered him lift to Hougang as he wanted to go to Ang Mo Kio. He said he could take a taxi from Hougang to Ang Mo Kio.

7 I forgot to on the headlights. So that must have attracted the police. I tried to run when they found the drugs in the ashtray of the van. But I was caught. I last smoked heroin two days ago using the chasing the dragon method.

8 I want to plead guilty and ask for leniency as this is the first time I am doing this. I am trying to do my own business by doing a delivery job but accidentally I met this type of person who approached me. As my delivery business was not doing well and I still had to pay for the rental of the van, I had no choice but to go into this sort of business for just a short while until things get better.

22 In his second investigation statement recorded on 17 April [16] the accused gave a description of Ah Seng:

'Ah Seng' is in his 40's, he is stout, about 1.75m, plumpish face, clean shaven, no spectacles, the hair is a bit blondish, he also has [tattoos]. The [tattoos] are on the left arm. The [tattoos] are

pictures of dragons and so on.

He added that Ah Seng frequented a coffee shop at Blk 2A Woodlands Central after 7.00pm on Saturdays.

23 The third investigation statement was recorded on 28 May^[17] when the accused said that he got his heroin supply for his consumption from a coffee shop in Woodlands from a Peranakan man by the name of Bob.

24 At the close of the Prosecution case, there were no submissions from counsel for the accused that there was no case for him to answer. On the evidence produced, the accused had admitted to ownership of the drugs recovered. There was a clear case for the accused to enter his defence, which he did.

The defence

25 The accused's defence was that the drugs in the ashtray and the Hayrer sling bag were his, but the Lafuma haversack and its contents were not in his possession and did not belong to him.

26 In the course of cross-examination, counsel for the accused had put the defence case to the Prosecution witnesses repeatedly that the Lafuma bag was recovered from the cargo compartment of the van^[18] and this was repeated in the closing submissions.^[19]

27 The defence can be reviewed in two parts: (a) the accused's involvement with the drugs; and (b) the reasons for making the statements.

The accused's involvement with the drugs

28 The accused was a freelance delivery man and *karang guni* man (a rag-and-bone man). He had rented the van from Rahmah binte Arshad, who rented it out because her husband was incapacitated by a stroke and could not use the van himself, and because she needed the rental for financial support.

29 In the course of his work as a *karang guni* man, the accused collected discarded electrical appliances from housing estates and rubbish dumps in Bedok, Tampines and Hougang and sold them to dealers in Sungei Kadut.

30 On 12 April, he had a load of such appliances which he intended to sell to a dealer at Sungei Kadut known to him as Ah Seng. They arranged to meet at the Turf Club. After the races, Ah Seng inspected the appliances which were in the van and expressed interest in them. Ah Seng borrowed the van to transport the goods to his store, and promised to return it the following day.

31 On the next day at about 9.00pm, Ah Seng returned the van to him. Ah Seng agreed to pay \$500 for the appliances, and offered to sell him ten sachets of heroin and some sleeping tablets for \$3,000. The accused bought the drugs and paid Ah Seng \$2,500 after deducting \$500 for the appliances. The accused brought the heroin home, where he packed part of the contents of one sachet into 12 straws and resealed that sachet.

32 Sazali came into the picture when Sazali telephoned the accused to pay him for his share of drinks they had had together previously. They agreed to meet. The accused kept six sachets and the 12 straws in the Hayrer bag and four sachets in the ashtray. He took the Hayrer bag and the Soo Kee

bag with him to the van and placed them in the space between the seats and the metal partition, and the remaining four sachets in the ashtray, three of which Sazali threw away when the van was searched.

33 The accused had kept his appointment with Sazali, and was giving Sazali a lift to Hougang when they were stopped and arrested.

34 He admitted that the drugs in the Hayrer bag and the ashtray belonged to him, but denied any knowledge of or connection with the Lafuma bag and its contents.

35 His professed ignorance of the Lafuma bag was at variance with the case his counsel put repeatedly that the Lafuma bag was recovered from the cargo compartment. The accused said that he did not know that the Lafuma bag was in the van^[20] and did not know where it was recovered from.^[21] Counsel did not offer any satisfactory explanation for this inconsistency between the case put, and the accused's own evidence. An explanation was needed because counsel had let it be known that he had put the case on the accused's instructions.^[22]

36 The accused went so far as to say that he did not see the Lafuma haversack until it was produced at the preliminary inquiry,^[23] despite the clear reference to it in Insp Sim's record of his interview^[24] and his admission in para 6 of his first investigation statement that "I kept the heroin in the black slingbag and black haversack".^[25]

37 The accused's attempt to distance himself from the haversack was strained further by his explanation that when he used the terms "black slingbag" and "black haversack" he was referring to the same Hayrer bag.^[26] This was entirely inconsistent with the reference to "the black slingbag *and* black haversack" [emphasis added] in para 6 of his investigation statement, and the reference to them in the plural as "the bags" in the same paragraph.^[27]

38 The accused thought the Lafuma bag might have been left behind when Ah Seng returned the van.^[28] If he believed that, it would be natural for him to alert the investigators of this to prove his non-involvement with that bag, but his actions fell short of that. He did not say in any of his statements that the Lafuma bag might have been Ah Seng's. He claimed that he had written Ah Seng's telephone number on a piece of paper,^[29] but he did not give it to the investigation officer. He said he gave it to his counsel, but his counsel confirmed that he did not supply any telephone number to the investigation officer. Apparently, even the description he gave of Ah Seng was unreliable. The accused said that only the parts of his statement relating to Ah Seng's age, built and height were true, and the other details were untrue. He said that the false details had come from the investigation officer, but this was never put to the investigation officer, and no explanation was given as to why the investigation officer would fabricate details about Ah Seng or why the accused would agree to them.

39 He also claimed that his brother had tried, without success, to locate Ah Seng, but he did not disclose the information supplied to him for that purpose or call the unidentified brother as his witness.

Reasons for making the statements

40 The accused's position was that while he had made the statements, some parts of the statements were untrue and had been made up by him, while other parts had come from the investigation officer.

41 The first statement was the one recorded by Insp Sim. The accused's explanation for his answers was that Insp Sim was pointing to the Hayrer bag when the questioning commenced^[30] although Insp Sim had expressly recorded that he was pointing to the black haversack at that time.

42 The next statement recorded was the cautioned statement. He was aware that he was charged for trafficking 59 mini packets and 12 straws of heroin weighing 583.04g.^[31] He claimed that he had told the investigation officer that only ten packets and 12 straws were his and that the investigation officer "told me that in my earlier statement I have admitted",^[32] but this was not put to the investigation officer. When he gave the cautioned statement, he was referring to the drugs in the Hayrer bag, the ashtray and the drugs thrown from the van.

43 As I have already noted, when the accused made his cautioned statement he was responding to a charge relating to one large packet, 59 sachets and 12 straws of drugs that were weighed in his presence. As he knew that there were only six sachets and 12 straws of drugs in the Hayrer bag, one sachet in the ashtray and three sachets on the road, he could not be referring only to the drugs in the Hayrer bag, ashtray and on the road outside the van when he said "[t]he heroin belongs to me" in response to the charge.

44 The cautioned statement was followed by three investigation statements. The accused explained that he had made up parts of the statements. He gave three reasons for doing that. One reason was that during the weighing of the drugs, the investigation officer informed him that there had been cases where drugs weighing one or two kilograms were reduced to three or four grams.^[33] As his counsel put it in the closing submissions,^[34] the accused believed the investigation officer because he was "in control of the whole situation". He took comfort in not having to face a capital charge.

45 The investigation officer denied giving the accused any such assurance. It would have been reckless for the investigation officer to speculate on the net diamorphine content of the drugs weighed, and for the accused to have believed him when they both knew that the drugs had not been analysed at that time. Furthermore, the accused did not explain why he had taken comfort in the prospect that he would not face a capital charge and had admitted to ownership of all the drugs if the bulk of them had nothing to do with him.

46 The accused also said that he made the statements out of concern for Rahmah and Sazali. He was sympathetic over Rahmah's plight with her incapacitated husband, and wanted to ensure that the investigation officer would return the van to her so that she could derive income from renting it out. He was also anxious to exonerate Sazali, who was arrested and charged jointly with him.

47 Again, it was not explained why he made unnecessary and excessive admissions to assist them, when he could have assisted and exculpated them without falsely incriminating himself. The accused did not allege that the investigation officer had agreed to release Sazali and the van only if the accused had made incriminating statements.

48 The accused said that he was cold and tired from drug withdrawal when he made those statements. He had not mentioned that he was experiencing discomfort either to the two doctors who examined him before and after the recording of his cautioned statement, or to the investigation officer or the interpreter during the recording of his statements.

49 He also agreed with the prosecutor that, as at the time he was concerned about Rahmah and Sazali, the discomfort was not severe.^[35] It was not taken in the defence as a factor negating voluntariness by sapping his will so that he made statements which he would not otherwise had made.

The accused's complaint was that he had made up parts of his statements by himself, not that he had succumbed to agreeing with the investigation officer's suggestions because of his weakened state.

Evaluation of the evidence

50 There were, at the end of the case, two essential issues; whether the Lafuma bag was found together with the Hayrer and Soo Kee bags, and whether the accused had admitted that the Lafuma bag was his.

51 Sgt Pek and Cpl Yeo testified that all three bags were found between the seats and the metal partition.

52 The accused claimed that he did not see the Lafuma bag before the preliminary investigation, although Insp Sim's and Cpl Hoe's evidence that they went through the three bags in the presence of the accused was not challenged.

53 The accused's evidence was contradicted by the evidence of Sgt Pek and Cpl Yeo and inconsistent with the case put to them, while the evidence of Sgt Pek and Cpl Yeo was corroborated by the near-contemporaneous entry in the patrol car logsheet^[36] that the Lafuma bag was found "behind the driver seat".

54 On the evidence, I found as a fact that the Lafuma bag was together with the Hayrer and Soo Kee bags.

55 On the second issue, there was the accused's recorded and signed admissions of his ownership of the drugs. He did not allege that the admissions were tainted by inducement, threat, promise or oppression, or inadmissible for any other reason.

56 His explanation for them was that he was relieved that he was not facing a capital charge, that he was anxious that the van be returned to Rahmah, and that Sazali be exonerated and released, and that he was feeling the effects of drug withdrawal.

57 On his own evidence (disputed by the investigation officer), there was only a remark that he may not face a capital charge. There was no assertion that it was going to be so, or any promise that it would be so if he incriminated himself. Neither was there any promise that Sazali and the van would be released if he made suitable statements. The discomfort, if any, was not severe and did not diminish his powers of thought or weaken his will.

58 If there was any truth in his defence, he would have told the investigators that the Lafuma bag might have been left in the van by Ah Seng. He did not say that. Instead, he only mentioned Ah Seng as the supplier of some of the drugs recovered. He claimed that he had Ah Seng's telephone number, but did not disclose that to the investigation officer. He said he gave it to his counsel, but his counsel confirmed that Ah Seng's telephone number was not given to the investigation officer.

59 At the conclusion of my review of the evidence and the defence, I found the defence to be entirely unworthy of belief. There was no doubt in my mind that the accused was in possession of the Lafuma bag, the Hayrer bag and the heroin in them, as well as the sachet in the ashtray, and that he had admitted that they belonged to him.

60 In the circumstances I found the accused guilty and convicted him, and imposed the

mandatory death sentence on him.

[1] See P7 and P8.

[2] See P6.

[3] See photographs P7-P8 (Lafuma bag), and P6 (Hayrer bag).

[4] PS7.

[5] P77.

[6] Photographs P74-P76 and P78-P84.

[7] See P75.

[8] PS8 para 3 and PS22 para 3.

[9] P32.

[10] Notes of Evidence page 127.

[11] See P6.

[12] P1-P13.

[13] Notes of Evidence pages 130-131 and 370.

[14] P39A.

[15] P38.

[16] P40.

[17] P41.

[18] Notes of Evidence pages 86, 100, 133, 172, 253, 257, 267, 268, 417.

[19] At para 6.

[20] Notes of Evidence page 486.

[21] Notes of Evidence page 503.

[22] Notes of Evidence pages 86, 100 and 133.

[23] Notes of Evidence page 591.

[24] See para 13 hereof

[25] See para 21 hereof.

[\[26\]](#)Notes of Evidence page 652.

[\[27\]](#)Notes of Evidence page 651.

[\[28\]](#)Notes of Evidence page 707.

[\[29\]](#)Notes of Evidence page 693.

[\[30\]](#)Notes of Evidence page 489.

[\[31\]](#)Notes of Evidence page 518.

[\[32\]](#)Notes of Evidence page 520.

[\[33\]](#)Notes of Evidence page 516.

[\[34\]](#)At para 21.

[\[35\]](#)Notes of Evidence page 646.

[\[36\]](#)P77.