

Public Prosecutor v Choa Joo Liang
[2004] SGHC 271

Case Number : CC 21/2004
Decision Date : 03 December 2004
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Ravneet Kaur and Wayne Koh (Deputy Public Prosecutors) for prosecution; Kelvin Lim (Kelvin Lim and Partners) and Loo Khee Sheng (K S Loo and Co) for accused
Parties : Public Prosecutor — Choa Joo Liang

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

Evidence – Drugs seized – Investigating officer did not check if drugs sent for analysis were returned in the same form to be tendered in evidence – Whether defect rendered evidence irregular

Evidence – Documentary evidence – Photographs – Photographs of seized drugs showed contents to be of a colour uncharacteristic of heroin – Whether defect rendered evidence irregular

3 December 2004

Kan Ting Chiu J:

1 The accused person, Choa Joo Liang, faced three charges when he came before me.

2 The Prosecution proceeded with one charge that he:

on or about the 20th day of October 2003, at about 3.35 pm, at Block 537 Bukit Panjang Ring Road #19-831, 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, 102 packets of granular substances containing 103.15 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.

and the two other charges were stood down.

3 When the charge was read to the accused, he pleaded guilty to it. His counsel confirmed that he had advised the accused on the plea and the consequences before the accused enter his plea.

4 As he was facing a capital charge, I did not accept the accused’s plea, and directed the Prosecution to proceed to prove its case in the usual way. Pursuant to the direction, the Prosecution called its witnesses and tendered exhibits. The main difference from the usual trial was that there was no cross-examination of the prosecution witnesses and no submissions by defence counsel.

5 The facts presented were straightforward. A group of Central Narcotics Bureau (“CNB”) officers went to apartment #19-831, Block 537 Bukit Panjang Ring Road (“the apartment”) on 20 October 2003 and were let into the apartment by a girl.

6 The accused cohabitated with his girlfriend in the apartment. It belonged to the girlfriend and

they stayed there with her two daughters and two nieces. He and his girlfriend occupied the master bedroom of the apartment. The person who let the officers into the apartment was her younger daughter.

7 After gaining entry, the officers went to the master bedroom and found the accused squatting inside the attached toilet. There were some packets on the toilet floor. When the accused was asked what was inside the packets, he replied that it was "*peh hoon*". Seven packets of granular substance believed to be heroin were recovered from the toilet floor. From the toilet cabinet, the officers recovered another two sachets of similar granular substance.

8 The officers asked the accused whether there were more drugs, and were told that there were, in a bedside table drawer and a cardboard carton in the bedroom. From the former, seven envelopes each containing ten sachets and two loose sachets of a similar granular substance were recovered. From the cardboard carton, four envelopes containing a total of 21 sachets of granular substance were recovered.

9 From beneath the bed in the master bedroom, drug trafficking paraphernalia comprising an electronic sealer, a digital weighing scale, a plastic spoon and some empty sachets were found.

10 All the packets and sachets of granular substances recovered were sent for analysis by the Health Sciences Authority ("HSA"). The granular substances were found to contain diamorphine which form the subject matter of the charge.

11 In the course of investigations, statements were taken from the accused. Initially, he made a non-committal cautioned statement that he had nothing to say to the charge.

12 In subsequent investigation statements, he confirmed that he admitted to the officers at the time of the raid on the apartment that the packets in the toilet contained heroin and they belonged to him, and that he told them that there were more drugs in the cardboard carton and the bedside table drawer.

13 He disclosed in the statements that he obtained the heroin from a Malaysian Chinese he knew as "Ah Hoe" from whom he had made previous purchases. He would take the heroin to the apartment, grind them down, pack them into sachets, weigh and then seal them. He would consume about one sachet a day, and he would sell the sachets for \$200 each.

14 The evidence on the recovery and analysis of the drugs, and the admissibility of the investigation statements, were not disputed by the accused.

15 At the close of the prosecution case, I gave the accused the opportunity to enter his defence, but he elected to remain silent and did not call any witnesses to give evidence on his behalf.

16 I reviewed the evidence and found clear and credible evidence that the accused had admitted that the large quantity of drugs recovered from the master bedroom and the attached toilet belonged to him and that he had intended to pack most of the drugs for sale, and to consume some of them himself.

17 The 103.15g of diamorphine was so large that any reduction that could reasonably be made from the amount intended for self-consumption would not reduce the amount below the 15g level from which the mandatory capital sentence applies for trafficking in diamorphine.

18 Consequently, I found the accused guilty on the charge and sentenced him to suffer death.

19 Before concluding these brief grounds of decision, I would refer to two matters that came up in this case. One is a recurrent problem that has occurred time and again for years, and the other is new.

20 The first is that when the investigating officer produced the seized drugs in the trial, he referred to them by the packets and sachets they were recovered in and submitted for analysis without checking if they were still in that form. If he had looked at the drugs after they were analysed and returned by the HSA, he would have known that the contents of some of the packets and sachets were consolidated for homogenisation and analysis, and were returned in the combined form, so that the 72 sachets sent for analysis came back in one large packet, and two packets came back in one packet.

21 This problem keeps repeating because the investigating officers and the prosecutors do not check the drugs before tendering them in evidence. As the identity and integrity of the drugs are crucial in such trials, this is not acceptable.

22 The other problem was new and bizarre. When the photographs of the packets and sachets of granular substances were produced,[\[1\]](#) the contents were pale blue – a colour not associated with heroin and different from that of the heroin which I have seen in other cases that I have dealt with.

23 The heroin in the case was not really blue. A check with the actual drugs[\[2\]](#) showed that they were of a typical yellowish colour, with no resemblance to the colour shown in the photographs.

24 I was disturbed that this obvious colour discrepancy in the drugs shown in the photographs would have arisen and remained undetected and unexplained till I noticed it. The investigating officer admitted that he did not examine the photographs tendered in evidence. Apparently, neither had the officers involved in the preliminary inquiry and those appearing before me, or they did it without sufficient care.

25 I directed that action be taken to establish the cause for the colour discrepancy.

26 Two additional witnesses were produced as a result. One was the inspector in charge of the section of the Forensic Management Branch, Criminal Investigation Department, where the photographs were developed and printed.

27 The other officer is the person who actually developed the negatives and printed the photographs. She explained that the first step was to place the negatives in a digital printing machine where the negatives were developed without enhancement or correction.

28 To print photographs for court use, she took the developed negatives to a photograph printing machine. With this machine, which is about 11 years old, only one negative can be viewed at a time. She made colour adjustments for the first negative. When she was satisfied with the result, she printed that frame and the rest of the roll with that colour setting, with further adjustments only for density.

29 I asked her why she did not inform the investigating officer about the exceptional blue colour of the drugs in the photographs printed. Her explanation was that she did not see the actual drugs, and did not know what they were. Consequently, she was not surprised at the blue granules shown in the photographs.

30 On the basis of her explanation, and without the benefit of evidence from other persons knowledgeable in photographic development and printing, I think that the practice of making colour adjustments from only the first negative when printing a roll of films may be the cause of the problem. In the series of 34 photographs taken in this case, there were outdoor shots of the exterior of a block of apartments, shots of the interior of an apartment, and close-up shots of the drugs recovered. The lighting conditions and distance of the objects in the photographs were varied. It seems to me that one single colour adjustment cannot be applied to all the photographs. As the officer was not at the scene and did not know the true colours of the objects photographed, it may be preferable that she did not make any colour adjustments at all.

31 She was the first person to contribute to the problem, but she was not the only one. After she printed the photographs, they were dealt with by officers at different levels, *ie* the investigating officer and the prosecuting officers, without them realising that the colour of the drugs in the photographs was wrong. They had the advantage of knowing that the drugs were diamorphine, and had access to them. They should have spotted the defective photographs and arranged for proper ones to be done. These mistakes should not be repeated. Standards in developing, printing and handling of the photographs by all the persons involved need to be improved.

32 In this case, the two defects were noticed and taken into account before I convicted the accused. While they reveal shortcomings in the investigations and the presentation of the case, they were not fatal because the actual drug exhibits were produced in court for examination and the chain of custody of the exhibits was not in issue.

33 On the totality of the evidence before me, I have no doubt that the accused was guilty of the offence for which he was charge and convicted.

[1]P13, P14, P16, P22, P23, P24 and P30

[2]P66 to P71