

Public Prosecutor v Chum Tat Suan
[2013] SGHC 150

Case Number : Criminal Case No 1 of 2012
Decision Date : 05 August 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Mohamed Faizal and Qiu Huixiang (Attorney-General's Chambers) for Public Prosecutor; Nandwani Manoj Prakash and Eric Liew (Gabriel Law Corporation) for Accused.
Parties : Public Prosecutor — Chum Tat Suan

Criminal Law – Misuse of Drugs Act

Criminal Law – Elements of crime – Mens rea

5 August 2013

Judgment reserved.

Choo Han Teck J:

1 The accused was charged with importing not less than 94.96g of diamorphine into Singapore, thereby committing an offence under s 7 and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). He is a 65 year old Singaporean who described his occupation as a “bookie” and a vendor of amulets. On 15 January 2010, he left Johor Bahru and crossed the immigration checkpoint at the Woodlands checkpoint, Singapore at 2.10am. He was the sole passenger in a taxi bearing the licence plate JHN 9218. W/Sgt Mehrunnisha Bte Hassan (“PW27”) who conducted a routine check spotted a black bag in the boot of the taxi and directed the driver to pull over for a more thorough check. When PW27 asked the taxi driver whose bag that was, the accused answered that it was his bag. He also said that he had nothing to declare.

2 PW27 nonetheless searched the black bag and discovered that there was a hidden compartment at the base of the bag. She unscrewed the base and found that it had hidden ten bundles wrapped in newspapers. She took out one bundle, unwrapped it, and cut the outer translucent cover. Some substances, later ascertained to be diamorphine (heroin) were found in three other bundles from the bag. Just before the bag was inspected, the accused gave some money to the taxi driver and said that the “thing” was his and the taxi driver “was not involved”.

3 SI Ashari Bin Hassan (“PW30”), an officer of the Central Narcotics Bureau (“CNB”) then interviewed the accused at the Woodlands checkpoint. PW30 had his colleague SI Choo Thiam Hock (“PW29”) as interpreter. When asked if he had anything to surrender, the accused said that he had “ten bundles of heroin weighing five pounds and a packet of “ice” weighing 22.7g in the lower compartment of the black bag”. He also disclosed that he had drug related utensils in the side compartment of the bag. He told PW30 and PW29 that he was going to deliver the heroin in Geylang and be paid \$10,000 for that. This is also the evidence of SSgt Edwin Lee Mun Foong (“PW31”) who was among the group of officers at the arrest of the accused.

4 PW30 then searched the black bag and retrieved the drugs and drug related contents from the compartment as well as the articles from the side compartment as disclosed by the accused. PW29

then took over and questioned the accused who told him that he (the accused) had collected the drugs from one "Seow Eh". The accused was asked to telephone "Seow Eh" which he did. The brief message given by the accused was that he was "ready" and had "cleared". However, about six minutes later "Seow Eh" called the accused and a brief but strange conversation took place. "Seow Eh" said that he would ask someone to call the accused and "Seow Eh" asked the accused if he was ready. The accused said he was ready, but added that he was "sad and sorrowful". He repeated that he was ready and that "Seow Eh" was "hopeless". The two telephone calls were made using mobile phones. PW29's understanding of the latter conversation was that the accused was trying to signal to "Seow Eh" that he (the accused) had been arrested. PW29 thus assessed the accused as "not co-operative".

5 The accused was taken to the Central Narcotics Bureau ("CNB") headquarters and there he was tested positive for amphetamines. His urine samples were then sent to the Health Sciences Authority ("HSA") where they were tested and were found to contain methamphetamine. Drug consumption paraphernalia consisting of an improved bottle, a lighter, and two pieces of metal were seized from a dressing table drawer in the accused person's home. He pointed them out to the CNB officers when they asked if he had anything to surrender. He told the CNB officers that he had some "drug utensils". The 11 bundles of suspect substances seized from the accused's bag were sent for testing by the HSA and were found to contain not less than 94.96g of diamorphine and 26.74g of methamphetamine ("ice"). The accused gave statements to the CNB officer in which he admitted that the heroin was for sale although the ice was for his personal consumption. The drugs were obtained from "Seow Eh". He did not challenge the voluntariness of the statements but at trial he claimed that he had told PW29 that he did not know that the black bag contained drugs.

6 The accused elected to give evidence on his own behalf. The defence was that the black bag did not belong to him, and that he did not know that the black bag that he carried with him in the taxi at the time of his arrest contained heroin. In his testimony at trial he told the court that he had nothing to do and so went gambling with his friends. He was staying at the Merlin Tower in Johor Bahru when he met an old friend. His friend took him to Long Yau, Taman Iskandar to gamble. He brought along his bag which he claimed was a blue cloth bag. It did not have a base like the one in the black bag (referring to the hidden compartment). He claimed that when he left Taman Iskandar he took the wrong bag. That was the foundation of his defence of absence of *mens rea*.

7 It was a poor defence. First, I am not convinced that the accused could mistake a blue cloth bag for the black PVC bag. Secondly, the accused admitted that some of the articles found in the black bag were his and had been in the blue bag. The idea that whoever planted the drugs in the black bag also transferred the belongings of the accused so that he could bring the black bag into Singapore was utterly absurd. Thirdly, the accused testified that he bought some duck eggs and kept them in his (blue) bag. It transpired in the course of the trial that the eggs were in the black bag. The now rotten eggs were discovered by the CNB only at trial. It is of no relevance why they were not discovered sooner; but the point was that if the accused claimed that he had placed the eggs into his own bag and the eggs were found in the black bag, the inescapable conclusion must be that he had only one bag – the black one. I disbelieved his evidence that his bag was a blue cloth bag. Fourthly, there was evidence of the accused person's DNA found on some of the items in the black bag, including the glass tubes and glass pipes found in the side compartment. Fifthly, the accused's DNA was also found on some of the ten bundles of heroin seized from the black bag. Lastly, the accused could not explain in his testimony why he did not tell the officers at the Woodlands Checkpoint and then again during the recording of the statements taken pursuant to s 121 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) (the "CPC") that the black bag did not belong to him. Counsel for the accused offered an explanation based on contamination and transference of the DNA, namely, either by accident or by some innocuous way. It was merely a hypothesis that was neither

supported by scientific evidence or factual evidence. In any event, even if I were to give the accused the benefit of doubt that his DNA was found on some of the bundles in innocent circumstances, the overall evidence left me with no doubt that the accused knew that he was carrying heroin and I also found as a fact that the black bag was his. I was satisfied that the evidence had shown beyond reasonable doubt that the accused had imported the heroin from Johor to Singapore.

8 The defence at trial proceeded thus on facts that were not part of the facts he was asked to describe in his s 121 statements. Mr Prakash, counsel for the accused, submitted that DNA of the accused was found only on some of the bundles of heroin, and none on the screws to the hidden compartment. That may be so, but the absence of any DNA belonging to the accused was only one factor for consideration. In some circumstances the absence might be helpful to the defence. However, in the present case, the absence of the DNA did not help this accused at all – the accused might not have screwed and unscrewed the hidden compartment, nor put in all the bundles of heroin, but that did not mean that he did not have knowledge of the bundles in his bag.

9 Counsel submitted that the incriminating portions in the s 121 statements of the accused were not statements made by him. Having read through all the statements and in view of the fact that there was otherwise no challenge as to the voluntary nature the statements were made, and the fact that there were numerous personal information in the statements that the recording officer could not have known, I am of the view that the s 121 statements shed sufficient weight towards corroborating the prosecution's case that the accused knew that he was carrying heroin in his black bag.

10 Mr Prakash also submitted that the accused was sleepy and was intoxicated at the material times when his statements were recorded. He argued that with the fact that the accused also had a "frontal lobe infarction", all that the accused had admitted to the CNB should not be given any weight. In support, Mr Prakash relied on Dr Steven Phang's evidence that the accused might be mildly intoxicated. However, Dr Phang testified that the accused was sufficiently alert and cogent to find his way from Taman Iskandar to Singapore and could even recall the meal he consumed while in Johor Bahru. I hence gave full weight to the accused's s 121 statements.

11 Having considered the evidence and the submissions of counsel I was of the view that the prosecution had proven its case beyond reasonable doubt against the accused and I thus found him guilty as charged and convicted him accordingly.