

Public Prosecutor v Obeng Comfort
[2015] SGHC 309

Case Number : Criminal Case No 11 of 2015
Decision Date : 03 December 2015
Tribunal/Court : High Court
Coram : Kan Ting Chiu SJ
Counsel Name(s) : Lin Yinbing and Amanda Chong (Attorney-General's Chambers) for the prosecution; Ram Goswami (Ram Goswami) and Cheng Kim Kuan (KK Cheng & Co) for the accused.
Parties : Public Prosecutor — Obeng Comfort

Criminal law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 34 of 2015 was dismissed by the Court of Appeal on 15 February 2017. See [\[2017\] SGCA 12.](#)]

3 December 2015

Kan Ting Chiu SJ:

Introduction

1 Obeng Comfort, a 42-year-old female Ghanaian national ('the Accused'), was tried before me on the charge that:

... you, on the 3rd day of September 2012, at about 10.10 p.m., at Changi Airport Terminal 1, Singapore ("the said place"), did import into the said place a controlled drug specified in Class A of the First Schedule of the Misuse of Drugs Act, Chapter 185 ("the said Act"), to wit, crystalline substance weighing 2951.12 grams which was analysed and found to contain not less than 2309.45 grams of methamphetamine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the said Act, and further upon your conviction under section 7 of the said Act, you may alternatively be liable to be punishable under section 33B of the said Act.

The case for the prosecution

2 At the time of her arrest, the Accused had just arrived at Singapore International Airport on a flight from Accra, Ghana. She caught the attention of Sergeant Muhammad Ridhuan Bin Ariffin ("Sgt Ridhuan") of the Central Narcotics Bureau ("CNB") who was on flight check duty at the airport together with other members of his team. Sgt Ridhuan stopped the Accused because he found her behaviour to be suspicious in that she was avoiding eye contact and was looking down as she was making her way out of the arrival hall.

3 She was directed to put the two handbags and the haversack she was carrying through an X-ray machine for screening. The screening revealed abnormalities in the X-ray images of the haversack. The contents of the haversack, which included one "Heinz Beanz" can [\[note: 1\]](#) and one

"Sunripe Whole Sweetcorn" can [\[note: 2\]](#) (these two cans will be referred to collectively as "the two cans") were taken out. Sgt Ridhuan found the two cans to be unusually heavy and questioned the Accused in English about them. He asked her where she had got them from, and she told him in English that they were from Ghana. When he asked for the exact place or shop that she had bought them from she told him that she bought them in Singapore, but was not able to show any receipt for their purchase. The Accused denied that this exchange with Sgt Ridhuan took place, but other CNB officers who were at the location, namely Station Inspector Amrun Bin Yahya, Sergeant Muhd Zulyadi Bin Zulkeplie and Woman Corporal Nuruljanna Marican Binte Mohammed Rafee heard the exchange and confirmed that it took place. I did not believe that the officers had conspired to commit perjury against her.

4 The two cans were opened in the presence of the Accused. In each can two round blocks wrapped in tape were recovered. When the tapes were removed from the blocks, the four blocks were found to be white crystalline substance wrapped in clear plastic material [\[note: 3\]](#). The Accused did not display any surprise or shock when these blocks were shown to her. Samples from the four blocks were taken and subjected to preliminary testing and were found positive for amphetamines. The Accused was then placed under arrest. The other contents of the haversack were screened and anomalies were detected in some of them, namely two pairs of ladies' shoes [\[note: 4\]](#), one silver-grey DVD player [\[note: 5\]](#) (this was described as grey by the prosecution witnesses, but it is more accurately silver-grey), one black DVD player [\[note: 6\]](#) and one power adapter [\[note: 7\]](#). All these items were then dismantled or cut open. From the heels of each of the ladies' shoes, one bundle of white crystalline substance was recovered. Five bundles of white crystalline substance were recovered from each of the DVD players. One bundle of white crystalline substance was recovered from the power adapter. The contents of the bundles also tested positive for amphetamines. In the course of investigations, the blocks and bundles of crystalline substance were sent to the Health Sciences Authority ("HSA") for analysis and were certified to contain methamphetamine with the aggregate weight of not less than 2309.45 grams. [\[note: 8\]](#)

5 At about 10.48pm on 3 September 2012 Sgt Ridhuan began to record a statement from the Accused in English [\[note: 9\]](#) in the form of 12 questions and answers. This statement was admitted in evidence with her consent. It read:

1) What is this? (recorder's note: accused was shown with a one 'Heinz Beanz' can containing two blocks of white substance)

I do not know what is those two blocks.

2) Who is it for?

Its for a guy who have been calling me through my phone (recorder's note: the guy number inside the handphone and we not able to retrieve the number because the battery was flat.)

Note: Handphone of the accused was subsequently charge to get the number.

3) Where do you get it?

The guy who called me in my phone pass to me at Ghana airport, outside the airport.

4) What are you supposed to do with it after the guy pass to you?

The guy ask me to pass someone to Singapore

5) How do you contact the person in Singapore?

I do not know the person in Singapore.

6) What is this? (recorder's note: the accused was shown with a can of opened 'Sunripe' whole sweetcorn containing two blocks of white substance).

I do not know, someone give it to me.

7) Who is it for?

The same guy who have been calling me through my phone.

8) Where do you get it?

The same guy at Ghana pass to me outside the airport.

9) What are you supposed to do with it after the guy pass to you?

The guy ask me to pass someone in Singapore.

10) What is these? (recorder's note: the accused was shown with two pairs of platform shoes, 'Shoes Story' black and brown colour containing 4 packages wrapped with masking tape inside the heels believed to be contain white substances).

I do not know.

11) Where do you get it?

The same guy from Ghana passed to me the four shoes outside the airport at Ghana.

12) What is these? (recorder's note: accused was shown one grey 'Chusei' DVD/TV Media player and one 'HP' AC power adapter).

I do not know about the white substance found inside the battery compartment on the grey 'Chusei' DVD/TV player. The same guy from Ghana pass to me all the items outside Ghana airport.

After the statement was recorded and signed by the Accused, a body search was conducted on her. Cash amounting to US\$2,900 and a black Nokia mobile phone were recovered.

6 On 4 September 2012, the investigation officer, Inspector Mohaideen Abdul Kadir Bin Gose Ahmad Sha, recorded a cautioned statement [\[note: 101\]](#) from the Accused. The Accused spoke in Twi, a language of Ghana. This statement was recorded with the services of a Twi interpreter, Mr Bill Yeboah Kyeremeh ("the Interpreter"). The statement was in answer to a charge of trafficking by transporting approximately 2,872.74 grams of methamphetamine from Dubai to Singapore. In the statement the Accused said:

I am not guilty of the offence as someone else gave me the items, the laptop, shoes, 2 cans cokes and canned beans. The person offered to pay for my air ticket as well as hotel if I would

deliver these items on his behalf, to which I agreed. The items were given to me at the airport and the person place them in my baggage himself. I had no knowledge what the items were as I did not touch them. He told me upon arriving in Singapore, someone will call me and we will arrange for him to collect the items. The man who gave me the items called me when I was in Dubai, he told me that *the laptop and the shoes also known as 'shine shine'*. I asked him what it meant and he said he will explain to me when I get to Singapore. He also told me upon delivery the items, *the recipient will give me \$5,000/-*. I asked him what the \$5,000/- was to be used for and he said that he will advise later. I have no knowledge of the contents and I was basically asked to deliver the items in return for the free tickets and accommodation.

[emphasis added]

7 Over the following days, a series of six investigation statements [\[note: 11\]](#) were recorded from the Accused with the services of the Interpreter. These statements were admitted in evidence by the prosecution without objection from the Accused. Defence counsel had, whilst cross-examining the Interpreter, put to him that some parts of the statements were not said by the Accused, and some things that she had said were not recorded properly. Counsel, however, did not suggest any reason for that, for example, whether they arose from any difficulty in communication between the Accused and the Interpreter, incompetence, carelessness or a deliberate act on the part of the Interpreter. As each statement was read back to the Accused in Twi, and given that she had the opportunity to make corrections before she signed it, there was no substance in the complaints. In these statements the Accused named the person who had given her the items as Kwaku Mohamed ("Kwaku"). She said that Kwaku had paid for her air tickets and hotel accommodation for her three trips to Singapore. She had come to know Kwaku through his wife, Mama, in Accra when she (the Accused) was trading in clothing. Kwaku contacted her in December 2011 and suggested that instead of trading in clothing, she should trade in electronic products from China or Singapore. He told her that he was prepared to buy air tickets for her to do that. In January 2012 Kwaku instructed her to go to Niger, from where she would fly to China or Singapore. She went to Niger as instructed and was given a ticket to Singapore. When she was in Singapore, Kwaku telephoned her and told her to go to Mustafa Shopping Centre to buy mobile phones. She did so and bought mobile phones and Indian clothing. After staying in Singapore for five days, she flew back to Niger, and then went back to her home in Accra to sell the mobile phones at a profit.

8 About two months after that first trip, she made her second trip to Singapore. She had intended to be in Singapore for about five days but overstayed for three or four days before returning to Ghana. This trip was uneventful, except for the fact that she lost a purse she had brought with her carrying US\$1,250.

9 After her second trip, Kwaku continued to be in contact with her. Kwaku told her that he needed her help. He did not provide details about the help needed when she asked him and only told her that she should be patient and that he was a very kind person who has helped a lot of people to travel to Singapore. When she asked to meet those people to find out about the help they gave him, he refused to tell her who they were.

10 In her second investigation statement, dated 8 September 2012, the Accused recounted the circumstances in which she came to be carrying the items which were found on her during her third trip to Singapore on 3 September 2012. In the statement, she said that she and Kwaku met at the Kotoka Airport in Accra. The statement continued:

...He then passed me 2 laptops and 2 pairs of shoes in a canvas bag. He told me that I have to bring all these items Singapore [*sic*] and a person in Singapore will contact me to collect them.

He also gave me 2 cans of baked beans, 2 cans of Coca Cola and some cans of malt drinks which he said were for my own consumption... I told Kwaku to put the items in my black haversack himself and passed him my black haversack.. [\[note: 12\]](#)

11 In her fifth investigation statement made on 14 September 2012, she again referred to the packing of the items into the haversack (which was simply referred to as a bag) on that day, but the account differed in that she did not see the items Kwaku had brought. She stated: [\[note: 13\]](#)

I did not see any of the items that Kwaku packed in my bag. At the carpark opposite the airport in Accra, Kwaku took my haversack, moved a few steps away from me and packed the items he brought. He *blindsided* me and packed the items in my bag. He verbally told me that he had packed laptops, shoes and the cans. ...

[emphasis added]

and in another part of the statement she stated: [\[note: 14\]](#)

When Kwaku packed the items in my bag, I probed him and asked him what they were. He told me that they were laptops and shoes. I did not feel suspicious and I did not have any suspicion on Kwaku as he was my friend and I trusted him. However, I had no reason to believe that they might have contained something else.

12 When she was in Dubai on her way to Singapore she received a call from Kwaku. She described the conversation thus: [\[note: 15\]](#)

...He told me that the goods that he gave me *contained something called "shine shine"*. I asked him what it was. He told me that after I had given the items to the person in Singapore, that person will give me USD5,000/-. Kwaku said that he will tell me what "shine shine" [*sic*] when I have collected the money. He also tell me the reason why I will receive the USD5,000/-.

[emphasis added]

13 After she was arrested upon her arrival in Singapore, Kwaku called her repeatedly on her mobile phone. Eventually they spoke, in a mixture of Twi and English. Kwaku asked her why he had not heard from her, and she lied to him that she had been sleeping in the hotel. The conversation was recorded, and a written transcript was produced in evidence at the trial with the words spoken in Twi translated to English [\[note: 16\]](#).

14 In the course of recording the fifth statement, she was shown photographs of the items seized from her and was questioned about them. She referred to the two "Chusei" DVD players as "laptops" throughout her statements and her evidence, and that term is retained where she had used it. Her references to the two laptops and their hidden contents [\[note: 17\]](#) are noteworthy. She believed that silver-grey laptop shown in photograph PH 30 was the "shine shine" that Kwaku was talking about, and she *recognised* the bundles hidden in the laptop, shown in photographs PH 31 and PH 32, as "shine shine". She also *recognised* the black laptop and confirmed that the hidden bundles taken out of that laptop were "shine shine". These are ominous admissions in that they revealed that she had not only heard from Kwaku in the Dubai conversation that the items contained "shine shine", but that she had seen the "shine shine" and was able to recognise it. Defence counsel put to the Interpreter that the Accused had not mentioned "shine shine" and had not stated that she recognised the hidden bundles as "shine shine", but the Interpreter reiterated that she had mentioned "shine shine"

and had said what was recorded. As mentioned before, the procedure for the recording of the statements was that after each statement was taken down in writing, it was read back to her in Twi before she signed it.

15 The matters set out in the foregoing paragraphs formed the mainstay of the prosecution case against the Accused. The cautioned statement and investigation statements were admitted in evidence by consent. Defence counsel, in cross-examination of the prosecution witnesses, did not dispute that the two cans, two pairs of shoes, two DVD players and the power adapter produced in evidence were in the Accused's possession, and that packets of white crystalline substance were concealed in them. In addition, the HSA qualitative and quantitative analysis certificates were not disputed. Counsel however took pains to point out that there was no evidence that the Accused knew of the presence of the concealed packets, or of their nature.

16 At the close of the prosecution's case, counsel did not submit that there was no case for the Accused to answer. At that stage the evidence presented was considered together with the presumptions in ss 18(1) and 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") which read:

18.—(1) Any person who is proved to have had in his possession or custody or under his control —

(a) anything containing a controlled drug;

...

shall, until the contrary is proved, be presumed to have that drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

I found that the prosecution had presented a sufficient case for the Accused to be called to enter her defence. She made her defence from the witness stand.

The Defence

17 The Accused's defence is that she was not aware of the hidden contents in the items given to her by Kwaku (and therefore did not have the knowledge to be in possession of them), and that she did not know that they were methamphetamine. She gave her evidence in Twi. She confirmed that the cans and the other items were given to her by Kwaku on 2 September 2012 at the airport just before she departed for Singapore. Kwaku showed her the items and put them into her bag. She did not notice anything abnormal about the laptops, shoes and the cans. She did not suspect that they contained amphetamines or anything illegal and did not touch them.

18 She added that the cans of "Heinz Beanz" and "Sunripe Sweet Corn" and the two cans of Coca Cola were meant for her consumption (departing from her statement of 3 September 2012 to Sgt Ridhuan, see [5] above), and that the other items were to be delivered to someone in Singapore. Kwaku told her that he had given that person her phone number so that the person could arrange to collect the items from her. [\[note: 18\]](#) He also told her that the person would give her \$5,000. He also said:

...if the person gives you the money, take it. If the person does not give you any money, don't

ask about the money or anything. [\[note: 19\]](#)

19 She gave an account of the telephone conversation with Kwaku while she was in Dubai which differed from the versions in her cautioned statement (see [6] above) and her investigation statement (see [12] above). In this account, Kwaku did not talk about money. He told her that the things he had given her was "Sunshine", and when she asked if that referred to the "Sunshine" laptop, he hung up. [\[note: 20\]](#) (The word "Sunshine" in the transcribed notes of evidence should be "shine shine" as reflected in the closing submissions of the defence and the prosecution.)

20 At Singapore airport, when one of the cans was opened by an officer, she saw brownish liquid oozing out and asked "What is that?", to which the officer retorted "You brought these so I should be asking you, not you asking me." [\[note: 21\]](#) Two blocks were recovered from the can, and a sample was taken and tested. She was then handcuffed. Subsequently one laptop was opened and some items were taken out from it. One pair of the shoes was cut open and something wrapped in tape was found inside. She did not remember if the power adapter was opened.

21 She denied that Sgt Ridhuan had asked her where she got the cans from, or that she told him that she got the cans from Ghana. What she remembered was that she was asked "Do you have contents in your bag?" When she confirmed that there were, she was asked "What things?" She replied that there were two cans of Coca Cola and a laptop which was given to her by someone. When her counsel referred her to her signed statement of 3 September 2012 (see [5] above), her response was:

...I do remember this statement being taken, but I don't remember in detail specifically word for word. So I remember this statement taken, but there are some---some thing---some parts here that I still don't remember. I---I don't have recollection of. [\[note: 22\]](#)

22 She also sought to make clear what she had seen of the items that Kwaku had given her at the airport in Accra. She said that she saw the laptop, but did not see its contents [\[note: 23\]](#). When her counsel asked her to explain what she meant when she said in her fifth investigation that Kwaku had "blindsided" her when he placed the items into her haversack (see [9] above), her explanation was:

...After he has shown me the items, then he opened my bag. Then he told me he was putting the items in my bag and I said, "Okay". He said I couldn't hold those items in my hands. He just had to put them in the bag. I was holding the bag when he put the laptop in. [\[note: 24\]](#)

There was no explanation of the "blindsiding".

23 She then went on to deny that she had stated in her fifth investigation statement that she recognised the concealed items in the photographs of the laptop shown to her, and believed them to be "shine shine". She asserted that at that time she had asked the Interpreter what it was, and he told her that it a controlled drug and she asked herself if that was the "shine shine" Kwaku referred to. [\[note: 25\]](#) She then changed her position and said that she also asked the Interpreter whether that could be the "shine shine" Kwaku spoke of [\[note: 26\]](#) (but she did not say what the Interpreter's response was).

24 In response to further questioning by her counsel, she then said: [\[note: 27\]](#)

Honestly, I have sworn and I will not lie. I was not shown the items one after the other to say

that "Er it---could this be the 'shine shine', could that be 'shine shine", but it was except they show me the picture that I said "Eh, could it be the 'shine shine' that Kwaku Mohamed referred to---talked about."

and she continued:

I said to my interpreter and I spoke to myself. So I did not say "This is "shine shine", that is 'shine shine'." I didn't say that and that--- t's a bit confusing to me. I only said this at the point I was shown the picture like I have said earlier.

Review of the case

25 The first issue to be determined was whether the Accused knew that she had the "shine shine" in her possession. On a literal reading of s 18(1)(a), it would appear that possession of a thing containing a drug *ipso facto* encompasses possession of the drug, leaving no room for a presumption. However possession is not taken in the narrow sense and it entails awareness of the presence of the drug (as distinct from the nature of the drug). When it is so construed, then there is place for the presumption. In her fifth investigation statement, the Accused recounted that when she was in Dubai, Kwaku called her and told her that the goods he had given to her *contained* something called "shine shine", and in the same statement she recognised the hidden packs in the laptops as "shine shine". She did not dispute the veracity of the account of the telephone call. Her attempt to deny the admissions that she recognised the packs of "shine shine" was contradicted by the Interpreter and the fact that she had signed the statement in which the admissions were made after it was read back to her in Twi. In the circumstances, her knowledge that she was in possession of the "shine shine" was proved by her statement, and even if she was not aware of the "shine shine", it is presumed under s 18(1) as she was in possession of the "shine shine" hidden in the cans, DVD players, shoes and power adapter.

26 With respect to her knowledge of the nature of the "shine shine", there was no direct evidence. As she was in possession of the "shine shine", the question is whether she had rebutted the presumption under s 18(2) that she knew the nature of the "shine shine". The effect of the presumption is to reverse the burden of proof; the prosecution does not have to prove that an accused person has the knowledge. It is for the accused person to prove that he does not have the knowledge. As the Court of Appeal put it in *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 (at [23]):

... To rebut the presumption of knowledge, all the accused has to do is to prove, on a balance of probabilities, that he did not know the nature of the controlled drug referred to in the charge. The material issue in s 18(2) of the MDA is not the existence of the accused's knowledge of the controlled drug, but the ***non-existence of such knowledge*** on his part.

[emphasis in original]

and if he failed to rebut the presumption, he is deemed to have the knowledge without further proof. In *Public Prosecutor v Muhammad Farid bin Mohd Yusop* [2015] 3 SLR 16, the Court held (at [50] and [51]) that in determining whether an accused person has rebutted a presumption, "...much depends, in the final analysis, on an assessment of the credibility of the accused person...". In other words, a persuasive case has to be presented to rebut the presumption.

27 Whether an accused person succeeds in rebutting a presumption will depend on all the relevant circumstances. His credibility will be a key consideration, but there can be other factors such as the

evidence of other witnesses, the existence of supporting facts to show that he in fact did not have the requisite knowledge. In the present case the Accused did not call any witnesses and there were no facts which showed that she did not have the knowledge (eg, Kwaku coming forward and confirming that he told her that the "shine shine" was crystalline sugar). In these circumstances the Accused's effort in rebutting the presumption rested on the credibility of her evidence.

28 I reviewed the Accused's evidence relating to the items Kwaku handed to her to bring to Singapore. Her evidence left much to be desired, the more prominent aspects thereof being:

(a) The packing of the items into her haversack. She changed her position from seeing and helping Kwaku to pack the haversack to not seeing the items which Kwaku packed in the haversack since it was done out of her sight.

(b) The origin of the cans. She told Sgt Ridhuan that the cans were from Ghana, then claimed that they were bought in Singapore when there could be no doubt in her mind that they were from Ghana.

(c) Knowledge of the "shine shine". She denied knowledge even though she admitted in her investigation statement that Kwaku told her on the phone that the items contained "shine shine", and she recognised them when she were shown the photographs after her arrest.

(d) Collection of \$5,000. She said that Kwaku instructed her to collect the money from the person who collected the items, and then that the collection of the money was not mandatory, and she was not to ask for the money if it was not paid.

(e) The cans were for her consumption. She alleged that Kwaku told her that the two cans were for her consumption, despite the fact that their contents were inedible drugs carefully concealed and obviously intended for delivery to the recipient. It is inconceivable that Kwaku would take the chance of the Accused treating the cans as her own and giving them away, or throwing them away as she could not consume the contents.

29 It is to be noted these parts of her evidence spanned the entire course of her involvement with the drugs, from the time the items came into her possession, to the planned delivery of the items and the collection of money from the recipient. In assessing her credibility I took into account the fact that she only had a few years' schooling, and that she was in an unfamiliar environment where communication to and from her had to be conducted through interpreters. Nevertheless from my observation of her, she was reasonably articulate, confident and intelligent, and should have had no difficulties in remembering the events of the third trip. The aspects of her evidence referred to in the foregoing paragraph related to matters which took place quite shortly before her arrest, and are not matters of complexity. I find that the changes, inconsistencies and illogicality in her evidence point not to the failing of memory, but to a reluctance to tell the truth and a propensity to change her narration of the facts and retract troublesome admissions. She knew that Kwaku had paid a considerable amount for her three trips to Singapore and hotel accommodation so that he could call on her help. She knew that Kwaku was not forthcoming about the "shine shine" and the other persons who he had helped to travel to Singapore. She nevertheless agreed to carry the items to Singapore, and Kwaku expected her to call him when she arrived in Singapore. She was not guileless victim of Kwaku. She was carrying something hidden in the items for Kwaku in return for him paying for her trips to Singapore, and her behaviour after her arrest undermined her effort at rebutting the presumption under s 18(2).

30 After giving the matter due consideration, I found that she was holding back on and improvising

her evidence and that her declarations of ignorance were not credible. Consequently she did not show, on a balance of probabilities, that she did not know that the “shine shine” in her possession was methamphetamine and was therefore deemed to have known that. I found that the prosecution had proved, on the basis of the Accused’s admissions in her investigation statements and the applicable presumptions that she was guilty of the offence, and that she had imported the methamphetamine that was recovered. I also found that she was not the supplier or purchaser of the drugs, but was a courier.

Sentence

31 After I convicted the Accused, the prosecution tendered the Public Prosecutor’s certificate issued under s 33B(2)(b) of the MDA certifying that the Accused had substantively assisted the CNB in disrupting drug activities. I then sentenced the accused to imprisonment for life, with the sentence backdated to commence on 3 September 2012, the date of her arrest and detention. The sentence of life imprisonment is an alternative sentence to the previously mandatory death sentence, introduced in 2013 by s 33B.

32 Before I conclude, I have some observations to make on some aspects of 33B. Section 33B reads:

33B.—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and he is convicted thereof, the court —

(a) may, if the person satisfies the requirements of subsection (2), instead of imposing the death penalty, sentence the person to imprisonment for life...; or

(b) shall, if the person satisfies the requirements of subsection (3), instead of imposing the death penalty, sentence the person to imprisonment for life.

(2) The requirements referred to in subsection (1)(a) are as follows:

(a) **the person convicted proves** , on a balance of probabilities, that his involvement offence... was restricted —

... and

(b) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities...

(3) The requirements referred to in subsection (1)(b) are that **the person convicted proves**, on a balance of probabilities, that —

(a) his involvement in the offence... was restricted —

... and

(b) he was suffering from such abnormality of mind... as substantially impaired his mental responsibility for his acts...

[emphasis added]

33 The procedure for establishing the restricted involvement of the person convicted, in particular, whether evidence of the restricted involvement is to be adduced at the trial prior to the conviction or whether the person convicted is allowed to present the evidence after his conviction but prior to sentencing has been considered by the Court of Appeal in *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 ("*Chum Tat Suan*"). The majority view was that if the person had not proved his restricted involvement during the trial, he is not allowed to raise that for the purpose of sentencing. Although the issue did not arise in the present case, I would like to make an observation on that question.

34 A person facing a capital drug charge may withhold disclosure of his restricted involvement with the drugs, and put up a defence that he was not involved at all. He is entitled by law to present the defence of his choice. When he withholds disclosure of his restricted involvement and puts forward a "no-involvement" defence, he should know that there is no assurance that the defence will be accepted, and if it is not accepted there will be consequences. One of these consequences is that if the defence is rejected and if he is convicted, (if he is convicted it would be because there is proof of his guilt, and not because he had lied or withheld disclosure of his restricted involvement), he will be sentenced under s 33B. If he decides after his conviction but prior to sentencing to come clean and admit restricted involvement with the drugs (assuming that he is allowed to do that), the credibility of the admission may be undermined by his earlier denial of involvement. Further, if he is appealing against his conviction, the admission could have a very unfavourable effect on his appeal. The price for withholding the truth until after he has been convicted is that first, he may not be able to persuade the court to exercise its discretion not to impose the death penalty and second, his appeal against conviction may be jeopardised. However, should he not be allowed to make the admission post-conviction, he will not even have the opportunity to persuade the court not to impose the sentence of death on him. Effectively, for having lied or withheld the truth before his conviction, the penalty is the forfeiture of the possibility of avoiding the capital sentence. That is an inordinately severe penalty for lying.

35 There is another aspect of the application of s 33B which should be looked at. This relates to the words "the person convicted proves" in ss 33B(2)(a) and 33B(3). Taken literally they impose the burden of proof of the restricted involvement of the person convicted and his abnormality of mind on the person convicted. That raises issues of principle and practice. I start with the proof of restricted involvement. An accused person who raises a defence that he is not involved with the drugs will not do anything to prove his restricted involvement. Should he be put in a position where he has to choose between presenting his preferred defence (and not prove restricted involvement), or to waive that defence and admit restricted involvement (and incriminate himself)? In practice, evidence of his restricted involvement may be presented even if he denies it. The prosecution may present the evidence as part of its case and the evidence may be accepted by the court. The position then is that the evidence of restricted involvement is before the court, but it is not proved by the person convicted. In such a situation, should the court disregard the evidence that is already before it and which has been accepted, and not exercise its discretion with regard to the sentence?

36 The proof of abnormality of mind is almost in the same position. When there are questions during investigations about the mental condition of an accused person, he is invariably sent for psychiatric examination, and any finding on his mental capacity would be disclosed at trial by the prosecution. In such a case, the trial court may accept a finding of abnormality of mind, especially if the defence does not dispute it. Is there any reason to require the person to prove it again to ensure that the court can have the discretion to impose a sentence of life imprisonment instead of the death penalty? It does not enhance the efficacy of the administration of the law to require the person to incur the expense, effort and time to prove something that the prosecution has already proved.

37 The purpose of s 33B is to give discretion to the court to impose a sentence of life imprisonment and caning, where appropriate, as an alternative sentence to the death penalty on a convicted person who has a restricted involvement with the drugs or suffers mental impairment. The fact of restricted involvement or impaired mental condition is the critical consideration and not the source of the evidence of the involvement or the mental condition. A practical and fair interpretation should be adopted because lives may hang on it. The provisions should be interpreted purposively, with the words in question construed as "when the court is satisfied".

[\[note: 1\]](#) PH 15

[\[note: 2\]](#) PH 18

[\[note: 3\]](#) PH 17 & PH20

[\[note: 4\]](#) PH 21 – 23 & PH 24 –26

[\[note: 5\]](#) PH 26 – 28 & P35

[\[note: 6\]](#) PH 36 - 39

[\[note: 7\]](#) PH 33 - 34

[\[note: 8\]](#) P5 to P14

[\[note: 9\]](#) P 20

[\[note: 10\]](#) P 24

[\[note: 11\]](#) P25 – P30

[\[note: 12\]](#) P26 para 15

[\[note: 13\]](#) P29 para 65

[\[note: 14\]](#) P29 para 60

[\[note: 15\]](#) P29 para 61

[\[note: 16\]](#) p59

[\[note: 17\]](#) P29 paras 67-69

[\[note: 18\]](#) NE 26 Feb 2015 p79 II24-30

[\[note: 19\]](#) NE 24 June 2015 p4 II4-19

[\[note: 20\]](#) NE 24 June p3 ll25-32

[\[note: 21\]](#) NE 27 February p 11 ll21-24

[\[note: 22\]](#) NE 27 Feb 2015 p26 ll 13-18

[\[note: 23\]](#) NE 24 June 2015 p5 ll 11-14

[\[note: 24\]](#) NE 24 June 2015 p6 ll 6-11

[\[note: 25\]](#) NE 24 June 2015 p7 ll 2-6 & 11-20

[\[note: 26\]](#) NE 24 June 2015 p9 ll 30 - p10 11

[\[note: 27\]](#) NE 24 June 2012 p16 ll 7-17