

Public Prosecutor v Tan Kah Ho and another
[2017] SGHC 61

Case Number : Criminal Case No 1 of 2017
Decision Date : 07 April 2017
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Lau Wing Yum and Marcus Foo (Attorney-General's Chambers) for prosecution; Wong Siew Hong and Favian Kang Kok Boon (Eldan Law LLP) for first accused; Chua Eng Hui (RHTLaw Taylor Wessing LLP), Ho Thian Huat (T H Ho Law Chambers) and Dew Wong (Dew Chambers) for second accused.
Parties : Public Prosecutor — Tan Kah Ho — Mui Jia Jun

Criminal Law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The appeal in Criminal Appeal No 17 of 2017 was allowed by the Court of Appeal on 1 August 2018 to the extent that the matter was ordered to be retried before another High Court judge. See [\[2018\] SGCA 59.](#)]

7 April 2017

Judgment reserved.

Choo Han Teck J:

1 Tan Kah Ho (“Tan”) is a 33 year-old Malaysian who worked as a storeman. Mui Jia Jun (“Mui”) is a 28 year-old Malaysian who had worked in an internet café where he first met Tan.

2 Tan was arrested behind City Plaza at 6.50am on 21 February 2014 after he had just delivered a blue plastic bag containing three bundles of drugs analysed to contain not less than 21.74g of diamorphine (“the diamorphine bundles”) to one Low Johnnie. All three bundles were wrapped in black tape. A search on Tan’s car, registered as WSG 3916, was made and a “Jorano” plastic bag, containing seven black-taped bundles, was found on the floorboard of the front left passenger seat. The “Jorano” bag contained three bundles of crystalline substance, analysed to contain not less than 323.7g of methamphetamine (“the methamphetamine bundles”). There were also four bundles of nimetazepam forming the subject matter of the third charge, which had been stood down. I will not consider any evidence relating to this charge.

3 Mui was not present with Tan on 21 February 2014 when Tan delivered the diamorphine bundles to Low Johnnie. Mui was arrested on 1 April 2014 at the Wheelock Place car park where he had just driven in at about 3.42pm with a woman named Whoo Tze Xin. Mui was driving a Malaysian registered car bearing registration number JNV 1060.

4 When Tan and Mui were arrested, they were found to be in possession of three mobile phones each. Tan made a total of eight statements to the Central Narcotics Bureau (“CNB”) after his arrest. Mui made a total of four statements. The foregoing facts were admitted without dispute.

5 Tan and Mui were jointly tried on two charges, both were in furtherance of their common intention to traffic in drugs, Tan delivered 21.74g of diamorphine to one Low Johnnie and Tan was in possession of 323.7g of methamphetamine for the purpose of trafficking on 21 February 2014, thus

committing an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("Misuse of Drugs Act") read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed). The Prosecution's case is that Mui had passed a "Jorano" bag containing the drugs to Tan in Malaysia, whereupon Tan had driven into Singapore and delivered the diamorphine bundles to Low Johnnie.

6 Tan testified that he knows Mui as "Ah Jun". He got to know Mui through "Ah Yang", his friend. Around September 2013, "Ah Yang" told him that "there [was] a good way of earning good money for doing a simple delivering [*sic*] job of some illegal stuff or collecting money from some people in Singapore for them". Tan started delivering drugs from September 2013 and had been collecting them for delivery from Mui and another "Chinese guy".

7 In his oral testimony, as well as his statements dated 24 February and 5 December 2014, Tan confirmed that that he met Mui in Malaysia in the early hours of 21 February 2014, where Mui had placed the drugs in the "Jorano" bag and handed the bag to him for delivery. This "Jorano" bag contained the diamorphine bundles and the methamphetamine bundles (and four bundles of nimetazepam). He crossed the Tuas Checkpoint and drove to Bukit Batok, where he received instructions via text from Mui and separated the bundles for delivery. He proceeded to City Plaza to deliver the diamorphine bundles to Low Johnnie, an "Ah Pek" he recognised from a previous transaction. They both went into a toilet and Tan handed a blue plastic bag containing the diamorphine bundles to him. Tan's evidence is largely consistent with Low Johnnie's statement dated 6 January 2017. Low Johnnie stated that he had received a call from the "Malaysian man" he identified as Tan in the morning of 21 February 2014, and proceeded to take a taxi to City Plaza to receive the one pound of "peh hoon" (a street name for diamorphine) he had ordered. This was passed to him in three black bundles inside a blue plastic bag. Low Johnnie had also recognised Tan as he had "received 'peh hoon' from [Tan] on about two previous occasions".

8 Tan barely challenged the prosecution's case, and even admitted in his statements on 25 and 26 February 2014 and his oral testimony that he knew that he was carrying drugs in the "Jorano" bag for the purpose of trafficking. In his statement dated 25 February 2014, he confirmed that the diamorphine and methamphetamine bundles were "the drugs that [he brought] in to Singapore and [intended] to deliver to 2 separate recipients on the day of [his] arrest". To date, he has earned about RM 20,000 to RM 30,000 from the drug deliveries and collection of drug proceeds.

9 His only defence was that he did not know that he was committing a capital offence, either because he did not know the quantity of drugs he was carrying or the penalties for drug trafficking. His counsel, Mr Wong Siew Hong, hoped to persuade me that I ought to accept this defence because Tan is a "simple-minded man" and was told by his "co-ordinators" that he would only be barred from entering Singapore for two to three years should he be caught.

10 There is no doubt that Tan knew that he was carrying heroin. It is true that when cross-examined by Deputy Public Prosecutor Lau Wing Yum ("Mr Lau"), Tan denied that he knew that the drugs were heroin, but he had already admitted that he had been delivering heroin in Singapore on Mui's instructions. That admission is found on the first substantive paragraph of his first long statement dated 24 February 2014. Further, in his statement dated 25 February 2014, Tan stated that he knew that the "Jorano" bag passed to him contained three bundles of "Bai Fen" (a Mandarin street name for diamorphine) and three bundles of "ICE" (a street name for methamphetamine). When specifically shown the drug exhibits of the diamorphine bundles, he admitted that he knew that the bundles contained "Bai Fen".

11 Judging by the manner he answered the questions under cross-examination from Mr Chua Eng Hui ("Mr Chua"), counsel for Mui, and Mr Lau, I do not think that Tan was so simple-minded that he

did not know the type or quantity of drugs he was delivering. The death penalty threshold for diamorphine is 15g. Even in its gross form, which was delivered to and handled by Tan, two to three bundles would be sufficient to cross the threshold. Even if Tan did not know the exact nature and quantity of the drugs, it was because he did not care to find out. It is not disputed that he had possession of the drugs. There is thus a presumption under s 18(2) of the Misuse of Drugs Act that he had known the nature of the drug. If he chose not to check the bundles when he knew he was carrying drugs, and had the opportunity to do so (during his drive to Singapore, for example), it would be very exceptional for any court to accept that by his denial alone he had rebutted the presumption in law that he knew the nature of the drugs in his possession.

12 From the evidence, I am of the view that although Tan was delivering heroin, he was acting only as a courier. His role was only limited to transporting, sending or delivering the drugs within the meaning of s 33B(2)(a)(i) of the Misuse of Drugs Act. He received the drugs and instructions as to what to do with them from Mui, and was only provided with the contact numbers of the recipients upon reaching Singapore. Mr Chua, counsel for the second accused, Mui, argues as part of Mui's defence, that Tan was intimately involved in the packing of the drugs, and that explains Tan's deoxyribonucleic acid ("DNA") on the interior and exterior surfaces of the methamphetamine bundles. Tan's DNA being found on the exterior surfaces of the methamphetamine bundles is consistent with his testimony that he had handled the bundles to allocate them to their recipients. It is true that his DNA was also found on the adhesive side of the black tapes of one of the methamphetamine bundles (A1A) and one of the diamorphine bundles (B1). The packed bundles, as observed from their photographs (exhibits P12 and P25), do not appear to have been packed very tidily, with the edges of the bundle not entirely sealed up. As there is no other evidence suggesting that Tan was involved in more than delivering the drugs, I will give him the benefit of the doubt that his DNA may have been left on the adhesive side of the black tapes at the ends of the bundle when he was handling them for delivery.

13 That brings me to Mui's defence. Mr Chua submits that the central issue is whether Mui handed the "Jorano" bag to Tan. Mr Chua conceded that if he did, the Prosecution's case is made out. A large part of Mr Chua's closing submissions concerned the DNA evidence. He submits that Mui's DNA was found in only two places on the diamorphine bundles (on the black tapes and the Ziploc bag) and none on the methamphetamine bundles. Mui's DNA was also not found on the "Jorano" bag. Mr Chua contrasts this to the multiple places in which Tan's DNA, and the DNA of other unknown persons, was found on the bundles, and submits that it is far more likely that someone else had handled the drugs. Alternatively, Tan was the one who had packed the drugs, and Mui could not have handed the drugs to Tan.

14 Mr Chua's argument would have been strong if Mui's DNA was not found at all. The fact that some were found means that he had contact with the drugs in the "Jorano" bag, requiring a reasonable explanation. Mui testified that he had used a roll of black tape in one Xiao Hu's house to pack Erimin-5 tablets (street name for nimetazepam). The box he found the black tape in also contained Ziploc bags. Xiao Hu was Mui's friend, and had loaned Mui money in the past. On Xiao Hu's recommendation, Mui started packing Erimin-5 tablets at Xiao Hu's place for additional cash. Mr Chua submits that the same roll of black tape may have been used after that by a person other than Mui to pack the diamorphine, explaining Mui's DNA on one of the diamorphine bundles. He also submits that Mui may have left his DNA on the Ziploc bags when he touched them in the box, and these Ziploc bags were later used by someone else to pack the diamorphine. Ms June Tang from the Health Sciences Authority, who prepared the DNA reports, testified that it was a possibility, although she was unable to comment on its likelihood.

15 The probative value of the DNA evidence has to be examined against the rest of the evidence.

The evidence that the prosecution has proved against Mui are as follows. Tan, the courier, has identified Mui without hesitation or qualification as the "Ah Jun" who had handed the "Jorano" bag to him (Tan). His testimony that he and Mui were working in concert to deliver the drugs to recipients in Singapore has been consistent with all his statements and also the forensic evidence. The evidence from Tan's phones shows that Tan and Mui were in constant communication with each other on 20 and 21 February 2014. As mentioned above, three phones were recovered from Tan. This included a Sony Ericsson (marked "TKH-HP1"), Nokia (marked "TKH-HP2") and Samsung (marked "TKH-HP3") phone. Tan stated that Mui's number was +60146125901 ("the Number"). This number is saved as "Ah Jun" (in Mandarin) on Tan's Nokia and Samsung phones. In his statement dated 24 February 2014, not long after his arrest, Tan stated that Mui had called him on the night of 20 February 2014 to tell Tan to collect the drugs the next day and Tan had called Mui in the early hours of 21 February 2014 to ask where he should collect the drugs. This is corroborated by the forensic report of Tan's Samsung phone, which listed an incoming call from the Number at 8.56pm on 20 February 2014 and an outgoing call to the Number at 5.19am the next day.

16 Further, Tan gave evidence that upon reaching Singapore, he received further instructions from Mui as to the contact numbers of the intended recipients via text messages and proceeded to call them to arrange a meeting. This is again reflected in the text messages exchanged between the Number and Tan's Nokia phone between 6.07am and 6.10am on 21 February 2014. Tan sent a blank message to the Number at 6.07am. Text messages were then sent from the Number to Tan's phone. These messages included two Singaporean phone numbers, with an instruction to "collect whatever amount given" and to "do a's first", "A = 98944027" (later ascertained to be Low Johnnie's phone number). Again, the forensic report of Tan's Sony Ericsson phone shows that calls were made to both numbers at 6.47am and 7.14am Singapore time. The diamorphine bundles which were later delivered to Low Johnnie were also marked "A". It is clear from this that Tan's testimony implicating Mui, given a few days after his arrest, is coherent, consistent and is corroborated by the available circumstantial evidence.

17 The biggest difficulty with the forensic evidence thus far is that the phone or the subscriber identity module card ("SIM card") for the Number was never recovered, from Mui or otherwise. Mr Chua points to this gap in the evidence and argues that Mui is not the "Ah Jun" referred to in the contacts of Tan's phones. During trial, Mr Chua produced Mui's school leaving certificate. The Hanyu Pinyin translation of Mui's name in this certificate indicates that the last character in Mui's name is "Qing" rather than "Jun". This hardly goes any way in helping Mui's case. The question is not what Mui's name is on his school leaving certificate but what Tan knew him to be. Mui then tried to offer another possibility for "Ah Jun" when he testified that he had been helping one Xiao Hu with packing Erimin-5 tablets, and that he had seen Tan at his (Xiao Hu's) place. He had also seen the "Jorano" bag at Xiao Hu's place, although he had never touched it. Mui claims that the real name of Xiao Hu was "Tan Jun Yi". There is no independent evidence of Xiao Hu's real name, and I do not accept Mui's bare assertion that there happened to be another man involved in the drugs operation who was conveniently named "Tan Jun Yi" and was the "Ah Jun" that Tan had been communicating with. Tan himself testified that although he had dealt with another Chinese man, he had only addressed this man as "lao ban", and indicated his name with a comma in his phone, as the Chinese man had never told him his name. Further, although neither the SIM card nor the phone for the Number had been recovered, a Nokia phone (marked "JJ-HP1") with a SIM card bearing the number "60167604280" was found on Mui on the day of his arrest. This number was saved in Tan's Sony Ericsson and Samsung phones as "Ah Jun" and "Ah Jun 1" (in Mandarin). This shows that Mui was clearly known to Tan as "Ah Jun".

18 The crunch came when Mui's counsel took Mui to the contacts list stored in the SIM card of Mui's Nokia phone (marked "JJ-HP1"). The Number, without the Malaysian "+60" prefix, was saved as

a contact. His argument was presumably that if Mui was the owner of the Number, it would not be saved in the contacts list of one of his phones. Mui testified that the Number belonged to Xiao Hu and was saved by Xiao Hu onto Mui's phone. The name of the contact was a Chinese character, "我". Mui's counsel spotted this and asked Mui what that meant. Mui was a little more alert and tried to evade the point by saying that "there is no meaning to [the character]", but eventually, it was ascertained at trial that the Chinese character "我" simply meant "I" or "me". The clear inference is that Mui had saved the Number in his Nokia phone, indicating that the Number belonged to him. I accept the Prosecution's explanation that Mui owned at least three phones and needed to remind himself of the numbers that he had. Mui claims that Xiao Hu had typed that into his (Mui's) phone. Mui also testified that Xiao Hu's other number was saved as "Lao Ban 2". That Xiao Hu saved his number in Mui's phone as "I" or "me" is patently absurd unless an explanation is given. None was given

19 For completeness, Mr Chua also referred us to Mui's phone records of his Samsung phone (marked "JJ-HP3"). One "Akira Akimoto", bearing the Number (without the Malaysian "+60" prefix), is listed as a Facebook contact on this phone, and there are Facebook messages within a group conversation from "Akira Akimoto". Mr Chua's argument again is that if Mui owned the Number, it would not be saved as a Facebook contact from which Mui was receiving messages. The Facebook messages allegedly sent by Akira Akimoto were not translated for the court and are thus of little assistance to Mui. As shown by the preceding paragraphs, the evidential value of saved contacts in phones or social media accounts, or forensic evidence in general, can only be appreciated if its full context is provided to the court.

20 From the whole of his evidence, I find Mui's defence to be untenable. It is clear from all the evidence that Mui had passed Tan the drugs on the morning of 21 February 2014. He further participated in the criminal act by sending Tan text messages with instructions as to who the recipients were and how the drugs were to be specifically allocated, with the intention that Tan would go on to sell the drugs to the recipients and collect payment. Acting on this, Tan went on to deliver the diamorphine bundles to Low Johnnie and was holding on to the methamphetamine bundles for the next transaction, before he was arrested. I am satisfied that the prosecution has proved its case beyond reasonable doubt that Tan acted with Mui and with the common intention of them both, trafficked in not less than 21.74g of diamorphine and was in possession of not less than 323.7g of methamphetamine for the purposes of trafficking. I therefore found them guilty as charged and convict them accordingly. I am unable to find that Mui acted only as a courier. The evidence showed that he was the packer and instruction giver.