

Public Prosecutor v Abdul Wahid Bin Ismail
[2017] SGHC 87

Case Number : Criminal Case No 26 of 2017
Decision Date : 20 April 2017
Tribunal/Court : High Court
Coram : Hoo Sheau Peng JC
Counsel Name(s) : Mark Jayaratnam and Rachel Ng (Attorney-General's Chambers) for the Prosecution; Amolat Singh (Amolat & Partners), Wong Seow Pin (S P Wong & Co) and Tan Jeh Yaw (S Y Wong Law Chambers) for the accused.
Parties : Public Prosecutor — Abdul Wahid Bin Ismail

Criminal Law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 16 of 2017 was dismissed by the Court of Appeal on 24 October 2017 with no written grounds of decision rendered.]

20 April 2017

Hoo Sheau Peng JC:

Introduction

1 The accused, Abdul Wahid Bin Ismail, claimed trial to the following charge:

That you, Abdul Wahid Bin Ismail, on 16 March 2015, inside a motorcar bearing registration plate number SHC3924D, along Serangoon Road, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, by having in your possession for the purpose of trafficking, three packets containing not less than 1343.4 grams of granular/powdery substance which were analysed and found to contain not less than 46.64 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33(1) of the said Act.

2 The accused did not raise any substantive defence to the charge. At the conclusion of the trial, I found that the Prosecution had proved the charge beyond a reasonable doubt against the accused. I found him guilty and convicted him of the charge.

3 Under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), read with the Second Schedule to the MDA, the punishment prescribed for the charge is death. Section 33B(1)(a) provides that if the twin requirements set out in s 33B(2) are satisfied, the court has a discretion not to impose the death penalty. The accused sought to avail himself of the alternative sentencing option. While there was no dispute that the accused's acts fell within s 33B(2)(a) of the MDA (which the courts have referred to, for the sake of convenience, as acts of a "courier"), the accused did not satisfy s 33B(2)(b) because the Public Prosecutor did not issue a certificate of substantive assistance. As the second requirement was not satisfied, I did not have the discretion to impose the alternative sentence. I therefore imposed the mandatory sentence of death.

4 The accused has appealed against his conviction and sentence. I now provide the reasons for my decision.

The Prosecution's case

5 The material facts were not contested. They are set out in an Agreed Statement of Facts which the Prosecution furnished pursuant to s 267(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), and which was admitted into evidence.

6 Further, there were 27 witnesses for the Prosecution, including officers from the Central Narcotics Bureau ("CNB") and analysts from the Health Sciences Authority ("HSA"). Each witness made a statement in accordance with s 264 of the CPC ("conditioned statement"). The parties agreed to dispense with the attendance in court of 25 of the witnesses, whose conditioned statements (together with the accompanying exhibits) were admitted into evidence without their having to take the stand. Only two witnesses, Staff Sergeant Muhammad Fardlie Bin Ramlie ("SSgt Fardlie") and Station Inspector Quah Yong Sen ("SI Quah"), provided oral evidence to supplement their conditioned statements.

7 Also, the Prosecution relied on eight statements provided by the accused to SSgt Fardlie and SI Quah in the course of investigations. The accused accepted that all eight statements were made voluntarily, without any threat, inducement or promise made to him before or during their recording. There was also no serious challenge to the contents within the eight statements.

Events leading to the arrest

8 I now set out the material facts. The accused is a 50-year-old male Singaporean. At the material time, he was 48 years old. He was a taxi driver who drove a blue Comfort taxi bearing licence plate number SHC3924D.

9 On 16 March 2015, at about 5pm, a party of officers from the CNB proceeded to the vicinity of Block 61 Geylang Bahru to conduct an operation. At about 5.15pm, the CNB officers spotted the accused's taxi at the car park of Block 61. They saw a man, later ascertained to be Lim Hock Kim ("Lim"), boarding the taxi. Shortly after, Lim alighted from the taxi.

10 Subsequently, the taxi proceeded out of the car park and was tailed by the CNB officers in their vehicles. As the taxi was travelling along Serangoon Road, the CNB officers intercepted it. The accused, who was driving the taxi, was placed under arrest. Separately, Lim was also arrested.

Seizure of the drug exhibits and other exhibits

11 The CNB officers searched the accused and recovered a sum of \$2,000 in cash. They also conducted a search of the taxi in the presence of the accused and found a spare tyre in the boot. On one side of the tyre, there was a red plastic bag, which they seized. This red plastic bag (marked as "B1") contained two black taped bundles (marked as "B1A" and "B1B") which in turn contained one large packet of brown granular substance each (marked as "B1A1" and "B1B1"). On the other side of the spare tyre, one torn red plastic bag was also found and seized. This second red plastic bag (marked as "C1") contained one black taped bundle (marked as "C1A") which in turn contained one large packet containing brown granular substance (marked as "C1A1"). The three packets, *ie*, "B1A1", "B1B1" and "C1A1", and the contents within, formed the subject matter of the charge ("the three packets of drugs"). I should add that other drug exhibits and paraphernalia were recovered from the floor mat of the driver's seat of the taxi. However, these were not pertinent for the purpose of the

charge, and I shall not set out the details.

Analysis by the Health Sciences Authority

12 Subsequently, the three packets of drugs were submitted by the CNB to the HSA for analysis. An analyst with the HSA, Lim Hui Jia Stephanie, found that the three packets contained, in total, not less than 1,343.4g of granular/powdery substance, which contained not less than 46.64g of diamorphine. The HSA also found that the exterior surface of the second red plastic bag marked as "C1" carried genetic material which matched the DNA profile of the accused. There was no dispute as to the integrity and proper custody of all the exhibits at all material times, and I shall not go into the details here.

Statements made during the investigations

13 I now summarise the pertinent aspects of the eight statements given by the accused during the investigations:

(a) In an oral statement given to SSgt Fardlie on 16 March 2015 at 5.42pm, the accused admitted that all the "ubat" in the taxi, including the "3 'batu' at the back", belonged to him. I note that according to SSgt Fardlie and the CNB interpreter Mohammad Farhan Bin Sani, "ubat" literally means "medicine" in Malay, while "batu" means "stone". However, based on their experience with drug investigations as officers of the CNB, they testified that in slang or street lingo, "ubat" refers to heroin, while "batu" refers to a pound of heroin.

(b) In a contemporaneous statement recorded by SSgt Fardlie on 16 March 2015 at 6.30pm pursuant to s 22 of the CPC, the accused admitted that the three packets of drugs recovered from the boot of the taxi were his, and were meant for sale. He referred to the contents as "ubat", and said that one "batu" would go for \$4,000.

(c) In the cautioned statement recorded by SI Quah on 17 March 2015 at 3.49am pursuant to s 23 of the CPC, the accused said that he shared "this thing" with his friend Azman.

(d) Five statements were recorded by SI Quah between 20 March 2015 and 28 August 2015 pursuant to s 22 of the CPC.

(i) In the statement recorded on 20 March 2015 at 10.18am, the accused said that after his arrest, when he was asked by the CNB officers if he had anything to surrender, he said that there were "3 'Batu' inside the taxi boot". He clarified that, "To [him], 'Ubat' means *heroin*, and 'Batu' means *1 black bundle of 'Ubat'*" [emphasis added].

(ii) In the statement recorded on 20 March 2015 at 3.44pm, the accused was shown photographs of the three packets of drugs found in the boot of the taxi, and he accurately identified them.

(iii) In the statement recorded on 21 March 2015 at 10.15am, he said that Azman, his friend, was a fellow drug addict who was involved in dealing with drugs. Azman put him in touch with a person known to him as "Abang".

About a week before his arrest, the accused had collected five "Batu" in a black trash bag from Abang's courier at a diesel kiosk at Sungei Kadut. Then, he contacted Azman, who said that he had an order for half a "Batu", and that he would go with the accused to meet the

buyer.

The accused took two "Batu", placed them in a red plastic bag and put them on one side of the spare tyre in the boot of his taxi. Then, he placed another two "Batu" into another red plastic bag, and placed them on the other side of the spare tyre. Then, he entered the taxi with one "Batu" in a red paper bag, and drove off to meet Azman.

When they met, the accused handed one "Batu" to Azman in the taxi, and Azman cut the "Batu", splitting it into half. Then, Azman handed half a "Batu" back to the accused. The accused could see the "Ubat" in the half "Batu" which was handed to him, and the accused kept it in the side compartment of the taxi.

Then, they proceeded to a car park at Block 61, where Azman handed the half "Batu" to a Chinese man, in exchange for a stack of cash.

(iv) In the statement recorded on 22 March 2015 at 10.05am, the accused explained that upon Abang's instructions, he delivered one "Batu" to someone at Dhoby Ghaut.

Then, on the day of the arrest, Abang told him to proceed to Kallang Bahru to deliver a half "Batu" to the same Chinese man who took delivery of a half "Batu" from Azman. The accused was also to collect any money that the Chinese man would pass to him, and then pass the money to Azman.

After the accused reached the location, the Chinese man boarded the taxi. The accused passed the half "Batu" in the side compartment of the taxi to the Chinese man. In turn, the Chinese man handed him a stack of cash, which he assumed to be \$2,000 for the half "Batu". Shortly after, the accused was arrested.

The accused explained that he was going to deliver the three packets of drugs upon receiving instructions from Abang as to where to send them to. He expected a reward for his task.

(v) In the statement of 28 August 2015 at 9.45am, the accused clarified that Azman was not involved with the three packets of drugs. He collected the three packets of drugs by himself, and he was waiting for Abang to call him about them.

Admissions as to the elements of the charge

14 The Agreed Statement of Facts has by definition been accepted by the accused. Critically, it is stated at para 20 that:

The accused had in his possession three packets, being exhibits "B1A1", "B1B1" and "C1A1", containing not less than 1343.4 grams of granular/powdery substance which were analysed and found to contain not less than 46.64 grams of diamorphine. The accused was aware of the nature of the drug present in the said three packets i.e. heroin. The three packets i.e. exhibits "B1A1", "B1B1" and "C1A1" form the subject matter of the present charge. The accused is not authorized under the MDA or the Regulations made thereunder to have the said three packets containing not less than 46.64 grams of diamorphine in his possession.

The defence

15 At the close of the Prosecution's case, I found that there was sufficient evidence against the accused for the defence to be called. The accused was the only witness for the Defence. By and large, the accused provided an account which was consistent with the contents of the eight statements as summarised above. In short, the accused did not dispute his guilt. Instead, he focused on (a) attempting to prove on a balance of probabilities that he had acted merely as a courier under the instructions of a person known to him as "Abang"; and (b) showing that he had co-operated with the CNB by providing information about drug trafficking activities. As the Defence put it, the main issue was his eligibility for consideration for the alternative sentencing option. I shall set out some additional details provided by the accused in his testimony in this regard.

16 Specifically, the accused said that he first came to know Abang in the 1980s, and then lost contact with him. Through his friend, Azman, he was re-acquainted with Abang. He saved Abang's contact number in his handphone under the name "Johor Guard. Taman Perling". Abang supplied drugs to Azman, and Azman got the accused involved in transporting drugs. Prior to the arrest, the accused worked with Azman on three occasions. Acting as the driver, he would fetch Azman to specific locations, and Azman would collect drugs from unknown persons. On each of those occasions, the accused got a packet containing about 8g of heroin as a reward for his assistance. He consumed the drugs that he received on those three occasions.

17 After he gained Abang's trust, the accused was able to work alone. He discussed his remuneration with Abang, who told him that for every one "batu" he delivered, he would get \$100. Then, Abang instructed him to go to a diesel kiosk at Sungei Kadut to take delivery of five bundles of drugs from an unknown person. As the accused waited at the Sungei Kadut diesel kiosk, an unknown man arrived on a motorcycle. He opened the front passenger door of the taxi and placed a plastic bag containing five bundles on the floor mat of the taxi. The accused felt inside the plastic bag and noted that there were five "batu" within the plastic bag. He placed the plastic bag containing the five bundles in the boot.

18 Then, the accused received instructions from Abang to deliver one bundle to someone at Dhoby Ghaut. The accused did as instructed. He did not collect any money from the person he delivered the bundle to. The accused, together with Azman, then made another delivery of half a bundle to someone at Geylang Bahru. The accused could not remember whether this was before or after the delivery of one bundle to the person at Dhoby Ghaut. For this transaction, it was Azman who "packed" the half bundle.

19 On the day of the accused's arrest, Abang called the accused and instructed him to deliver another half a bundle to the same Chinese man who previously took half a bundle at Geylang Bahru. This Chinese man was Lim. Abang also told him to collect some money from Lim, and to keep \$200 as the reward. The accused proceeded to the car park at Block 61 Geylang Bahru, and Lim boarded the taxi. The accused passed him half a bundle, and Lim passed him a sum of \$2,000 which was to be handed to Abang. Then, the accused drove towards the car park exit. Shortly after, he was arrested. At the time, there were the three packets of drugs left in the boot of the taxi, which formed the subject matter of the charge. The accused was waiting for instructions from Abang to deliver the three packets of drugs.

20 As regards the recording of his statements, the accused mentioned that on one occasion, he requested a drink and to sit on the floor so as to lean against the wall because he was suffering from withdrawal symptoms. SI Quah allowed him to do so. However, the accused confirmed that the statements were given voluntarily.

21 In cross-examination, the accused was asked if he was aware that the three packets of drugs

contained heroin. The accused admitted that after Azman cut open one bundle to divide it into half for the purpose of the first delivery to Lim, the accused came to know that the three packets of drugs were heroin. He agreed that the three packets of drugs were not for his own consumption. He also confirmed that on the occasion when he was suffering from withdrawal symptoms, he understood the questions that were asked and the answers he provided.

The law

22 I now turn to the applicable law. The relevant provisions in the MDA constituting the charge read:

Trafficking in controlled drugs

5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug;

...

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

By s 2 of the MDA, “traffic” is defined to include “transport”, “send” and “deliver”.

23 In *Muhammad Ridzuan bin Md Ali v PP and other matters* [2014] 3 SLR 721, the Court of Appeal held at [59] that the elements of a charge of trafficking under s 5(1)(a) read with s 5(2) of the MDA are (a) possession of a controlled drug; (b) knowledge of the nature of the drug; and (c) proof that possession of the drug was for the purpose of trafficking which was not authorised. There was no dispute as to the law.

Closing submissions

24 In its closing submissions, the Prosecution submitted that it was not contested that the accused was in possession of the three packets of drugs; that he was in possession of the drugs for the purpose of delivering them to someone, *ie*, for the purpose of trafficking; and that he knew that the drugs were diamorphine or heroin. Therefore, the charge was proved against the accused beyond a reasonable doubt. The Defence did not challenge the Prosecution’s position.

Decision

25 Essentially, the accused admitted to all the elements of the offence. In relation to possession of the three packets of drugs, the accused stated that he had received them from Abang’s courier at a diesel kiosk at Sungei Kadut, and that he had then placed them in the boot of his taxi. It was clear that the accused was in possession of the three packets of drugs.

26 According to s 2 of the MDA, “traffic” includes the act of delivery. The accused admitted that, as instructed by Abang, he had collected the drugs in order to deliver them, on the understanding that he would receive a reward for doing so. At the material time, he was awaiting instructions from Abang on who to deliver them to. The accused further testified that he did not open the three packets of drugs as they were not meant for his personal consumption. All of this established that the accused was in possession of the drugs for the purpose of trafficking. This was not an authorised act.

27 As regards the knowledge element, it was clear from the admission in the Agreed Statement of Facts, the contents of his statement (particularly the contents of the statement recorded on 20 March 2015 at 10.18am set out at [13(d)(i)] above), and his evidence in court, that the accused knew that the drugs were heroin.

28 The Prosecution had proved the charge against the accused beyond a reasonable doubt. Accordingly, I convicted the accused of the charge.

Sentence

29 The relevant provisions in the MDA concerning the alternative sentencing regime read:

Discretion of court not to impose sentence of death in certain circumstances

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 and, if the person is sentenced to life imprisonment, he shall also be sentenced to caning of not less than 15 strokes ...

(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 in the offence under section 5(1) or 7 was restricted —

(i) to transporting, sending or delivering a controlled drug;

(ii) to offering to transport, send or deliver a controlled drug;

(iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or

(iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); 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 within or outside Singapore.

30 In other words, to invoke the discretion of the court under the alternative sentencing regime, an offender must show that his acts are acts of a courier within the meaning of s 33B(2)(a) of the MDA and must also receive a certificate of substantive assistance from the Public Prosecutor. Section 18(4) of the MDA further states that the decision to give or withhold such a certificate is in the sole discretion of the Public Prosecutor.

31 In respect of the first requirement, it was not disputed that in determining whether an offender has acted as a courier, the court should look only to his role in respect of the capital charge for which he is tried, and disregard his role in respect of any other distinct drug transactions. Section 33B(2)(a) of the MDA specifically refers to the offender's "involvement in *the* offence" [emphasis

added]. At the end of the day, the determination of whether an offender is a courier necessarily involves a fact-specific inquiry: *PP v Christeen d/o Jayamany and another* [2015] SGHC 126 at [68].

32 In relation to the three packets of drugs which formed the subject matter of the charge, the accused collected them and was meant to deliver them as and when he received instructions from Abang. He expected to get a reward for doing so. While the accused might have collected the sum of \$2,000 for the half "batu" delivered to Lim just prior to the arrest, there was nothing to show that he was required to do anything more in relation to the three packets of drugs. Therefore, on the evidence available, I found on a balance of probabilities that the accused's role fell within the acts of a courier set out at s 33B(2)(a) of the MDA. In fact, the Prosecution did not dispute this.

33 However, I was informed that the Public Prosecutor had not issued, and would not be issuing the accused a certificate of substantive assistance. The Prosecution stated that in coming to that decision, the Public Prosecutor had considered (a) the information provided to the CNB to date by the accused; (b) information pertaining to operational matters and the CNB's follow up; and (c) the views of the CNB in relation to whether, based on the information provided by the accused, the accused substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore. After considering the above, the Public Prosecutor determined that the accused had not substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

34 As the second requirement was not met, the discretion of the court under s 33B(1)(a) did not arise. The Defence did not dispute this. Accordingly, I imposed the punishment of death.