

Chow Mun Fai v Public Prosecutor
[2001] SGCA 18

Case Number : CA 27/2000
Decision Date : 27 March 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : Edmond Pereira (Edmond Pereira & Partners) and Teo Choo Kee (Lee & Tan) (assigned) for the appellant; Bala Reddy and April Phang (Deputy Public Prosecutors) for the respondent
Parties : Chow Mun Fai — Public Prosecutor

JUDGMENT:

Grounds of Judgment

On 27 November 2000, the appellant, Chow Mun Fai (Ah Fai), was convicted and sentenced to death by the High Court on a charge of having in his possession for the purposes of trafficking, 46 sachets of substances, containing not less than 23.21g of diamorphine, an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (MDA) (Cap 185) and punishable under s 33 of the MDA. He appealed his conviction. At the conclusion of the hearing, we dismissed the appeal and now give our reasons.

2 Ah Fai was jointly charged in the High Court with his wife, Tan Tiew Guay ("Tan"), who was also known as Rose. They were arrested at the same time and were jointly tried in the High Court under a charge of possession of drugs for the purposes of trafficking. The amended joint charge which they faced was as follows:

That you, Tan Tiew Guay and Chow Mun Fai on or about the 22nd day of June 2000, and in a lift at Blk 744 Woodlands Circle, Singapore, and in unit #05-762, in furtherance of the common intention of both of you, 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 your possession for the purpose of trafficking, 46 sachets of substance containing not less than 23.21 grams of diamorphine without any 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) of the Misuse of Drugs Act, read with section 34 of the Penal Code Chapter 224 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

At the end of the trial, Ah Fai was found guilty of the offence and sentenced accordingly. On the other hand, Tan was found guilty of a lesser offence and was sentenced to eight months imprisonment. Neither Tan nor the prosecution appealed against her conviction and sentence.

Background facts

3 Ah Fai and Tan were married in 1994. They have three children, the eldest son aged six, the daughter aged five and the youngest son aged three, who was given away by Tan when he was seven months old because she could not afford to raise him. They co-owned a flat at Block 744 Woodlands Circle #05-762 (the Woodlands flat) with Ah Fais younger brother, Chow Meng Khuen. Ah Fai, Tan and their daughter started living in the Woodlands flat sometime in 2000. Prior to that, they were staying with Ah Fais mother at Block 203 Ang Mo Kio Ave 3 #10-1714 (the Ang Mo Kio flat). At the time when Ah Fai and Tan

were arrested, Ong Choon Hong (Hong), who is married to one of Ah Fais brothers, Chow Meng Kwang, was also staying with them in the Woodlands flat.

4 On 22 June 2000, Ah Fai, Tan and their daughter left the Woodlands flat at around 11.30pm and entered the lift on the fifth floor. When the lift stopped on the fourth floor, several Central Narcotics Bureau (CNB) officers entered the lift and arrested Ah Fai and Tan. At the time of their arrest, Tan was holding a red "On Cheong Jewellery" bag which contained a tissue paper pack and two paper wrappings. The two paper wrappings were found each to contain five sachets of diamorphine. Tan was questioned by one of the CNB officers but no written record was made of the questions asked and the answers given.

5 Ah Fai and Tan were then taken back to the Woodlands flat and the door was opened by Hong, who was in the flat at that time. Hong was also arrested by the CNB officers. The arrested persons were told by the CNB officers to surrender any drugs that they had in the flat. Tan then led two of the officers, Inspector Neo Ling Sim and Corporal S. Rajkumar, into the master bedroom. She directed them to a drawer of a plastic cabinet, next to the dressing table, where two red plastic bags were recovered and were found to contain altogether 36 sachets of heroin or diamorphine. She also pointed out a plastic box placed on the floor of the master bedroom, where another red plastic bag was recovered. This was found to contain a digital weighing scale, three bundles of empty sachets and a spoon. The spoon was later sent for scientific analysis and was found to be stained with diamorphine. In the same bedroom, an improvised smoking pipe was seized from the dressing table. Other than the above items, the following were also found in the kitchen of the flat and were seized: a tin foil with trace amounts of methamphetamine (commonly known as "ICE"); one mini-sachet of trace amount of ICE; and an improvised smoking pipe.

6 Tan and Ah Fai were then questioned separately by the Investigating Officer, Soh Thiam Loon (the I/O). Tan was first brought into one of the bedrooms for the questioning. The following record was made by the I/O of the questions and answers made:

Q : What have you got to say?

A : I got nothing to say.

Q : What are these things? (I point to 2 wrapped newspapers, inside red "On Cheong Jewellery" plastic bag)

A : Drugs

Q : What types of drugs?

A : Heroin

Q : Who these heroin belong to?

A : Belong to my husband, but I am holding.

Q : Why are you holding it?

A : Usually I hold, my husband didnt hold.

Q What are these 2 red plastic bags? (I point to 2 red plastic bags)

A : Also heroin drugs.

Q : Who they belong to?

A : My husband.

Q : How much heroin inside?

A : Im not sure because 5 in one packet.

Q : Who put these 2 red plastic bags in the drawer of the room?

A : My husband.

Q : What are all these heroin for?

A : Selling to people.

Q : Who sell?

A : My husband.

Q : How does he sell?

A : I am not sure. He sells but I do not know how he sells.

7 After the questioning with Tan was completed, Ah Fai was also brought into a bedroom and was questioned by the I/O. The following questions and answers were made in a mixture of Mandarin and Cantonese:

Q : What are these things? (I point to 2 wrapped newspapers, inside a red "On Cheong Jewellery" plastic bag)

A : Pak Fun [in Chinese characters]

Q : Belong to who?

A : My wife.

Q : For what?

A : Dont know.

Q : What are these 2 red plastic bags? (I point to 2 red plastic bags found in master bedroom)

A : Dont know

Q : Who put them in the room?

A : Dont know

Q : Who stay in the room where 2 red plastic bags found?

A : Me and my wife.

Q : This house belongs to who?

A : Me, my wife and my younger brother.

Q : What else have you got to say?

A : Nothing.

8 Ah Fai, Tan and Hong were subsequently brought back to the police station. Ah Fai and Tan were jointly charged with trafficking the 46 sachets of diamorphine found in the red "On Cheong Jewellery" bag and the two red plastic bags recovered from the master bedroom of the Woodlands flat. As for Hong, she was found to have been smoking ICE and was later released on bail. No charges in relation to Ah Fai and Tan were brought against Hong.

9 Scientific analyses of the substance seized were later conducted. The ten sachets found in the red "On Cheong Jewellery" bag were analysed to contain a total weight of not less than 5.29g of diamorphine. The other 36 sachets found in the two red plastic bags that were seized from the master bedroom of the Woodlands flat were analysed to contain a total weight of not less than 17.92g of diamorphine. In all, the 46 sachets had an overall weight of 23.21g of diamorphine.

The prosecutions case

10 In the court below, it was the prosecutions case that Ah Fai was a drug dealer and Tan assisted him in his drug trafficking activities. Ah Fai obtained his supply of the drugs from one Chua Ah Xiao. He sold the drugs to other parties and the money made from the sale would be banked into a UOB account. In this regard, the prosecution relied on evidence given by Ah Fais mother, Ho Sow Thor (Ho), who testified that sometime in April 2000, Ah Fai approached her and asked her to open an account in her name for him. Thus, she opened an account with the UOB and was given a bank book and ATM card, both of which she passed to Ah Fai.

11 Ah Fais brother, Chow Meng Kip (Meng Kip), also gave evidence that he was previously asked by Ah Fai to deliver some money to a person in Johor called "Ah Xiao". The prosecution further relied on the evidence provided by Hong, who testified to Ah Fais drug trafficking activities. She said that she was aware that there were drugs kept in the Woodlands flat as she had often seen people coming to the flat to look for Ah Fai and on one occasion, she saw one of the men leaving with a packet of drugs. She could recognise the drug as she was formerly a heroin addict, but had since quit and changed to smoking ICE instead. She obtained her supply of ICE from Ah Fai. She had warned Ah Fai that it was dangerous to have people coming to the flat to buy heroin but Ah Fai had ignored her advice. In her oral evidence, Hong testified that she was aware that Ah Fai had asked Ho to open a bank account and that Ah Fai had once asked her to deposit money into the account for him. Hong also said that during the occasions when people came to the Woodlands flat to look for Ah Fai, Tan was not around in the house most of those times.

12 Further incriminating evidence against Ah Fai was provided by one Thomas Toh Phee Lam (Thomas), a heroin drug addict. The prosecutions case was that, at the time of his arrest, Ah Fai was actually going to meet Thomas to sell him the ten sachets of heroin placed in the "On Cheong Jewellery" bag. Thomas was arrested by CNB officers on 22 June 2000, at around 7.45pm, and 15 sachets and one straw of heroin were recovered from him. A conditioned statement was later taken from Thomas. In his written statement, he stated that he had bought ten of the sachets of heroin from Ah Fai on the previous day, i.e. 21 June. The remaining five sachets and one straw of heroin were purchased from Ah Fai on some previous occasion. Thomas admitted to having been to the Ang Mo Kio flat before, sometimes to buy heroin from Ah Fai and at other times to smoke heroin. There were also occasions where Thomas went to the Woodlands flat to either buy or smoke heroin. Although Tan was sometimes present in the flat when he went there, Thomas dealt only with Ah Fai when he was buying heroin and it was Ah Fai who would give him the drug. Thomas was also previously told by Ah Fai that he bought his heroin from a man called "Ah Xiao".

13 During the trial, Thomas turned out to be an extremely unhelpful witness. His oral testimony was inconsistent and he vacillated between agreeing with and contradicting his written statement. He first agreed that he had made the statement voluntarily and no one had forced him to make it. However, he went on to deny most of what was stated in his written statement and even said that he was taught to give the written statement by the CNB officers. Surprisingly, when he was confronted by

Tans counsel on the truth of his assertion that he had only been to the Woodlands flat once to smoke ICE, Thomas then agreed that what he had just said in court was untrue, whereas the relevant paragraph in the written statement was in fact the truth. When he was cross-examined by counsel for Tan, Thomas testified that he was instructed by CNB officers to call Ah Fai in the evening of 22 June 2000 and he had arranged to meet Ah Fai that night to purchase some heroin. He was then brought by the CNB officers to Woodlands at some time after 11pm that night but he did not get to meet Ah Fai eventually. Subsequently, when he was cross-examined by Ah Fais counsel, Thomas then did a volte-face and essentially agreed with all of Ah Fais denials that were put to him.

14 Tan herself also gave evidence of Ah Fais drug trafficking activities. She admitted that she knew that there was heroin in the "On Cheong Jewellery" bag, which she was carrying at the time of their arrest. She knew that there was heroin kept in the Woodlands flat and in fact, she was the one who pointed out the drugs to the CNB officers. She knew that Ah Fai obtained his supply of heroin from Chua Ah Xiao and in turn sold the heroin to customers. She had seen customers coming to the Woodlands flat to purchase heroin from her husband and she had seen them discussing the price and quality of heroin. She had also helped to purchase envelopes and empty sachets for Ah Fai when he asked her. However, Tan firmly denied that she was otherwise involved in Ah Fais drug activities. She claimed that all the heroin that was seized belonged to Ah Fai and not to her. She was holding the "On Cheong Jewellery" bag for Ah Fai only because he had passed it to her when they were waiting outside the lift and had told her to hold it for him.

15 Tans evidence of the events on 22 June 2000 could be summarised as follows. She was at the Woodlands flat and had woken up at around 8-9am that morning. Ah Fai, Hong and her daughter were also present in the flat. After her daughter woke up, Tan brought her out to buy breakfast. When they returned, Tan saw Ah Fai talking on his handphone. Hong was helping out with the housework at that time. At around 1-2pm, Ah Fai gave her \$1,500 in cash to deposit into a UOB account that was opened in Hos name. Tan took the cash and went out with her daughter. She claimed that the money was deposited at the Woodlands Central UOB branch but evidence showed that it was in fact banked in at the Ang Mo Kio branch. Tan then went window-shopping with her daughter before returning to the Woodlands flat at around 4-5pm. Ah Fai and Hong were still in the flat at that time. A while later, Tan brought her daughter out again to buy dinner and they returned at around 6pm. After dinner, some time in the night, Tan heard Ah Fai talking to Thomas on the phone and heard them arranging to meet later at the void deck of the Woodlands block of flats. Subsequently, Tan saw Ah Fai taking two bundles of heroin from his drawer and placing them into the red "On Cheong Jewellery" bag. Tan then placed a packet of tissue paper into the red bag. She claimed that it was for Ah Fais use as she knew that he did not use handkerchiefs. When Ah Fai was leaving the house, Tan told him that she was going out as well to buy some Milo for their daughter. Ah Fai and Tan, together with their daughter, then left the Woodlands flat. At that time, Ah Fai was carrying the red "On Cheong Jewellery" bag. When they were waiting for the lift at the lobby, Ah Fai asked Tan to hold the red bag and so she held it. They got into the lift and were later arrested by the CNB officers who entered the lift at the floor below.

Ah Fais defence

16 Ah Fais defence was a plain denial of any knowledge or connection with the drugs. As the red "On Cheong Jewellery" bag was carried by Tan when they were arrested, he claimed that the drugs belonged to her and that he had no knowledge that she was carrying drugs. He asserted that he used only handkerchiefs, thereby suggesting that the pack of tissue paper found in the red bag must be for Tan. He also claimed that he did not know that there were drugs in the Woodlands flat and that he was never involved in any drug related activities. Ah Fai tried to push the entire blame to Tan, alleging that she had a reason to be unhappy with him and wanted to frame him, as he was seldom home and was keeping a mistress outside. Ah Fai further sought to portray a poor marital relationship between him and Tan, saying that their relationship deteriorated after she gave away their youngest son without his consent. This was in stark contrast to Tans evidence that their relationship was good and Fai treated her well.

17 Ah Fai attempted to dissociate himself from the Woodlands flat by asserting that he was seldom there and often stayed overnight at other places. He did not even have the keys to the flat. This appeared to be the truth as it was in fact verified by

Tan. He also tried to show that he had no exclusive use of the master bedroom where the drugs were found, contending that Hong had free access to the room. Ah Fai sought to minimize the significance of the UOB account, claiming that he asked his mother, Ho, to open the account for him as he had lost his identity card and was unable to do it himself. He asserted that he did not have the bank book or the ATM card and that these were kept by his mother. When he needed money, he would ask his mother to make the withdrawals for him. As for the large deposits in the account, Ah Fai explained that he had struck the lottery many times and those deposits were part of his winnings.

18 In his oral testimony, Ah Fai denied any connection with Chua Ah Xiao, declaring that he did not know any such person. He explained that Meng Kip was mistaken about the instructions as the latter did not know English. Ah Fai had actually asked Meng Kip to pass some money to one "Ah Kin", and not to "Ah Xiao". Although Ah Fai admitted that Thomas was his friend, he denied that he had ever sold drugs to the latter. He also denied that he spoke to Thomas on 22 June 2000 and arranged to meet him that night to sell him heroin.

The decision below

19 Ah Fai and Tan were jointly tried before Judicial Commissioner Choo Han Teck (the judge) in the High Court under a joint charge. At the end of the trial, the judge formed the view that the evidence did not justify a finding that Tan was in possession of all the heroin seized from the flat. It was held that she was only guilty of possessing the 5.29g of diamorphine contained in the red "On Cheong Jewellery" bag she was carrying when she was arrested in the lift. The judge found that Tan had no intention of trafficking the drugs but was holding the bag for Ah Fai for only a brief moment. She was thus sentenced to eight months imprisonment.

20 As for Ah Fai, the judge was satisfied beyond reasonable doubt that all the heroin found in the flat and in the red "On Cheong Jewellery" bag belonged to him and that he was in possession of these drugs for the purposes of trafficking. He found Ah Fai to be a thoroughly untruthful witness and there were material contradictions between his oral testimony and the written statements he had made to the CNB officers. On the other hand, the judge accepted Tans evidence despite some inconsistencies in her testimony, which he found to be minor. The judge noted that both Tan and Hong gave consistent testimony that they had previously seen people coming to the Woodlands flat to buy heroin from Ah Fai. Tans evidence that Ah Fai had arranged to meet Thomas on the night of 22 June 2000 was also corroborated by Thomass evidence. All these added together show very clearly that Ah Fai was actively involved in selling heroin. The judge was also convinced by the evidence that the financial transactions from the sale of heroin were being effected through the UOB bank account opened in Ah Fais mothers (i.e. Hos) name. Ah Fai made use of Tan and Hong to deposit money into that account for him. He also asked his brother, Meng Kip, to pass money to his heroin supplier, Chua Ah Xiao.

21 Based on all the facts and evidence, the judge found Ah Fai guilty of possessing all the 46 sachets of heroin for the purposes of trafficking. Ah Fai was therefore sentenced to suffer death.

The appeal

22 In the appeal before us, it was contended that the judge erred in law and/or fact in the following ways:

(i) Failing to give sufficient consideration to these facts:-

(a) the ten sachets of heroin were found in the red "On Cheong Jewellery" bag which was carried by Tan and Ah Fai had no knowledge of these sachets.

(b) Ah Fai had no knowledge of the 36 sachets seized from the master bedroom of the Woodlands flat and it was in fact Tan who pointed out to the CNB officers where the drugs were kept.

(c) Ah Fai was seldom at the Woodlands flat and he did not have the keys to the flat.

(d) Ah Fai used only handkerchiefs and did not have any use for the pack of tissue paper found in the red "On Cheong Jewellery" bag.

(ii) Failing to give sufficient weight to Ah Fais consistent evidence that the drugs did not belong to him and placing undue weight on the contradictions in his testimony and statements when these were immaterial or irrelevant.

(iii) Failing to give due caution to the fact that Tan was an accomplice and had been jointly charged for drug trafficking. Further, giving undue weight to Tans evidence when it was self-serving and unsatisfactory as it contained material inconsistencies.

(iv) Finding Hong to be a credible witness when there were material contradictions and inconsistencies in her evidence.

(v) Accepting Thomass evidence when he was shown to be an untruthful witness.

23 To reiterate, it was Ah Fais defence that he had no knowledge of and no connection with the drugs seized from the red bag and from the Woodlands flat. He sought to distance himself from the Woodlands flat by showing that he was seldom home and that he did not even possess keys to the flat. He claimed that the drugs belonged to his wife and suggested that she was involved in drug trafficking without his knowledge.

24 Whilst it may be true that the red bag containing the ten sachets of drugs was carried by Tan when she and Ah Fai were arrested, and that it was Tan who showed the CNB officers where the drugs in the Woodlands flat were kept, this did not automatically absolve Ah Fai of all connections with the drugs. Further, even if it was established that Ah Fai was indeed seldom home at the Woodlands flat and he did not have the keys to the flat, these facts did not mean that the heroin seized could not be in his possession. These facts must be examined in the context of the other evidence given by Ah Fai as well as all the other witnesses. As for the contention relating to Ah Fais use of handkerchiefs, we considered this to be an inconsequential factor which did not add much weight either way.

25 After examining all the evidence, we found that there were many unsatisfactory points in Ah Fais defence which could not be properly accounted for. Ah Fais evidence was self-conflicting in many material aspects and it was further substantively refuted by the evidence provided by the other witnesses. Firstly, despite Ah Fais attempts to distance himself from any association with the Woodlands flat, it was apparent that he did live there and conducted his activities there. This was so even if he was not home at the Woodlands flat very often. Ah Fai himself gave evidence that he had furnished the flat and was the one who paid for its monthly instalments and utility bills. His clothes were found in the master bedroom of the flat. When the I/O asked him who stayed in the master bedroom, his reply was himself and Tan.

26 Secondly, Ah Fais contention that he was ignorant of the drugs and was not involved in any drug trafficking activities was baseless. When Ah Fai was questioned by the I/O while they were in one of the bedrooms soon after the drugs in the Woodlands flat were seized, Ah Fai was able to identify the two wrapped bundles found in the red "On Cheong Jewellery" bag

as "Pak Fun" (i.e. heroin). We found this to be very telling. It showed that he knew that heroin was contained in the wrapped bundles and that he knew what it looked like. Ah Fai must have realised the significance of this statement later because he then sought to retract it during his oral testimony by denying that he gave such an answer. He claimed that he said to the I/O that he did not know what the bundles were. This was evidently an attempt to cover up the inconsistency in his evidence.

27 Ah Fais denial that he had drug dealings with one Chua Ah Xiao was also plainly refuted. Ah Fais own brother, Meng Kip, testified that he was once asked by Ah Fai "to pass something to one Ah Xiao". In Thomass written statement, he stated that Ah Fai had told him that the heroin was supplied by one "Ah Xiao". Tan also gave evidence that the heroin seized belonged to Ah Fai and that he obtained his supply of heroin from Chua Ah Xiao. Ah Fais denial was further contradicted by his own evidence. In his oral testimony, Ah Fai claimed that he did not know anybody called Chua Ah Xiao. This was obviously a lie since in his very own written statement, he had admitted that he owed Chua Ah Xiao money but intended to repay him slowly through working. In his anxiety to disclaim all connections with Chua Ah Xiao, Ah Fai overlooked the evidence that he had given earlier to the CNB officers.

28 Next, there was the issue of the UOB account, which, in our view, was a clear indication of how the financial transactions arising from Ah Fais drug trafficking activities were being managed. In his written statement recorded on 29 June 2000, Ah Fai stated that he only had one POSB account used for crediting his reservist pay. He claimed that he did not have any personal money in any other persons account and he had never asked anyone to open an account for him. This was proven false by his mothers (Hos) testimony, that in April 2000 he had asked her to open a bank account for him, using her name. Ah Fai then sought to explain that the reason for this was because he had lost his identity card and could not open an account himself. Ah Fai further denied that he held the bank book and the ATM card for the account, claiming that he left the bank book with Ho or kept it in the Ang Mo Kio flat and he would ask her to make withdrawals for him every time he needed money from the account. He said that Ho did not give him the ATM card for the UOB account.

29 All these contentions were again shown to be false. Ho gave evidence that she had passed both the bank book and the ATM card to Ah Fai after she opened the account for him. After giving Ah Fai the two items, Ho said she did not know anything about the account after that and what Ah Fai did with it, meaning that she never did make any withdrawals for Ah Fai. Hos evidence was unchallenged and there was no reason to disbelieve her as she had no reason to lie or to frame her own son. The relevant bank book of the UOB account was also seized from the Woodlands flat, and not the Ang Mo Kio flat, as Ah Fai had sought to claim. It was Tans evidence that Ah Fai kept the bank book and would pass the book and money to her when he wanted her to deposit money into the account for him. Tan, however, never saw the ATM card for the account. Even Hong testified that Ah Fai had once asked her to deposit money into the UOB account. Withdrawals made via the ATM card were clearly documented in the bank book. Since Ho never saw the ATM card again after she passed it to Ah Fai, the inference must be that the withdrawals were being made by Ah Fai or someone whom he had passed the card to.

30 Another sign which we found to be extremely telling of Ah Fais illicit activities, was the large amounts of money that were deposited into and withdrawn from the UOB account within a short span of time. From the period May to June 2000, a total of \$56,800 was deposited into the account in cash. Even more curious was the fact that the bank records showed that immediately upon a cash deposit being made, the exact amount would be withdrawn on the same day via the ATM card. Ah Fai was not able to offer any credible explanation for these large deposits and their immediate withdrawals. According to Ah Fai, he did odd-jobs which earned him about \$420 to \$560 a week, and that was his only source of income. He first sought to explain that he had struck the Toto lottery many times and the large deposits were part of his winnings. However, when confronted by the evidence of the systematic withdrawals of the deposits, Ah Fai then said that he did not know who had deposited the cash sums into the account and withdrawn them on the same day.

31 We now move on to consider the evidence given by Tan. It was argued by counsel for Ah Fai, Mr Pereira, that the judge erred in failing to give due caution to the fact that Tan was an accomplice and was jointly charged with Ah Fai for drug trafficking. We interpreted this to be a reference to s 116, illustration (b) of the Evidence Act (Cap 97), which states that the court *may* presume that an accomplice is unworthy of credit and his evidence needs to be treated with caution.

32 The courts treatment of an accomplices evidence is well-established : see *Sharom bin Ahmad & Anor v PP* [2000] 3 SLR 565.

Kwang Boon Keong Peter v PP [1998] 2 SLR 592 and *Chua Poh Kiat Anthony v PP* [1998] 2 SLR 713. Section 135 of the Evidence Act has abrogated the common law rule that a court must warn itself of the danger of convicting on uncorroborated evidence of an accomplice. Reading this section with the directory words in s 116, illustration (b), the effect is that the court may convict an accused person based on uncorroborated accomplice evidence and there is no requirement that the court must direct itself to treat such evidence with caution, though such should still be borne in mind. Thus, accomplice evidence should be given the same weight as any other evidence if it is proven, from all the circumstances of the case, to be reliable evidence.

33 Therefore, there was little merit in this argument. In any event, we found that the guilt of Ah Fai was not established on Tans evidence alone, but was also based on other reliable evidence given by the other witnesses, such as Ho, Meng Kip and Hong.

34 Mr Pereira then further contended that Tans evidence should not have been accepted as it was self-serving and there were many material inconsistencies in her testimony. The following contradictions were listed:

(i) Tans admission to CNB officers of the ownership of the ten sachets of heroin in the bag and her subsequent denial and assertion that she had said that Ah Fai told her to hold the bag.

(ii) Tan said in her written statement that Ah Fai obtained heroin from Chua Ah Xiao to sell, but later, in her oral testimony, she said that she did not know what Ah Fai did with the heroin.

(iii) Tan gave evidence that she saw customers coming to the flat to buy heroin but subsequently said that she did not know that the heroin seized from the flat was meant for sale.

(iv) Tan said that Hong slept in the kitchen but Hongs evidence was that she slept in one of the bedrooms.

(v) Tans evidence was that on 22 June 2000, she banked in the \$1,500 for Ah Fai at the UOB Woodlands branch when it was later shown that it was at the UOB Ang Mo Kio branch.

35 In our view, the above factors (ii) to (v) were all minor inconsistencies which did not undermine the main substance of Tans evidence implicating Ah Fai. The only significant point was probably her admission that the red bag she was carrying and the heroin therein belonged to her. As for the drugs found inside the Woodlands flat, there was some confusion over whether she admitted ownership of these drugs. One of the CNB officers, Cpl S Rajkumar, said that Tan was questioned by Insp Neo Ling Sim and Tan admitted that the drugs were hers. Neo, however, said that she did not ask Tan any questions about the drugs found in the flat and she agreed that Tan never admitted ownership to the drugs or paraphernalia seized from the flat. Tan explained in her written statement that she did not know why she said that the drugs belonged to her. We believed that Tan, in all probability, did admit, at that point in time when she was arrested, that the drugs belonged to her. But we also believed that it was probably due to the state of shock and confusion she was in at the time. She was holding the red bag and her daughter, who was with her then, was crying. It did not escape our attention that, when Tan was questioned by the I/O in the Woodlands flat, she had replied that the heroin belonged to her husband but she was holding it. This information was offered soon after her arrest and even while the search of the flat was still taking place. In the light of the other evidence, we were prepared to accept it as the truth and not merely an afterthought on Tans part to shift the blame to her husband, Ah Fai.

36 Our assessment of Tan as a witness was that, despite the various contradictions in her evidence, she remained a substantially credible witness. This was especially so with regard to the written statements she made with the CNB officers after her arrest. Her evidence, in particular her account of the events which took place on 22 June 2000, was supported by Hongs testimony. Indeed, other than her initial admission that the drugs belonged to her, we did not find any other significant evidence which showed that she was actively involved in drug trafficking activities. Hong testified that when she saw men coming to the

flat to purchase heroin, Tan was not around on most occasions and it was Ah Fai who dealt with those customers. Thomas also gave evidence that, when he purchased heroin, he dealt only with Ah Fai. We were unable to accept Ah Fais allegation that Tan was out to frame him just because he was seldom home and kept a mistress outside. Taking into consideration all the other evidence, we were of the view that Tans evidence on Ah Fais drug trafficking activities should be accepted.

37 As mentioned earlier, Tans testimony was also substantiated in many material aspects by the evidence given by Hong. Mr Pereira contended that Hong was not a credible witness as there were material contradictions in her evidence. However, these alleged contradictions were never identified to the court. Hong testified that on 22 June 2000, she overheard Ah Fai telling Tan that he was meeting Thomas later that night. We noted that Hong was not exactly specific initially in her testimony on whether she had heard that Thomas was coming to fetch "him" (i.e. Ah Fai) or "them" (i.e. both Ah Fai and Tan). However, when she was finally asked to clarify the issue, she stated quite unequivocally that what she had heard was "him". The ambiguity was most probably caused by Hong not being sufficiently precise in choosing her words. Hongs evidence was generally consistent with that given by the other witnesses and we saw no reason to doubt the veracity of what she said, especially with regard to Ah Fais involvement in drug trafficking.

38 Finally, there was the evidence given by Thomas. Although Thomas turned out to be an uncooperative witness during the trial and his evidence was greatly self-conflicting, this did not then mean that all his evidence should be totally disregarded. Thomas admitted that the conditioned statement he gave to the CNB officers was made voluntarily and there were no grounds to doubt the truth of what Thomas had said there. In the course of his cross-examination, Thomas made a wild allegation that he was taught what to say by the CNB officers in his conditioned statement. This was plainly a fabrication that was totally unsubstantiated. It was his evidence that, on 22 June 2000, he had arranged to meet Ah Fai that night. This was corroborated by both Tans and Hongs testimonies. Tan said that she was told by Ah Fai of the appointment while Hong overheard Ah Fai mentioning the appointment to Tan. Ah Fai was clearly on his way to sell the ten sachets of heroin in the red bag to Thomas when he was arrested.

Conclusion

39 After assessing the totality of the evidence, the only conclusion that could be reached was that Ah Fai was in possession of all the heroin seized and he was in possession of the drugs for the purposes of trafficking. This was a fairly straightforward case with overwhelming evidence stacked against the defence. The numerous discrepancies in Ah Fais evidence exposed the weaknesses and loopholes in his case. He was not able to properly explain the UOB account, his connection with Chua Ah Xiao and the evidence of other witnesses on how he sold heroin to customers at his Woodlands flat. Even if Tans evidence was disregarded, there was still the overwhelming evidence provided by Ho (Ah Fais mother), Meng Kip (his brother), Hong (his sister-in-law) and Thomas, and there was no reason why they would give incriminating evidence to frame him. There was no doubt that Ah Fai was an active dealer in drugs. The large quantities of heroin and the drug trafficking paraphernalia (i.e. the digital weighing scale, empty sachets and spoon), that were found in the Woodlands flat, went towards further proving this.

40 For the above reasons, we agreed with the High Courts decision to convict Ah Fai as charged and to sentence him to suffer death. We therefore dismissed the appeal.

Appeal dismissed.

Yong Pung How

L P Thean

Chao Hick Tin

Chief Justice

Judge of Appeal

Judge of Appeal

Copyright © Government of Singapore.