

Public Prosecutor v Chew Seow Leng
[2004] SGHC 227

Case Number : CC 28/2004
Decision Date : 08 September 2004
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Nor'ashikin Samdin, Woo Ka Wai, Abigail E Ng and Han Ming Kuang (Deputy Public Prosecutors) for prosecution; R S Bajwa (Bajwa and Co) and Mahmood Gaznavi (Mahmood Gaznavi and Partners) (assigned) for accused
Parties : Public Prosecutor — Chew Seow Leng

Constitutional Law – Equal protection of the law – Whether mandatory death penalty violates equal protection under Constitution – Article 12 Constitution of the Republic of Singapore (1999 Rev Ed), Section 7 Misuse of Drugs Act (Cap 185, 2001 Rev Ed).

Criminal Law – Offences – Statutory offences – Misuse of Drugs Act – Accused found to be in possession of 226.57g of diamorphine and drug trafficking paraphernalia – Presumption of trafficking – Whether presumption rebutted – Sections 5(1)(a), 5(2), 17(c) and 33 Misuse of Drugs Act (Chapter 185, 2001 Rev Ed).

Criminal Procedure and Sentencing – Charge – Alteration – Alteration by court to reflect its finding that more than 15g of drugs found in accused's possession were for the purpose of trafficking.

Evidence – Custody of drug exhibits handed over from one investigating officer to another before being sent for analysis – Whether there were gaps in chain of evidence.

8 October 2004

Tay Yong Kwang J:

1 The accused was convicted on the following amended charge:

You, Chew Seow Leng, Male/43 years, NRIC No S1510659Z

are charged that you, on or about the 7th day of January 2004 between 11.45 am and 12.05 pm, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185 ("the Act") by having in your possession,

(i) 4 packets of granular substance containing not less than 149.1 grams of diamorphine in a taxi bearing registration number SHA 3884X along Puay Hee Avenue, Singapore; and

(ii) a total of ten (10) packets, two (2) straws and one (1) container of granular substance containing not less than 77.47 grams of diamorphine at No 2 Topaz Road #03-01, Topaz Mansion, Singapore,

totalling 226.57 grams of diamorphine, of which more than 15 grams of diamorphine are for the purpose of trafficking, without any authorisation under the 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 Act and punishable under section 33 of the Act.

The words in italics were inserted by the court at the conclusion of the evidence. The amended charge was read to the accused who maintained his plea of not guilty.

The Prosecution's case

2 The Prosecution and the Defence agreed on the matters set out in a Statement of Agreed Facts. The Statement reads:

Statement of Agreed Facts

1 On 7 Jan 2004, acting on information received, a party of CNB officers were deployed to look for the accused at the vicinity of Block 115 Yishun Ring Road. When they were at the vicinity, they saw a taxi SHA 7670 going into the carpark leading to Blocks 110 to 115 Yishun Ring Road with a passenger at the rear seat. The taxi was thereafter seen leaving the carpark of Blk 115 Yishun Ring Road without the passenger inside.

2 At about 10.15 am, the CNB officers spotted the accused standing behind Blk 115 Yishun Ring Road and using his mobile phone. The accused was at that time seen holding a red paper bag. He thereafter walked to the exercise corner near Blk 115 and sat down on a wooden chair.

3 At about 10.45 am, the accused was spotted walking to the void deck of Blk 115 carrying the red paper bag. He was then seen walking along the void deck of Blk 115 towards Blk 110 carrying a yellow paper bag in addition to the red bag. He then proceeded towards Blk 110 Yishun Ring Road and entered a provision shop there.

4 After a while, he emerged from the provision shop holding the red paper bag, the yellow paper bag and an additional white plastic bag. He was then seen standing along Yishun Ring Road waiting for a taxi. At about 11.10 am, the accused person boarded taxi SHA 3884 X which travelled along Yishun Ring Road, Yishun Avenue 2, Lentor Avenue and from there, entered the Central Expressway ("CTE").

5 The CNB officers trailed the accused in the taxi SHA 3884 X. Subsequently, they received instructions to intercept the said taxi, and did so at the first available opportunity, when the taxi exited the CTE at about 11.30 am, long Upper Serangoon Road near Woodsville Close.

6 The accused was arrested while seated in the rear of the taxi. At the time of the arrest, the red paper bag (containing the yellow paper bag) and the white plastic bag were found beside the accused person. The CNB officers then escorted the accused in the taxi SHA 3884X to Puay Hee Avenue.

7 At Puay Hee Avenue in the taxi SHA 3884X, Senior Station Inspector Siew Lai Lone recorded a statement from the accused, in which the accused admitted ownership of red paper bag and confirmed that he was told that it contained 4 pounds of heroin. The accused also informed SSI Siew that he was residing at No 2 Topaz Road #03-01 Topaz Mansion.

8 At about 11.45 am, another party of CNB officers led by SSgt Tony Ng Sze Chiang arrived at Puay Hee Avenue to take over the custody of the accused and the following exhibits that were seized during the arrest:

- a. the red paper bag (containing the yellow paper bag),
- b. the white plastic bag and
- c. the accused's handphone.

9 The red paper bag (containing the yellow paper bag) seized during the accused person's arrest was found to contain:

- (a) A bundle wrapped in plastic, containing two packets of yellowish granular substance.
- (b) A yellow paper bag containing a bundle wrapped in plastic. Two packets of yellowish granular substance were found in this bundle.

10 Upon the exhibits being sent to the Health Sciences Authority ("HSA") for analysis, it was ascertained that the four packets of yellowish granular substance together contained not less than **149.1 grams of diamorphine**.

11 After this party of CNB officers took over custody of the accused and the drug exhibits, they brought the accused to his rented apartment at No 2 Topaz Road #03-01 Topaz Mansion ("Topaz apartment"). They arrived at the Topaz apartment at about 12.05 pm and discovered that two male Chinese persons were present in the Topaz apartment. The two male Chinese were then placed under arrest and they were established to be Boo Hang Guang and Tan Ah Leng.

12 The accused person then led the CNB officers to various places in the master bedroom and the master bedroom toilet where various drugs exhibits and drug paraphernalia were recovered as follows:

(a) From under the side table of the bed:

i. One pink plastic bag with the words "Miss Saigon" printed on it, containing two bundles wrapped in plastic. The bundles contained two packets of yellowish granular substance marked collectively as "**CSL-2**". Upon HSA analysis, it was ascertained that the substance contained not less than **72.99 grams of diamorphine**.

ii. One red plastic bag containing:

(a) One orange plastic bag containing 7 packets of yellowish granular substance marked collectively as "**CSL-3**". Upon HSA analysis, it was ascertained that the substance contained not less than **3.14 grams of diamorphine**.

(b) One red plastic bag containing 1 packet of yellowish granular substance marked "**CSL-4**". Upon HSA analysis, it was ascertained that the substance contained not less than **0.52 grams of diamorphine**.

(c) One white plastic bag containing 2 straws of yellowish granular substance marked collectively as "**CSL-5**". Upon HSA analysis, it was ascertained that the substance contained **0.02 grams of diamorphine**. Also in this white plastic bag was a "pocket" weighing scale with casing, a plastic bag and a stack of empty plastic packets.

(d) One white plastic bag, containing a stack of empty plastic packets.

(b) From the surface above the bed:

One black plastic bag containing 8 bottles of dark coloured liquid marked collectively as "CSL-

10".

(c) From the side table of the bed:

One plastic container containing 24 "Dormicum" tablets, 10 "Codipront" tablets and 16 "Subutex" tablets marked collectively as "CSL-9".

(d) From the toilet basin:

(i) One container containing yellowish granular substance marked as "CSL-6". Upon HSA analysis, it was ascertained that the substance contained **0.53 gram of diamorphine**.

(ii) 2 stained straws and a piece of rolled up paper marked collectively as "CSL-8". Upon HSA analysis, it was ascertained that the exhibits were **stained with diamorphine**.

(iii) one pair of scissors.

(iv) one wooden stick.

(v) 2 lighters.

(e) From the right side of the toilet basin:

(i) 2 pieces of rolled up paper marked collectively with other items as "CSL-8". Upon HSA analysis, it was ascertained that the exhibits were **stained with diamorphine**.

(ii) One pair of scissors.

(iii) One lighter.

(iv) 2 wooden sticks

(v) Pieces of cut aluminium foil.

(vi) One multi-purpose knife set.

(vii) One Styrofoam plate

(f) From the extreme right drawer of the dressing table:

(i) One blue plastic bag containing:

(1) One packet of crystalline substance marked as "CSL-7". Upon HSA analysis, it was ascertained that the substance contained 1.62 grams of methamphetamine.

(2) One packet of coins.

(3) Five bunches of keys.

- (g) From the middle drawer of the dressing table:
 - (i) One pair of scissors.
 - (ii) 2 boxes of aluminium foil.
- (h) From underneath one of the drawers of the dressing table:
 - (i) One plastic bag containing:
 - (1) 2 small bundles of small empty packets.
 - (2) 1 blue plastic bag containing gloves.

13 Exhibits marked "CSL-2" to "CSL-8" were found in the Topaz apartment were subsequently sent to the HSA for analysis and were found to contain a total of not less than **77.47 grams of diamorphine**.

14 In total, the abovementioned drug exhibits recovered from the red paper bag and the Topaz apartment contained not less than **149.1 grams of diamorphine and 77.47 grams of diamorphine** respectively. The accused admits ownership of all the drug exhibits.

[emphasis in original]

3 The accused did not challenge any of the statements made by him in the course of investigations on the ground of voluntariness. In the statement recorded by Senior Station Inspector Siew Sai Lone ("SSI Siew") at Puay Hee Avenue, the accused admitted that there were four pounds of heroin in the red paper bag and said that he had taken the heroin from one Lau Tee at the void deck of Block 122 Yishun Ring Road. He paid Lau Tee \$30,000 for it. He also admitted that that occasion was the second time he had taken heroin from Lau Tee. The first transaction also took place at the same location. SSI Siew, a CNB officer since 1978, testified that he did not notice the accused exhibiting drug withdrawal symptoms such as shivering, a runny nose or yawning.

4 In another statement recorded that day at about 12.15pm in the apartment in Topaz Mansion by Senior Staff Sergeant Tony Ng ("SSG Ng"), the accused admitted again that there were four pounds of heroin in the red paper bag and that he had obtained them from Lao Di in Yishun. He said he paid Lao Di \$30,000 for the heroin. The apartment was rented by the accused. He maintained that the two men arrested by the CNB officers in the apartment had nothing to do with the drugs found therein. He explained that the two men went to the apartment occasionally to consume heroin and spent the night there in the other bedroom. SSG Tony Ng said the accused appeared normal when he was recording his statement. The accused did not appear to be suffering from drug withdrawal symptoms and he did not complain that he was.

5 SSG Ng took custody of the drugs at Puay Hee Avenue and brought them to the apartment in Topaz Mansion. He also took custody of the exhibits seized in the apartment. He handed over everything to the investigating officer, Assistant Superintendent of Police Goh Boon Pin ("ASP Goh"), when ASP Goh arrived at the apartment later, after informing him of the various locations the exhibits were found in. Subsequently, he witnessed ASP Goh weighing the drugs back in the CNB office.

6 ASP Goh testified that in addition to the items listed above, two stacks of Singapore currency notes amounting to \$6,600 were also found. There were more than 3,000 empty, small

plastic packets among the exhibits. After directing the taking of photographs of the scene and the exhibits, ASP Goh took custody of all the exhibits, including the drugs seized in the taxi earlier, placed them into individual plastic bags with labels and then put all the plastic bags into a large plastic bag. He brought all these back to the CNB office for safekeeping in his safe and his cabinet. He locked the safe and the cabinet. He did not keep the exhibits in the CNB store as it closed at 6.00pm and he would not have been able to bring them out to weigh in the accused's presence that evening.

7 Later that evening, he took out the drug exhibits and weighed them in the presence of the accused. He then returned the drug exhibits to the safe and the cabinet and locked them. Next, he instructed that the accused be brought to Alexandra Hospital for a pre-statement medical examination.

8 ASP Goh, who has seven years' experience as a CNB officer, added that one pound of heroin could be repacked into 60 8g packets. Around 20 2cm straws could be made from each 8g packet. The market price in January 2004 was \$8,000 to \$10,000 per pound of heroin while the street value was \$400 to \$600 per 8g packet. One pound of heroin repacked into sixty 8g packets could therefore potentially reap in \$24,000 to \$36,000. The purity of the heroin found in the taxi was more than 8% while the purity of that found in the apartment was slightly less than 8%. As heroin was normally in packets of between 1% and 3% purity, the heroin here was therefore of a good quality.

9 Dr Choong Yih Li examined the accused at Alexandra Hospital at 10.50pm on 7 January 2004. He observed that the accused appeared slightly drowsy and was yawning persistently. The accused had tearing in both eyes and was shivering despite wearing a T-shirt and warm sweater. His gait was also unsteady. The doctor referred the accused to Changi Prison Hospital ("CPH") for observation as he appeared to be suffering from drug withdrawal symptoms. The doctor was not able to comment on the severity of the withdrawal suffered by the accused.

10 The accused was warded at CPH after midnight. Peter Ho, a staff nurse, testified orally that he observed the accused and took down his medical history. He noted that the accused was yawning frequently and had an unsteady gait. The accused claimed that he had a runny nose, diarrhoea, nausea, body ache and pain but had no vomiting or gastric pain. There were goose pimples on both his upper arms and upper body. There was also mild trembling in both upper limbs. He was having a fever. The accused claimed that he consumed a "very small amount" of heroin at around 10.00am on 7 January 2004.

11 At about 7.00am on 8 January 2004, Peter Ho observed the accused while making his rounds before handing over duty. The accused was sleeping.

12 Dr Mohd Emran Mamat ("Dr Emran"), a medical officer at CPH, saw the accused on 8, 9 and 10 January 2004. He noted that the accused "exhibited signs and symptoms of mild drug withdrawal". He based this finding on the notes made by the staff nurse. When the doctor examined the accused at 10.00am on 8 January 2004, most of the symptoms noted had subsided save for the accused's claim about having diarrhoea. He spoke to the accused in English. The accused did not appear to have difficulty understanding the doctor. The doctor recorded that the accused said he smoked about one packet of heroin a day for the past two months and consumed three straws of heroin at about 10.00am on 7 January 2004. Over the next two days, the accused was alert and said he felt better. He was discharged from CPH on 10 January 2004.

13 Dr Emran, who has been a prison medical officer with the Raffles Medical Group for the last four years, has seen around 70 patients experiencing drug withdrawal symptoms. He explained that there were three categories of drug withdrawal. A mild withdrawal would occur within six to 12 hours

after the last consumption of drugs, manifesting itself as flu-like symptoms such as a runny nose, fever, chill and body ache. A moderate withdrawal would involve hot or cold flushes, profuse perspiration, muscular spasms, increased sensitivity to pain, abdominal cramps and severe diarrhoea. When the symptoms became intolerable, the patient would be having a severe withdrawal and medical intervention would be required. Usually, the major withdrawal symptoms would manifest themselves between 48 and 72 hours after the last consumption of drugs and might continue for seven to ten days. If the symptoms were prolonged, medication would be given. None was dispensed in the case of the accused.

14 Dr Emran said that there was a correlation between the symptoms and the rate of consumption. The higher the consumption, the more severe the withdrawal would be and the longer the time taken for the symptoms to subside. If the accused had been taking one packet of heroin a day for the past two months, he would expect the symptoms to be at the moderate level, *ie*, worse than what he exhibited. However, he was not able to say what the accused's rate of consumption was.

15 Dr Emran testified under cross-examination that the accused's symptoms could be suggestive of a mild or a moderate withdrawal. The progression of the symptoms had to be taken into account as well. He agreed that symptoms could vary between different people. The purer the heroin, the more severe the withdrawal would be. However, based on his experience and observations over the three days the accused was in CPH, he stood by his opinion that the withdrawal was a mild one. He opined that it was unlikely the accused had consumed one packet of heroin a day.

16 While the accused was in CPH, on 8 January 2004 ASP Goh took out the exhibits from his safe and his cabinet to mark them before sending them to the Health Sciences Authority for analysis. After completing the marking, he placed the exhibits back into the safe and the cabinet and locked them up. Later that afternoon, he took out the exhibits again and brought them to the CNB Press Conference Room for the purpose of a press release. After that, he replaced the exhibits and locked them up.

17 On 9 January 2004, he took out the exhibits and sent them over to the Health Sciences Authority.

18 At about 10.40am on 10 January 2004, ASP Goh was informed that the accused would be discharged from CPH. He immediately arranged for the accused to undergo a pre-statement medical examination at Alexandra Hospital. Dr Paul See examined the accused at about 3.00pm. The accused did not complain that he was suffering from drug withdrawal symptoms. When Dr Paul See saw the accused again at 5.40pm for the post-statement medical examination, the accused also did not say anything about being in withdrawal.

19 In statements made to ASP Goh, the accused said that the heroin found in the taxi and in the apartment and the paraphernalia for consuming drugs belonged to him and had nothing to do with the other two men. They were friends whom he had met while in drug rehabilitation centres. They would go to the rented apartment frequently to consume heroin. The accused provided them the heroin free of charge but sometimes the two men would pay him some money. They also bought food for him when they went to the apartment.

20 The accused, described in the statements as unemployed, said that in or about October 2003, he decided to start selling heroin again as he owed about \$200,000 to loan sharks. He went to Geylang and was told by a friend that Lau Di could supply heroin in large quantities. He subsequently met Lau Di and asked him whether he could supply heroin in pounds to him. Lau Di said he could help

to check.

21 In early November 2003, the accused rented the apartment in question. The landlord and the property agent testified that the rent was \$1,200 per month and that the accused handed over \$2,400 for the first month's rent and a deposit of one month's rent. He also paid \$600 to the property agent as commission. Around mid-December 2003, Lau Di called him on his mobile telephone. Lau Di told the accused that the supply of heroin of between two to four pounds would be arriving in a few days' time. The agreed price was \$10,000 for one pound of heroin. A few days later, Lau Di called to say the heroin had arrived. The accused took delivery of it at the Yishun public housing estate. That transaction was about two weeks before his arrest. The heroin found in the apartment on 7 January 2004 was the remainder of the four pounds received on the first occasion. The accused stated that he repacked one pound of heroin into about 56 smaller packets of about 7.5g each and used a lighter to seal them. He sold each packet for \$300. He also consumed heroin whenever he wanted to. He would take the heroin from the small packets. He consumed about one packet a day.

22 One of the two men arrested in the apartment on 7 January 2004, Boo Hang Guang ("Boo"), testified that a friend informed him in November 2003 that the accused wanted to contact him. When he called the accused, the accused asked Boo whether he wanted to consume heroin. The accused arranged to meet him. He brought Boo to the apartment in Topaz Mansion and took out a straw of heroin which they then consumed together.

23 After that incident, Boo went to the apartment around once a week on seven or eight occasions and slept over two or three times. On all those occasions, the accused offered him straws of heroin free of charge. Boo wanted to pay for the heroin but the accused declined the payment. Boo therefore brought him food when Boo visited the apartment. Boo met the other man, Tan Ah Leng, in the apartment on two or three occasions.

24 At around 8.00am on 7 January 2004, Boo called the accused to ask whether he had any heroin. When the accused said he had, Boo went to the apartment. He saw Tan Ah Leng sleeping in the second bedroom (the master bedroom was occupied by the accused). The accused handed Boo a straw of heroin to consume. However, Boo also said he consumed two to three straws of heroin that morning. At about 10.00am, the accused told Boo he was going out for a while. At around noontime, the accused returned, escorted by the CNB officers. Boo did not know the accused had so much heroin in the master bedroom. Whenever he went to the apartment, the accused was there and the door of the master bedroom was open. However, it was closed that morning when the accused left the apartment.

25 Boo said that his average consumption was one or two straws of heroin a day. When he was at the apartment, he and the accused would consume heroin at any time of the day. He suffered from withdrawal symptoms for about three weeks after 7 January 2004. He is currently serving sentence for the offence of consumption of heroin.

26 Tan Ah Leng has known the accused since 1988. In October or November 2003, he contacted the accused and asked him whether he had any place for him to stay. The answer was in the negative. However, in late November, the accused told him he could sleep over on a few nights in the accused's rented apartment.

27 Tan Ah Leng stayed in the apartment on seven or eight occasions. He saw the accused consuming heroin in the toilet of the master bedroom and asked him for some heroin. The accused gave him some without charge. Tan Ah Leng consumed about one straw of heroin a day or three to four per week.

28 On 6 January 2004, he went to the accused's apartment and saw the accused sitting on the toilet bowl of the master bedroom consuming heroin. He joined the accused in the toilet to consume heroin. Before Tan Ah Leng went back to the other bedroom to rest, he asked the accused to give him more heroin. When the accused asked him to help himself to some, he filled two empty straws with heroin from a small container and then went to the other bedroom where he consumed some of the heroin from one of the straws. He then went to sleep. The next day, he was awakened when the CNB officers went to the apartment with the accused. He is currently serving sentence for the offences of possession and consumption of heroin.

29 Tan Ah Leng said in cross-examination that he considered the accused a heavier consumer of heroin than himself because the accused was consuming heroin whenever he went to the apartment.

30 Dr Ann Young, an analyst with the Health Sciences Authority, conducted an analysis of a urine sample taken from the accused on the day of his arrest. She found that the sample contained 16.5 micrograms of morphine per millilitre of urine which she said was a moderate amount. Another test done by another analyst on another urine sample showed 2.4 micrograms of morphine per millilitre of urine. Dr Ann Young said that there was no correlation between the amount of morphine in urine samples with the amount consumed because urine was a very unstable substance. The provider of the samples could have drunk varying amounts of water, perspired or gone to the toilet many times. Asked to comment on the discrepancies in the results of the two samples, she surmised that the samples could have been collected at different times or some water could have been left in the bottles after washing.

31 Dr Rasaiah Munidasa Winslow, a senior consultant psychiatrist at the Institute of Mental Health, was called by the prosecution to testify orally about various aspects of drug withdrawal. He specialises in addiction medicine, which includes heroin abuse, and has been treating heroin addicts since 1992. Currently, he sees about a hundred such patients yearly.

32 Dr Winslow gave some guidance on the classification of the severity of addiction. Mild addiction would result from the taking of one to two straws of heroin a day, moderate addiction three to five straws a day and severe addiction six or more a day.

33 There are more than 20 different symptoms of heroin withdrawal. The symptoms vary depending on the severity of withdrawal. A mild case of withdrawal would include symptoms such as fatigue, yawning, some restlessness and tiredness, and sometimes goose bumps. The symptoms generally peak between 12 and 36 hours and disappear within 48 and 72 hours. The addict should be able to sleep unless he has also been abusing other substances like sleeping tablets. A moderate case would include the whole spectrum of symptoms, judged by when the onset of symptoms begins, how severe they are and how long they last. In the first few days, there is difficulty in sleeping. The symptoms peak between 24 and 48 hours and can last for four to five days. The most severe cases of withdrawal last five to ten days and involve symptoms like nausea, vomiting, restlessness, severe pain, diarrhoea and an inability to sleep well. The symptoms peak about 72 hours after the cessation of consumption.

34 Dr Winslow stated that the heavier the usage of drugs, the more rapid the onset of symptoms after cessation and the longer the symptoms last. There are, of course, some deviations from the norm. Looking at the notes of the medical examination of the accused at Alexandra Hospital on 7 January 2004, Dr Winslow was of the view that he could have been at any stage of withdrawal although the likelihood was that it was a case of mild to moderate withdrawal. Perusing the medical history taken at CPH, he agreed with Dr Emran's assessment of the accused's case as one of mild withdrawal. He was also of the view that if the accused had been consuming one packet of heroin a

day in the two months before his arrest, his symptoms would appear unusually mild. Since his symptoms had subsided by 9 January 2004, taking into account the overall picture, it was probably a case of mild withdrawal.

35 Dr Winslow said there was no direct correlation between the amount of heroin consumed and the amount of morphine found in the urine. He could not tell how much heroin the accused had consumed as there were occasional cases of heavy users exhibiting mild withdrawal symptoms. Out of 100 patients that he sees a year, at most 5% to 10% would not show the severity of symptoms which was in line with the amount of heroin consumed.

The case for the Defence

36 At the close of the Prosecution's case in the afternoon of 14 September 2004, the accused was called upon to make his defence to the charge. Defence counsel requested that the proceedings be stood down to the next day for the accused to reconsider his intention to remain silent.

37 The next day, after conferring with both his counsel, the accused elected to remain silent and to call no witness to testify in his defence.

The decision of the court

38 The Prosecution relied on the following to prove its case:

- (a) The presumption in s 17(c) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed):
- (b) The statements given by the accused to SSI Siew Lai Lone, SSG Ng and ASP Goh.
- (c) The circumstantial evidence relating to the paraphernalia associated with drug trafficking.

39 The Prosecution's evidence proved that the accused was in possession of the packets of the granular substance seized in the taxi and in the apartment in Topaz Mansion. The accused admitted as much in his various statements.

40 The Defence criticised the investigators for not having proved the chain of custody of the packets from arrest to analysis. However, I had no doubt that SSG Ng did take custody of the packets in the taxi and that he did bring them to the apartment where he handed them over to ASP Goh together with those found in the apartment after the latter arrived at Topaz Mansion and completed his investigations. No other drugs were seized before the CNB officers intercepted the taxi or while on the way to Topaz Mansion. There was therefore no issue of a mix-up somewhere along the way. Although SSG Ng could not recall the time when he handed over the packets to ASP Goh and although he did not record the handing over, I believed his testimony that the packets seized from the taxi were with him all the time until they were handed over. Similarly, there was no question of any mix-up where the packets found in the apartment were concerned.

41 SSG Ng was also criticised by the Defence for having brought the packets seized from "one crime scene to another" instead of bringing them back to the CNB store for safekeeping. It was argued that, by doing so, he could have caused a mix-up in the exhibits. As I have indicated above, I was satisfied that there was no mix-up. In any event, even if there had been a mix-up, it would have made no difference as the charge consolidated the drugs found in both places.

42 Similarly, I believed ASP Goh's testimony that he took over the exhibits from SSG Ng and placed them into individual plastic bags before carting them back to the CNB office. There is no requirement that a written acknowledgement be given in respect of the handing over. ASP Goh has explained that he did not keep the exhibits in the CNB store because he wanted to bring them out later to weigh in the presence of the accused after the accused had gone through the administrative procedures and had his urine samples taken. I see no fault in that. When the drugs were weighed in the accused's presence, there was no indication from him that there could not have been so much. When his statements under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) were recorded on 10 January 2004, he admitted that the drugs in the taxi and in the apartment were his without qualifying the amount.

43 ASP Goh's testimony that he took care that nothing else was in the safe and in the cabinet when he placed the exhibits therein has not been discredited in any way. He was the only one handling them and he ensured that the safe and the cabinet were locked each time he put the exhibits back in. There is no requirement that exhibits can only be taken out in the presence of accused persons.

44 The Defence argued that ASP Goh had referred to the drugs as a yellowish granular substance while the analyst from the Health Sciences Authority had described those received by her as a granular or powdery substance without specifying the colour. It asked whether there could have been a mix-up with other drug exhibits from other cases. I do not see a material difference in the two descriptions. Further, the analyst was cross-examined by the Defence and she was not asked why she had omitted the colour of the exhibits.

45 I found no gaps in the chain of evidence relating to the drugs in question. There was no doubt as to the identity of the drug exhibits. As the drugs proved to be in the possession of the accused have been analysed and found to contain a total of 226.57g of diamorphine, the presumption in s 17(c) of the Misuse of Drugs Act applied. This presumption states that any person proved to have had in his possession more than 2g of diamorphine shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose. The burden is therefore on the accused to rebut this presumption on a balance of probabilities.

46 The Defence submitted that three points emerged from the accused's voluntary statements to ASP Goh. Firstly, he was consuming from the stock of heroin in his possession in Topaz Mansion. Secondly, he consumed whenever he wanted to do so. Thirdly, he consumed about 7.5g per day. It was argued that it was clear from the evidence of the two friends arrested in the apartment on 7 January 2004 that the accused was a "severe addict" who consumed heroin daily and at all times of the day. It was submitted that Dr Emran was not able to ascertain the rate of consumption from the withdrawal symptoms manifested by the accused. Similarly, while Dr Winslow said that there was a correlation between the rate of consumption and the withdrawal symptoms in the sense that a heavier user would experience a more rapid onset of symptoms and symptoms that lasted longer, he accepted that there was a small number of heavy users who might not exhibit severe withdrawal symptoms.

47 The Defence pointed out that Rajendran J in *PP v Dahalan bin Ladaewa* [1996] 1 SLR 783 at 813, [125], doubted whether the position adopted by the prosecution there that the severity of drug addiction could be determined by reference to the severity of withdrawal was a sound one. That decision was upheld by the Court of Appeal: see *PP v Dahalan bin Ladaewa* [1995] SGCA 87. Since the accused was a severe addict who needed to consume about 7.5g of heroin a day, and considering the accused's statement that he could not contact the supplier and that it was the supplier who

would contact him, it was submitted that "it would be prudent to assume that the accused would want to hold on to his drug supplies and not be in a hurry to sell them off".

48 It was clear that the accused was trafficking in heroin. His statements and the drug paraphernalia such as the weighing scale and the more than 3,000 empty plastic packets found in the apartment confirmed that fact. They buttressed rather than rebutted the presumption of trafficking. The Prosecution accepted that the accused was also a consumer of heroin. The issue, as I understand it from the Defence, was how much heroin was meant for trafficking and how much was meant for his consumption. In *Jusri bin Mohamed Hussain v PP* [1996] 3 SLR 29, it was held that before any meaningful apportionment of drugs for the purposes of consumption and of trafficking can be made, there must be credible evidence that part of the drugs is meant for self-consumption. There must also be credible evidence of the rate of consumption as well as the number of days the supply is meant for. Credible evidence, the court held, does not mean the mere say-so of the accused.

49 The accused relied only on his statement to the investigating officer for the rate of his consumption and the fact that the heroin was from the stock that he possessed. This fell short of the test laid down in *Jusri's* case. There was therefore no evidence upon which a meaningful apportionment could be made of the heroin in his possession. On that ground alone, his defence failed.

50 I will nevertheless deal with the contentions raised by the Defence on the assumption that the rate of consumption was one packet of 7.5g a day. The accused's statement indicated that he collected four pounds of heroin two weeks before his arrest on 7 January 2004. He accepted that the two pounds found in the apartment were the remainder of the four pounds obtained earlier. He said that each pound was repacked into approximately 56 smaller packets. Two pounds would have yielded 112 smaller packets. Assuming he did consume one packet per day for those 14 days, 98 smaller packets should have been left of the other two pounds. Instead, there were only eight smaller packets, two straws and a small container of heroin left. Even if these were regarded as comprising ten smaller packets, 88 smaller packets were still unaccounted for. The irresistible inference is that the accused trafficked in at least those 88 smaller packets. "Traffic", as defined in s 2 of the Misuse of Drugs Act, includes "give" and therefore any gift of heroin to his two friends in the apartment would still be caught.

51 By the same token, the accused intended to and would have trafficked in some 88 smaller packets out of the 112 that he could repack from the remaining two pounds of heroin. He has chosen not to explain otherwise.

52 He would have done likewise with the four pounds of heroin that he was carrying in the taxi to the apartment. That had to be the case. He was unemployed. He owed money to loan sharks. He had to pay the supplier some \$30,000 for the four pounds of heroin he was carrying in the taxi. Since each small packet of about 7.5g of heroin cost \$300, he would have to sell at least 100 of such packets to raise \$30,000. In addition, he had to pay the rent for the apartment and meet his other daily expenses. To pay the rent of \$1,200 per month, he would have to sell at least four more of such packets every month. It would also be entirely commonsensical to presume he would sell a few more packets to meet his living expenses.

53 The minimum amount of heroin the accused had to sell for each batch of four pounds was therefore more than 104 packets of 7.5g each. That would amount to almost two pounds of heroin for trafficking. He had four pounds more on the second transaction. Those would yield 224 smaller packets (4 x 56). He could not have been hoarding for his own consumption more than seven months' (ie, 224 days') worth of supplies. The four pounds found in the taxi contained 149.1g of diamorphine.

Even though the purity of the substance might not have been entirely uniform in the four packets, two pounds would contain about 74g of diamorphine. Although I accepted that he would consume some of the heroin, there was no chance that he was trafficking in only 15g or less of diamorphine, which would not attract the mandatory death penalty. I therefore amended the charge to include the words highlighted, much along the same lines as what was done in *Yeo Hee Seng v PP* [1995] 1 SLR 193.

54 In addition to its submissions on the facts of the case, the Defence also contended that the mandatory death penalty provided in the Misuse of Drugs Act offends Art 12 of the Constitution of the Republic of Singapore (1999 Rev Ed) which stipulates that “[a]ll persons are equal before the law and entitled to the equal protection of the law”. The arguments on this point followed most of those canvassed in *PP v Nguyen Tuong Van* [2004] 2 SLR 328. In that case, Kan Ting Chiu J reasoned that the Defence there failed to establish that the mandatory death sentence was unlawful for contravening the Constitution or international law. The appeal against Kan J’s decision was heard before the Court of Appeal in July this year and judgment has been reserved. I agree with Kan J and adopt his reasoning in coming to the same conclusion in the present case.

55 Accordingly, I found the accused guilty on the amended charge and convicted him.

Accused convicted on amended charge and sentenced to death

Copyright © Government of Singapore.