

Teo Cheow Kim v Public Prosecutor
[2008] SGCA 2

Case Number : Cr App 7/2007
Decision Date : 16 January 2008
Tribunal/Court : Court of Appeal
Coram : Andrew Phang Boon Leong JA; V K Rajah JA; Tan Lee Meng J
Counsel Name(s) : Nadesan Ganesan (Chan Kwek & Chong) and Alan Moh (Alan Moh & Co) for the appellant; Janet Wang (Attorney-General's Chambers) for the respondent
Parties : Teo Cheow Kim — Public Prosecutor

Criminal Law

Criminal Procedure and Sentencing

16 January 2008

V K Rajah JA (delivering the grounds of decision of the court):

Introduction

1 The appellant was convicted in the High Court of trafficking in 30.37g of diamorphine under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) and was sentenced to death accordingly: see *PP v Teo Cheow Kim* [2007] SGHC 70 ("the GD"). The charge on which the appellant was convicted ("the Charge") read as follows:

That
you,
**Teo
Cheow
Kim**

on the 2nd day of November 2006 at about 9.30 p.m., along Race Course Road, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, by having in your possession for the purpose of trafficking, 3 bundles containing not less than 30.37 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) and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

2 The appellant appealed against the conviction and the sentence. After hearing the arguments made on behalf of the appellant and the Prosecution, we dismissed the appeal. We now give our reasons.

The facts

3 The appellant is a 52-year-old male Singaporean. On 2 November 2006, the appellant visited Johor Baru, where he met a Malaysian male known as "Ah Tee". Ah Tee asked the appellant to deliver "bei hoon" (which is Hokkien for diamorphine) in Singapore on his behalf. In return, Ah Tee agreed to reward the appellant with \$3,000. The appellant was told to pick up the "bei hoon" at the void deck of Block 739 Bedok Reservoir Road at about 8.00pm on the same day and to deliver it to a Malay male

at Geylang Lorong 6.

4 As instructed by Ah Tee, the appellant arrived at the void deck of Block 739 Bedok Reservoir Road at the appointed time. There, the appellant collected a white plastic bag containing three bundles of "bei hoon". The appellant subsequently proceeded to his cousin's shophouse at Block 740 Bedok Reservoir Road, #01-3167, where he concealed the white plastic bag in a yellow plastic bag.

5 The appellant and his cousin subsequently left the shophouse and proceeded to Bedok Reservoir Road. All this while, the appellant held onto the yellow plastic bag. After successfully hailing a taxi, the appellant instructed the driver to send him to Kampong Java Road as he wanted to pass something to a friend (who was later identified as one Lim Hock Kim). However, when the taxi driver reached Kampong Java Road, the appellant said that his friend was not waiting for him there and directed the taxi driver to proceed to Race Course Road instead.

6 The taxi stopped near the junction of Race Course Road and Hampshire Road, and the appellant alighted. The appellant then walked across Race Course Road and entered the Banana Leaf Apollo Restaurant. At about 9.30pm, soon after the appellant left that restaurant to make a call on his mobile phone, a team of officers from the Central Narcotics Bureau ("CNB") led by Station Inspector M Subramaniam apprehended and arrested him. The yellow plastic bag which the appellant was carrying was seized and handed over to Staff Sergeant Mohd Affendi bin Ideris ("SSgt Mohd Affendi") and his team. The appellant was then escorted by Sergeant Tan Lye Cheng Michelle ("Sgt Tan"), together with SSgt Mohd Affendi and Sergeant Lee Yong Sin ("Sgt Lee"), to CNB's headquarters ("CNB Headquarters").

7 Unknown to him, the appellant had actually been under surveillance from 7.00pm of that eventful day. A team of CNB officers had tailed him from his residence at Block 10 Selegie Road to Block 740 Bedok Reservoir Road. They saw him leave his cousin's shophouse with the yellow plastic bag containing the "bei hoon". They also followed the taxi which the appellant boarded to the junction of Hampshire Road and Race Course Road, where the latter was subsequently arrested outside the Banana Leaf Apollo Restaurant. Another team of CNB officers arrested Lim Hock Kim, who was found loitering along Race Course Road near the said restaurant. Lim Hock Kim was likewise brought to CNB Headquarters.

8 In the interview room at CNB Headquarters, SSgt Mohd Affendi opened the yellow plastic bag in the presence of both the appellant and Lim Hock Kim. The yellow plastic bag was found to contain a white plastic bag. Inside the white plastic bag were three bundles wrapped in newspaper. Each bundle contained a yellowish granular/powdery substance which was later identified to be diamorphine. SSgt Mohd Affendi subsequently lodged a police report pertaining to the arrest of the appellant and Lim Hock Kim. The relevant portion of the police report is reproduced below:

Later, at CNB [Headquarters], in the presence of [the] accused, the yellow plastic bag was opened up. In the bag, was another 'NTUC Fairprice' plastic bag. In it, contain [sic] 3 bundles wrapped in Chinese newspapers.

Each bundle was found to contain a packet of yellowish granular substances [sic] believed to be [a] controlled drug. Total 3 packets. Upon questioning, *accused ... admitted ownership of the 3 packets.*

[emphasis added]

9 The appellant was subsequently questioned about the contents of the yellow plastic bag by

Sgt Lee in Hokkien and he replied in Hokkien. The English transcript of the exchange read as follows:

Q1: What is inside the plastic bag? (Recorder's note: Pointing to a yellow plastic bag containing a white NTUC Fairprice plastic bag containing 03 bundles wrapped in newspaper).

A1: Heroin.

Q2: Who does it [*ie*, the heroin] belongs [*sic*] to?

A2: It belongs to me.

...

Q7 What will you get in return from "Ah Dee" if you pass the heroin to the male Malay at Geylang Lorong 6?

A7: "Ah Dee" will give me Singapore dollars \$3000.

10 In the early hours of the following day (*ie*, 3 November 2006), the appellant was escorted to his residence at Block 10 Selegie Road by Sgt Tan, SSgt Mohd Affendi and Sgt Lee. SSgt Mohd Affendi maintained custody of the yellow plastic bag at all times during the journey from CNB Headquarters to the appellant's residence, where a search was effected. Nothing incriminatory was found there and the appellant was taken back to CNB Headquarters. Lim Hock Kim was similarly taken to his residence by CNB officers, who found ten packets of diamorphine there. He was then escorted back to CNB Headquarters.

11 Back at CNB Headquarters, Assistant Superintendent Lim Teck Lim ("ASP Lim") assumed custody of the appellant and Lim Hock Kim from Sgt Tan, SSgt Mohd Affendi and Sgt Lee. ASP Lim took down a description of all of the appellant's personal belongings and took custody of the yellow plastic bag from SSgt Mohd Affendi. He then proceeded to make a note of Lim Hock Kim's personal effects as well as the ten packets of diamorphine found in the latter's residence.

12 ASP Lim later instructed Staff Sergeant Low Hiok ("SSgt Low") to take photographs of the seized exhibits in the presence of the appellant and Lim Hock Kim at the Special Investigation Team's office. Once the photographs of the exhibits were taken, ASP Lim directed Staff Sergeant Lee Choon Teck to weigh the drug exhibits. After the drugs seized from the appellant ("the appellant's drugs") were weighed, ASP Lim read aloud the weights registered by the weighing scale and showed the readings of the weight of the drugs to the appellant. ASP Lim recorded these readings in his own diary while Inspector Tan Teck Hong Jason recorded them in a separate record book. The same procedure was carried out in relation to the ten packets of diamorphine found at Lim Hock Kim's residence.

13 In the course of the investigations, two statements from the appellant were recorded by ASP Lim on 6 November 2006 and 11 November 2006 respectively. The salient portions of the statement made on 6 November 2006 read:

3 In the yellow plastic bag were three (03) "liap" of "bei hoon". I knew that "bei hoon" is known as heroin in English. (Recorder's note: "liap" means bundle in English). This yellow plastic bag was subsequently seized by the officers. ...

...

11 Last Thursday (2 Nov 2006) afternoon, I went to Johore Bahru and I bumped into Ah

Tee. He asked me for help to take something on his behalf. I asked him what was the thing and he replied "bei hoon". I asked Ah Tee for Singapore three thousand dollars (S\$3000/-) as a reward for helping him take the "bei hoon" [to] Singapore. Ah Tee agreed to my request. ...

...

13 ... I did not open up the plastic bag to check the contents in it and did not pay any attention as to how [sic] the packaging was like in the plastic bag. But I was aware [there] was something illegal inside the plastic bag. ...

...

16 This was the first time that I was dealing with "bei hoon", helping Ah Tee, a Malaysian, to send [sic]. ...

14 The further statement made by the appellant on 11 November 2006 included the following admissions:

24 On the 2 Nov 06(Thursday) afternoon as mentioned in my previous statement dated 6 Nov 06 at para 11, when I met "Ah Tee" at Johore Bahru, he told me to go to Geylang Lor 6 after collecting the three "liaps" of "bei hoon". ...

...

26 On 2 Nov 06 at about 8 pm plus after I had collected the three "liaps" of "bei hoon" ... I went straight to my cousin's place behind Blk 739 "Chwee Ti Lor" [ie, Bedok Reservoir Road]. I went up to the mini temple at the second floor where I saw my cousin cleaning the altar table.

...

28 I left the plastic bag containing the 3 "liaps" of "bei hoon" under an altar table before I went to the toilet to ease myself. After relieving myself, I then picked up the plastic bag with the 3 "liaps" of "bei hoon" again. From the side of the altar table, I saw an empty yellow plastic bag lying there. I took it and placed the white plastic bag containing the 3 liaps [of] "bei hoon" into it. ...

The trial below

15 The appellant had at the outset pleaded guilty to the Charge before the trial judge ("the Judge"). However, as the appellant was facing a capital charge, the Prosecution nevertheless proceeded to adduce evidence to prove its case against him.

16 At the close of the Prosecution's case, the appellant was called upon to enter his defence. The appellant elected to remain silent. He also did not call any witness to testify on his behalf, although he did ask for Mr Wu Nan Yong ("Mr Wu"), one of CNB's interpreters, to be summoned for cross-examination. Mr Wu was the interpreter who had recorded the cautioned statement made by the appellant under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed). However, that cautioned statement was not admitted in evidence by either the Prosecution or the Defence. It bears mention that even Mr Ho Meng Hee ("Mr Ho"), counsel for the appellant at first instance, was unable to explain what Mr Wu was needed for. Accordingly, as the Judge was not satisfied that Mr Wu was relevant to the appellant's defence, he refused to summon Mr Wu for cross-examination (see the GD

([1] *supra*) at [4]).

17 In his closing submission, Mr Ho contended that the Prosecution had failed to prove its case beyond reasonable doubt. Mr Ho argued that the appellant's drugs could have been mixed up with the drugs seized from Lim Hock Kim ("Lim Hock Kim's drugs"). The Judge, however, was satisfied that the evidence showed conclusively that the two sets of drugs had been distinctly marked and accounted for (see the GD at [6]).

18 The Judge noted (at [4] of the GD) that, crucially, the appellant had not challenged the admissibility of the statements made on 6 November 2006 and 11 November 2006. In those statements, the appellant had admitted unreservedly to his knowledge and ownership of the drugs in the yellow plastic bag. The Judge further observed (*ibid*) that "[the appellant] ... also admitted that he was paid to transport the heroin". Accordingly, the Judge found that the Prosecution had made out its case against the appellant beyond a reasonable doubt. The appellant was therefore convicted.

The ground(s) of appeal

19 The sole ground of appeal before this court was that the Judge had failed to accord adequate consideration to the possibility of a mix-up of the appellant's drugs with Lim Hock Kim's drugs. More specifically, in his petition of appeal, the appellant argued that such a mix-up could have occurred because:

- (a) there was evidence that the two sets of drugs had been placed together without proper and distinct identification marks when they were photographed and weighed; and
- (b) the appellant's drugs, instead of having been kept securely at CNB Headquarters, had been taken out and transported to the appellant's premises and had then been brought back to CNB Headquarters.

20 We noted that, in his petition of appeal, the appellant also submitted that the Judge had erred in fact and in law in disallowing the Defence's application to call Mr Wu as a witness to testify. However, during the course of the appeal, Mr Nadesan Ganesan ("Mr Ganesan"), counsel for the appellant, informed us that his client was no longer challenging the Judge's decision on this point. Accordingly, the only issue for this court to determine was whether a mix-up of the appellant's drugs with Lim Hock Kim's drugs could have occurred.

Our decision

21 It is settled law that an appellate court customarily exercises great caution in evaluating factual findings and will not interfere with a trial judge's findings of fact unless they are plainly wrong. To this end, the observations made by this court in *Chew Seow Leng v PP* [2005] SGCA 11 at [25] are apposite:

It is trite law that an appellate court will not disturb the findings of fact made by the trial judge, unless they are clearly reached against the weight of the evidence or plainly wrong. The appellate court must bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judge's findings and reasons: *Lim Ah Poh v PP* [1992] 1 SLR 713, *Ameer Akbar v Abdul Hamid* [1997] 1 SLR 113. This is especially the case where the findings turn on the trial judge's assessment of the credibility and veracity of the witnesses: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656.

22 Before us, Mr Ganesan submitted that Lim Hock Kim's drugs and the appellant's drugs had been grouped together at some stage of the investigation. He argued that there had been no evidence as to the quantity of Lim Hock Kim's drugs, and that the Judge had improperly curtailed the cross-examination of Lim Hock Kim when Mr Ho attempted to clarify the possibility of a mix-up between the two sets of drugs. Mr Ganesan contended that the Defence had thus been denied an opportunity to establish that a mix-up could have occurred in this respect to the prejudice of the appellant.

23 In response, the deputy public prosecutor, Ms Janet Wang ("Ms Wang"), contended that the possibility, that the appellant's drugs might have been mixed up with Lim Hock Kim's drugs, was not borne out by the evidence. The appellant had been seen carrying the yellow plastic bag when he left his cousin's shophouse at Block 740 Bedok Reservoir Road. In the statement made on the day of his arrest (see [9] above) as well as the subsequent statements made on 6 November 2006 and 11 November 2006 (see [13]–[14] above), the appellant had admitted to knowledge of the three bundles of drugs in that plastic bag and to having agreed to deliver the drugs for Ah Tee in return for \$3,000. The appellant had not disputed this evidence in his statements. Ms Wang added that the appellant's drugs had been photographed in the presence of both the appellant and Lim Hock Kim. Furthermore, according to ASP Lim, there was no possibility of a mix-up between the two sets of drugs as, firstly, the specific drug exhibits seized from an accused would accompany that person wherever he was brought during investigations, and, secondly, Lim Hock Kim's drugs had been separately marked, sealed and placed in ASP Lim's safe in the present case. Finally, Ms Wang emphasised that, to ensure that only one person dealt with the drugs seized, SSgt Mohd Affendi had retained possession of the yellow plastic bag containing the appellant's drugs from the time of the appellant's arrest right through to the time that plastic bag, together with its contents, was handed over to ASP Lim at CNB Headquarters.

24 We found that there had been no break in the chain of custody of the appellant's drugs and, thus, saw no reason to disturb the findings of the Judge. As noted by Ms Wang, SSgt Mohd Affendi had taken personal custody of the yellow plastic bag containing the appellant's drugs upon the appellant's arrest until he handed the bag over to ASP Lim for the latter to record and weigh its contents. In addition, we found that the procedures in place for photographing and weighing seized drug exhibits had been properly carried out, and that the appellant's drugs and Lim Hock Kim's drugs could not have been mixed up. During the photography session, the contents of the yellow plastic bag had been carefully and separately laid out for their photographs to be taken. We noted that the plastic bag and its contents had been photographed layer by layer, in that SSgt Low had taken a photograph of, first, the yellow plastic bag, followed sequentially by photographs of the white plastic bag therein, then the three bundles wrapped in newspaper inside the white plastic bag, and finally each bundle. The drugs in the three bundles had then been weighed in the presence of the appellant and Lim Hock Kim, neither of whom disputed the weight recorded.

25 In any event, we also noted that Lim Hock Kim's drugs appeared to have been packaged quite differently from the appellant's drugs. In this regard, we found the following exchange between Mr Ho and Lim Hock Kim (reproduced below from the certified transcript of the notes of evidence of the proceedings on 7 May 2007, the first day of the trial) instructive:

Q: Now those drugs seized from your house, were they in a plastic bag or in what form?

A: In plastic bags.

Q: In how many plastic bags?

A: Ten plastic bags.

Q: So many?

A: By plastic bags I mean plastic packets, 10 packets.

Q: How have you kept them in the house? I mean, did you – did you put [them] in a plastic bag?

A: These 10 packets were put in a plastic bag.

Q: All right, so, what kind – what colour was the plastic bag?

A: White colour.

Q: And it will be a normal size plastic bag, is it? I mean, like – it's like this – shown in this photograph [Lim Hock Kim was shown the photograph of the appellant's white plastic bag]. That kind of size, is it?

A: No.

Q: Much smaller or bigger than this?

A: Smaller.

26 In our judgment, there was absolutely no plausible basis to suggest that the chain of custody of the appellant's drugs had been compromised. We noted that the appellant never challenged the weight of those drugs when they were weighed in his presence. It also bears emphasis that the appellant's actual possession of the yellow plastic bag and its contents was not disputed in court. Further, the appellant never suggested that the items appearing in the photographs of these exhibits were not his. Accordingly, we held that counsel had failed to establish a reasonable doubt that there could have been a mix-up of the appellant's drugs with Lim Hock Kim's drugs.

Conclusion

27 In the circumstances, we dismissed the appeal and affirmed the Judge's decision.

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