

Public Prosecutor v Tan Kheng Chun Ray
[2011] SGHC 183

Case Number : Criminal Case No 6 of 2011
Decision Date : 04 August 2011
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Gordon Oh and Peggy Pao (Attorney-General's Chambers) for the Prosecution;
Subhas Anandan and Sunil Sudheesan (KhattarWong) for the accused.
Parties : Public Prosecutor — Tan Kheng Chun Ray

Criminal Law

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 3 of 2011 was allowed by the Court of Appeal on 28 November 2011. See [\[2012\] SGCA 10.](#)]

4 August 2011

Kan Ting Chiu J:

1 The accused, Ray Tan Kheng Chun pleaded guilty to seven charges [\[note: 1\]](#) for drug offences under the Misuse of Drugs Act (Cap 185 2008 Rev Ed).

2 The seven offences are:

Charge 1

Importing not less than 14.99 grams of diamorphine.

Charge 2

Importing not less than 1.12 grams of methamphetamine.

Charge 3

Consumption of methamphetamine.

Charge 4

Possession of utensils intended for the consumption of a controlled drug.

Charge 5

Possession of another lot of utensils intended for the consumption of a controlled drug.

Charge 6

Possession of utensils intended for the consumption of a controlled drug.

Charge 7

Possession of three tablets of nimetazepam.

The offences in Charges 1 to 5 took place on 10 October 2009. The offences in Charges 1, 2, 4 and 5 took place at the Woodlands Checkpoint, and the drug consumption offence in Charge 3, took place in Malaysia. The offences in Charges 6 and 7 took place on 11 October 2009 at the accused's residence at No 1 Queensway, #08-63, Queensway Tower, Singapore.

The facts

3 The facts of the offence were set out in the Statement of Facts [\[note: 21\]](#) which the accused admitted without qualification. Paras 2 to 6 of the statement disclosed that:

2. On 10 October 2009, at about 11.45 p.m., the accused drove a Singapore-registered motor car bearing registration number SGX 3644M ("SGX 3644M") alone into Singapore at the Woodlands Checkpoint.

3. At the Arrival Car Green Channel Zone of the said Checkpoint, the accused was directed by an Immigrations and Checkpoints Authority ("ICA") officer to park SGX 3644M at Lane 6 of the said Zone for a routine check to be carried out on the vehicle.

4. Two other ICA officers thereafter carried out the check on SGX 3644M.

5. In the course of checking SGX 3644M, the ICA officers discovered a box of tissues ("the tissue box") on the floor behind the driver's seat. On closer inspection, various glass ware and glass pipes were found inside two smaller boxes that were packed at the bottom of the tissue box.

6. The ICA officers activated Central Narcotics Bureau ("CNB") officers on duty in the vicinity of Lane 6 of the abovementioned Zone for assistance. On further inspection of SGX 3644M, the following items were discovered:

- a. One red plastic bag behind the radio console, which contained two packets of granular/powdery substances wrapped in a newspaper;
- b. One orange plastic bag inside the compartment below the handbrake, which also contained two packets of granular/powdery substances wrapped in a newspaper; and
- c. One black pouch in the compartment below the radio console ("the black pouch"), which contained two packets of crystalline substance, glass tube, glass pipe and straw.

4 The diamorphine referred to in Charge 1 was recovered from the red plastic bag and the orange plastic bag. Each bag contained two packets of granular/powdery substances which were analysed and found to contain not less than 30.91 grams of diamorphine.

5 The methamphetamine referred to in Charge 2 was recovered from two packets of crystalline substance in the black pouch. The crystalline substance was analysed and was found to contain not less 1.12 grams of methamphetamine. The utensils referred to in Charge 4 were also recovered from the black pouch.

6 The utensils referred to in Charge 5 were recovered from the tissue box.

7 The utensils referred to in Charge 6 and the three tablets of nimetazepam were recovered from the accused's residence on 11 October 2009.

8 The evidence of the consumption of methamphetamine referred to in Charge 3 was from the analysis of the urine sample of the accused taken on 11 October 2009.

9 At the hearing, the accused confirmed that he knew that the drugs he was importing were diamorphine and methamphetamine. [\[note: 3\]](#)

10 The accused's background was set out in his plea-in-mitigation: [\[note: 4\]](#)

- (a) he is a Singaporean and is 30 years old (his marital status is not disclosed);
- (b) he was educated in Perth, Australia to the equivalent of A-level;
- (c) he has been a regular with the Republic of Singapore Navy since 1998 (his rank and pay are not disclosed);
- (d) he suffers from gout and high blood pressure; and
- (e) he has no antecedents.

11 The accused disclosed that he used to commute to Johor Bahru to visit his girlfriend and friends, and he met a person named Eric who became a drinking companion.

12 In 2008 – 2009 the accused was in financial difficulties as a result of his accumulating credit card and mobile telephone debts which amounted to \$13,000. He borrowed from his friends to pay the credit card and telephone bills and ended up being indebted to them as well.

13 On one occasion when he was with Eric he told Eric of his financial problems. Subsequently, when he was in Johor Bahru on 10 October 2009 Eric approached him with a proposal for him to bring a consignment of drugs into Singapore for a payment of \$2,500.

14 The accused was eager to earn the \$2,500 and agreed to the proposal. He gave Eric his car key and Eric drove off to place the drugs in the car before returning it to him. When the accused drove the car back to Singapore, he was arrested at the Woodlands Checkpoint. After he was arrested, the accused co-operated with the authorities and made positive statements to the investigating officers.

15 The prosecution did not make submissions specifically on sentence to be imposed. Instead, it submitted two compilations of sentences. One compilation was of sentences imposed in cases where an accused person had pleaded guilty to trafficking/importing diamorphine where the quantity of the drugs has been reduced to below 15 grams although the actual quantities involved were greater and would have brought on the mandatory capital sentence. [\[note: 5\]](#) In the twenty cases in the compilation the sentences imposed ranged between 20 to 25 years imprisonment with between 15 to 20 strokes of the cane. The other compilation was of sentences for consumption of methamphetamine, possession of utensils intended for drug consumption, and possession of nimetazepam [\[note: 6\]](#).

16 In deciding on any sentence, regard must be given to the range of sentences prescribed by statute. For the seven offences the accused committed, the range of sentences are:

Charge 1

Maximum 30 years or imprisonment for life

15 strokes

Minimum 20 years

15 strokes

Charge 2

Maximum 30 years or imprisonment for life

15 strokes

Minimum 5 years

5 strokes

Charge 3

Maximum: 10 years or \$20,000 fine or both

Charges 4, 5 and 6

Maximum 3 years or \$10,000 fine or both

Charge 7

Maximum 10 years or \$20,000 fine or both

17 The circumstances and conduct of the accused before and after his arrest are also important matters to be considered. I kept in mind the mitigating factors, i.e.m that he had pleaded guilty to all the charges, that he had co-operated in the investigations and that he had no antecedents. I also took into account other factors:

- (a) at 30 years old he is in the prime of his life;
- (b) he is reasonably well-educated;
- (c) he has a steady job;
- (d) his accumulated debt of \$13,000 was not large, and was incurred by him in credit card and mobile phone expenses;
- (e) he was not put under pressure to commit the offences, but was tempted by the allure of quick cash, as his counsel put it; and

(f) he would have faced the death penalty on conviction if the quantity of diamorphine was not reduced by the prosecution.

18 I imposed the following sentences on him:

Charge 1: 22 years' imprisonment and 15 strokes.

Charge 2: 5 years' imprisonment and 5 strokes.

Charge 3: 8 months' imprisonment.

Charges 4, 5, 6 and 7: 3 months' imprisonment each.

and I ordered that the custodial sentences for Charge 1 and Charge 2 are to run consecutively, and that the custodial sentences for Charges 3 to 7 are to run concurrently with the sentences for the first two charges. In effect, the accused has to serve imprisonment for 27 years and suffer 20 strokes of the cane.

19 The minimum sentence for Charge 1 is 20 years' imprisonment and 15 strokes. The minimum sentence was not imposed because:

(a) the accused was actually importing 30.91 grams of diamorphine, which was more than twice the quantity that would have brought on the mandatory death sentence; and

(b) there was an absence of any real extenuating circumstances for the commission of the offence.

The sentence of 22 years, two years above the minimum and eight years below the maximum sentence, is appropriate and cannot be considered to be excessive.

20 Counsel had submitted that it was proper "to consider the two importation offences as a single transaction for sentencing purposes". [\[note: 7\]](#) He was referring to the "one transaction rule". This rule is that where two or more offences are committed in the course of a single transaction, all sentences in respect of these offences should be concurrent rather than consecutive – *Kanagasuntharam v Public Prosecutor* [1991] 2 SLR(R) 874 ("*Kanagasuntharam*"), per Yong Pung How CJ at [8]. However, Yong CJ noted that difficulty may arise over what constitutes one transaction, and he also observed that the rule is not absolute, and that its application is subject to the facts of the case and the circumstances of the offence.

21 Does the one transaction rule apply to the two importation offences in the present case? The accused was importing methamphetamine which belonged to him as a principal and he was also importing diamorphine which did not belong to him as an agent of Eric for payment. He was going to retain the methamphetamine, but the diamorphine was to be collected from him. While he had committed the two offences at the same time and at the same place, it cannot be said that the two offences were parts of one transaction.

22 Under s 307(1) of the Criminal Procedure Code 2010 (No 15 of 2010) where the accused person is convicted of at least three distinct offences, at least two of the sentences are to run consecutively. As the accused had been convicted for seven distinct offences, I had to decide how many sentences are to run consecutively and which sentences should run consecutively.

23 The seven offences are divisible into two groups by reference to the gravity of the offences and the lengths of the prescribed sentences. The two importation offences fall into one group and the other charges for the drug possession, drug consumption, and possession of the utensils fall into the another group.

24 I ordered that the first two sentences for the importation offences are to run consecutively because drug importation is a serious offence. When a person commits two such offences and they were not committed in a single transaction, he should be punished for both of them. The three-month and eight-month sentences for the less serious offences can run concurrently with the two sentences for importation and be subsumed within the consecutive sentences.

25 The effective sentence must be checked against two rules of sentencing, namely, the totality principle and the proportionality principle.

26 In respect of the first rule, *Principles of Sentencing* DA Thomas (Heinemann, 2nd Ed, 1979) explained at pp 57 – 58 that:

A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, **or** if its effect is to impose on the offender 'a crushing sentence' not in keeping with his record and prospects.

[emphasis added]

and this principle was approved in *Kanagasuntharam* and *Jeffery bin Abdullah v Public Prosecutor* [2009] 3 SLR(R) 414 ("*Jeffery bin Abdullah* ").

27 The effective sentence of 27 years is not substantially above the normal level of sentences for offences of importing or trafficking in large quantities of drugs shown in the record of sentences compiled by the prosecution. The sentence is also not a crushing sentence on the accused who is 30 years old and with no health problems except gout and high blood pressure. If he behaves himself in prison and obtains remission in his sentence for good behaviour, he may serve 18 years, and could be released when he is 48 years old.

28 The proportionality principle was explained by Chan Sek Keong CJ in *Jeffery bin Abdullah* (at [16]):

The proportionality principle requires that the overall sentence imposed on an offender should be based on his total culpability in the various offences committed, when viewed as a whole.

29 In the present case, the accused had rendered his services to Eric to import a substantial quantity of diamorphine from Johor Bahru into Singapore. In addition to that, he was importing methamphetamine into Singapore on his own account, he was consuming drugs, and he had other drugs in his residence and was in possession of utensils for drug consumption. He was fortunate that the prosecution reduced the quantity of diamorphine in Charge 1 so that the capital punishment would not be imposed. Looking at all the circumstances, an effective sentence of 27 years imprisonment is not disproportionate to the accused's total culpability.

30 The accused has appealed against the sentences imposed as being excessive.

[\[note: 1\]](#) Exhibits A – G

[\[note: 2\]](#) Exhibit H

[\[note: 3\]](#) Notes of Evidence page 2, lines 11 – 13 and lines 27 – 29

[\[note: 4\]](#) Exhibit I

[\[note: 5\]](#) Exhibit J

[\[note: 6\]](#) Exhibit K

[\[note: 7\]](#) See Sentencing Principles in Singapore Kow Keng Siong, Academy Publishing para 27.090 – 27.091 – 27.092

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