

Public Prosecutor v Mohd Jeefrey bin Jamil
[2014] SGHC 255

Case Number : Criminal Case No 31 of 2014
Decision Date : 28 November 2014
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Eugene Lee and Michelle Koh (Attorney-General's Chambers) for the prosecution; Johan Ismail (Johan Ismail & Co) and Mohamed Baiross (IRB Law LLP) for the accused.
Parties : Public Prosecutor — Mohd Jeefrey bin Jamil

Criminal Law – Statutory Offences – Misuse of Drugs Act

28 November 2014

Tay Yong Kwang J:

1 The accused was born on 4 March 1965. He is presently 49 years old. He claimed trial and was convicted on the following charge of trafficking in diamorphine, an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed)(incorrectly referred to as the 2012 Rev Ed in the charge) (“MDA”):

That you, **MOHD JEEFREY BIN JAMIL**,

on the 23rd day of March 2012, at about 10.47 a.m., at the back alley of No. 8 Hamilton Road, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2012 Rev. Ed), to wit, by having in your possession for the purpose of trafficking, ten (10) packets of substance containing not less than 45.26 grams of diamorphine, without any authorization 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 (Cap. 185, 2012 Rev. Ed), and punishable under section 33 of the same Act, and further upon your conviction, you may alternatively be liable to be punished under section 33B of the same Act.

The charge involves capital punishment unless s 33B of the MDA applies.

The prosecution’s case

2 In the morning of 23 March 2012, a party of Central Narcotics Bureau (“CNB”) officers proceeded to Hamilton Road to conduct a drug operation. The accused was seen riding his motorcycle “FBF 2851S” into Cavan Road and then entering the back alley of Hamilton Road. He was carrying a black Deuter brand haversack. He was placed under arrest by several CNB officers.

3 The accused led the CNB officers to his rented unit at Room 1 of 14C Hamilton Road (“the unit”). Inside the unit, a CNB officer searched the black haversack in the presence of the accused. One white plastic bag containing five bundles wrapped in black tape was found in the haversack. SSGT Bukhari bin Ahmad (“SSGT Bukhari”) asked the accused in the Malay language what the bundles

were and his answer was "I know illegal things".

4 SSI Tony Ng ("SSI Tony") then recorded an oral contemporaneous statement from the accused with SSGT Bukhari as the interpreter. The recording took about 26 minutes to complete. The voluntariness of this statement was disputed by the accused (see [6] below).

5 The seized bundles were brought back to CNB Headquarters. Each of the five bundles contained two packets of substance, making ten packets in all. Subsequently, the substance was sent to the Health Sciences Authority ("HSA") for analysis. They were analysed and found to contain not less than 45.26 grams of diamorphine in total.

The ancillary hearing to determine voluntariness

6 SSI Tony testified that the recording of the oral statement took place between 12.08pm and 12.34pm in the unit. The accused chose to speak in Malay. Although SSI Tony could understand some Malay, SSGT Bukhari participated in the recording by being the interpreter. SSI Tony denied the accused's suggestion in court that it was actually SSGT Bukhari who recorded the oral statement.

7 The relevant portions of the oral statement were as follow:

Q1 What language do you choose to speak?

Ans "Malay". (Recorder's Note: Sgt Bukhari with me for translation)

Q2 The bag that you was sling with "deuter" wordings during your arrest after alighting from the bike: FBF 2851 S belongs to whom? (Sgt Bukhari translated all)

Ans "Kawan punya aku bawa" (Friends one but I bring)

Q3 What is inside? (Sgt Bukhari asked)

Ans "Barang salah" (Illegal stuff)

Q4 What salah? Bukhari asked.

Ans "Ubat" (Drug)

Q5 What you intend to do with it? (Sgt Bukhari asked)

Ans "Tunggu orang pick up" (waiting for people to pick up)

Q6 How much will you earn? (Sgt Bukhari asked)

Ans "Dua ratus" (200)

The rest of the questions relate to matters which are not relevant to this trial.

8 SSI Tony disagreed that there was a question mark next to the Malay word "ubat" in the statement. He explained that "ubat" could mean medication in normal parlance but in the context of this case, it was translated as "drug" and the word "drug" was then added in brackets below the word "ubat" (in the written format). He also testified that the accused looked normal and gave spontaneous answers. The recorded statement was read back to the accused after the recording.

The accused was handcuffed during the recording but his hands were freed when he was asked to sign the recorded statement.

9 The next witness in the ancillary hearing was SSGT Bukhari. He testified that SSI Tony did the questioning and recording of the statement as he was in charge of the case. There were only three of them present in the unit during the recording. SSGT Bukhari merely translated the questions and answers. He denied that question 4 was not put to the accused during the recording. He asserted that SSI Tony recorded everything that was said. He also denied that he did not translate the subsequent portion of the statement indicating that the accused acknowledged that there was no inducement, threat or promise made to him before or during the recording of the statement. This position was taken by the accused because the words "Translate: Bukhari" appeared to have been written with a finer pen and in a slightly different handwriting from the rest of the words in the statement.

10 The accused testified in the ancillary hearing. He stated that SSI Tony was the recorder of the statement while SSGT Bukhari did the translation. SSI Tony would ask the questions in English and some would be translated. For the others, the accused answered them without translation as he was able to understand simple English. The completed statement was not read back to him. He was merely told to sign on the statement and he complied. The accused agreed that there was no inducement, threat or promise made to him. However, he denied that the three of them were the only ones in the unit then. There were a lot of people in the small unit and there was a lot of confusion because they were showing him things. He maintained that question 4 was not asked and answer 4 was not given by him. Other than this, the rest of the statement was given by him voluntarily.

My decision in the ancillary hearing

11 After hearing the brief evidence in this ancillary hearing, I was left in no doubt that the oral statement was recorded fully and properly by SSI Tony with the assistance of SSGT Bukhari. There seemed no plausible reason why the two officers would want to concoct and add question 4 and the answer thereto. It was a logical follow-up to the accused's answer to question 3 in order to clarify what the accused meant by "illegal stuff". Although question 5 was originally numbered as question 4, it was clear that it was merely a numbering error because the next question was numbered as question 6.

12 It was also obvious on the face of the record that there was no question mark after the Malay word "ubat", contrary to the suggestion by defence counsel. It was argued that the "h" in "salah" just above the word "ubat" was actually a question mark. If that was correct, it would mean that SSI Tony misspelt "salah" as "sala". That was highly improbable since SSI Tony had just written "Barang salah" in the answer above the alleged misspelling, with "salah" spelt correctly. Further, if there was a question mark after "ubat" and it was in fact a "leading question" (as defence counsel put it) and not the accused's answer, then what was the accused's answer to that question? Why would the CNB officers leave the question unanswered? If the answer was the English word "(Drug)", that would not help the accused's defence.

13 I therefore found the oral statement to be a voluntary one and admitted it into evidence.

The trial resumed

14 The prosecution led evidence from two HSA officers who analysed the accused's urine samples. They found that the samples contained morphine and methamphetamine.

15 Dr Mui Kai Soong, a medical officer attached to the prison's medical centre in March 2012, testified that the accused was admitted into the said centre on 24 March 2012 for medical examination and observation. He was discharged from the centre on 27 March 2012. The accused informed the doctor that he had inhaled heroin around 23 March 2012. During his stay in the centre, the accused was observed to have mild withdrawal symptoms consistent with opiate addiction.

16 DSP Xavier Lek recorded four long statements from the accused with the assistance of a female Malay interpreter. These statements were recorded between 29 March and 2 April 2012. The accused accepted that these statements were made voluntarily by him. They were admitted into evidence after redaction agreed to by the parties to exclude irrelevant matters.

17 In these statements, the accused stated that sometime around the end of 2011, he received a telephone call from one Boy in Malaysia who he believed was an Indian man. Boy asked him to deliver a package for him. The accused would be paid \$3,000 or given 30 packets of heroin in return. He agreed to help Boy as he had nothing to lose. Before delivering the package, he asked Boy what the package was and was told that it was a "mixture to produce drugs".

18 In January 2012, the accused made the first delivery for Boy. Boy called and told him that there was a job for him the next day. Someone would call the accused to arrange the collection and delivery of the package.

19 The following morning, the accused received a call from someone speaking in Malay. He was told to go to Block 24 at Marsiling. The accused rode his motorcycle there. He met a young Indian man who passed him a package. He saw a few bundles inside, similar to those found in his haversack at the time of his arrest. He did not open the bundles or count them. He kept the bundles in his haversack and left the place.

20 At about 8pm that day, the accused received a call from a Chinese man. He was told to proceed to Lorong 17, Geylang. There, he was approached by a Chinese man who asked him if he was "sending Boy stuff". The accused then handed over the package he had received earlier that day. In return, he was given an envelope containing 30 packets of heroin.

21 Between January 2012 and his arrest on 23 March 2012, the accused made three other deliveries in a similar manner. On the day of his arrest, he was making the fifth delivery. For the previous deliveries, he was paid with heroin for two of the deliveries and paid \$3,000 each for the other two deliveries.

22 On 23 March 2012, the accused received a call in the morning about an hour or two before his arrest. He was told to go to a mosque in Marsiling to collect a plastic bag containing the bundles in issue here. He did so and placed the bundles in his haversack without counting or examining them. He then returned to Hamilton Road. The accused added in his statements that he would still have delivered the packages for Boy even if he had known that they contained controlled drugs. This was because he had to support his drug addiction.

The accused's case

23 The accused did not submit that there was no case for him to answer. His defence was that he had no knowledge that the bundles he was found carrying in his haversack contained a controlled drug. He was only told that they contained "some kind of mixture to produce the drugs". He claimed that he had made similar deliveries in 2000 and was arrested. However, the charges against him were subsequently dropped after the HSA confirmed that the things he was delivering did not contain

drugs.

24 He stated that the bundles in issue were for him to deliver to a third party. They were not for his consumption.

The decision of the court

25 Section 18(2) of the MDA provides that any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug. This presumption applies to the accused as he was arrested with the bundles of drug in the haversack that he was carrying. There was no dispute that he had the bundles in question for the purpose of delivering them to a third party.

26 The accused's answers in his oral statement showed that he was aware he was carrying illegal things, which he went on to elaborate were "ubat" or drugs. He also said that he was waiting for people to pick up those things from him. As mentioned earlier, I found that the oral statement was properly recorded and that it was an accurate record of the questions asked and the answers given during the recording. The answers in the oral statement were also in conformity with what the accused said in the long statements. It was therefore plain on the evidence that he was fully aware that he was carrying and delivering illegal drugs.

27 If it was true that the accused did not know what the bundles he was arrested with contained, he would still be guilty of wilful blindness according to the meaning of that term as explained in *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156. He did not open the bundles to check the contents. He did not even bother to count the number of bundles when he had every opportunity to do so. According to paragraph 7 of his long statement, it was not his job to check and if there was anything amiss, it was not his problem. He was just supposed to take the bundles and deliver them as instructed. To him, the "worst case scenario" was that the bundles "could be drug in its purest form".

28 The accused claimed that in the said paragraph 7 of his long statement, he was referring to the 30 packets of heroin given to him in return for the delivery made by him and not the bundles he was caught with. It was the "worst case scenario" because he would not be able to smoke it if it was the purest form of heroin. He then went on to agree with the prosecution that it was not possible to obtain heroin in its purest form in Singapore.

29 It was clear from the context of the statements that his claim was unsustainable and that he was referring to the bundles he was carrying at the time of his arrest. In the same paragraph in the long statement, he also explained (in relation to the bundles) that "I did not check because in this line, one will just take quickly and passed". Further, he said that "I am just supposed to take and passed it to others. So it was best for me not to open them".

30 Further, the accused failed to rebut the presumption of knowledge contained in s 18(2) of the MDA. He had never met Boy before. There was no reason whatsoever for him to trust Boy's words that the bundles contained a mixture to produce drugs instead of drugs. He did not even bother to check any of the bundles even though he had the time and opportunity to do so. He knew what heroin was since he was addicted to it. The reward of \$3,000 or 30 packets of heroin for the mere delivery of a package ought to have raised immediate concerns that the bundles could contain illegal substances. Coupled with the fact that heroin was an alternative mode of payment, it must be plain to any reasonable person in the position of the accused that he was being asked to be a courier of drugs, in particular, heroin.

31 I therefore rejected the defence of lack of knowledge and found the accused guilty as charged.

32 Upon the accused's conviction, the prosecution stated that its position was that the accused was a "courier" (thereby satisfying the requirement in s 33B(2)(a) of the MDA). However, the Public Prosecutor would not be issuing the certificate of substantive assistance under s 33B(2)(b) of the MDA. Both requirements (of the accused being a "courier" and the Public Prosecutor issuing the certificate of substantive assistance) have to be satisfied before the court can consider the alternative sentencing option of life imprisonment and caning in s 33B(1) of the MDA. As one requirement was not met, the mandatory death penalty applied. Accordingly, I pronounced the death sentence on the accused.

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