

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 257

Criminal Case No 54 of 2016

Between

Public Prosecutor

And

Mohamad Noor Bin Abdullah

FOUNDATIONS OF DECISION

[Evidence] — [Proof of evidence] — [Admissions]

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]

[Criminal procedure and sentencing] — [Sentencing]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Mohamad Noor bin Abdullah

[2016] SGHC 257

High Court — Criminal Case No 54 of 2016
Lee Seiu Kin J
18-19 October 2016

18 November 2016

Lee Seiu Kin J

1 On 17 February 2015, in Committal Hearing No 154 of 2011, the accused was committed to stand trial in the High Court on 15 charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). At the trial before me on 18 October 2016, the prosecution proceeded on the first charge, which is punishable by death. That charge (“the Charge”) was as follows:

1ST CHARGE on 12 October 2011, at about 11:50 am, inside a car (registration number SGW 5275 L), at Jurong West Street 52, Singapore, did traffic in a controlled drug specified in Class “A” of the First Schedule to the Misuse of Drugs Act, Cap 185 (“MDA”), *to wit*, by having in your possession for the purposes of trafficking, fifteen (15) packets and six (6) bundles containing **not less than 61.75 grams of diamorphine**, without any authorisation under the said Act or the regulations made thereunder, an offence under s 5(1)(a) read with s 5(2), MDA and punishable under s 33(1), MDA, and further upon your conviction, you may alternatively be liable to be punished under s 33B, MDA.

2 After the Charge was read to the accused, he pleaded guilty. However, s 227(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) states that, where the offence is punishable with death, the court shall not record the plea of guilty unless evidence is led by the prosecution to prove its case at trial. Accordingly, I called upon the prosecution to give evidence to prove the Charge.

3 The prosecution gave evidence by way of a statement of agreed facts (“SAF”) to be used as a formal admission under s 267 of the CPC. Counsel for the accused confirmed that the accused agreed to the contents of the SAF and its use under s 267 of the CPC. I set out below the provisions of s 267 of the CPC:

Proof by formal admission

267.—(1) Subject to this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the Public Prosecutor or the accused, and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section —

- (a) may be made before or at the proceedings;
- (b) if made otherwise than in court, must be in writing;
- (c) if made in writing by an individual, must purport to be signed by the person making it and, if so made by a body corporate, limited liability partnership, partnership or unincorporated association, must purport to be signed by a duly authorised representative of that body corporate, limited liability partnership, partnership or unincorporated association, as the case may be;
- (d) if made on behalf of an accused who is an individual, must be made by his advocate; and

(e) if made before the trial by an accused who is an individual, must be approved by his advocate before or at the proceedings in question.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter, including any appeal or retrial.

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for which it is made or any subsequent criminal proceedings relating to the same matter.

4 I was satisfied that the SAF may be used as evidence in the trial as the admissions therein were made by counsel for the accused on behalf of the latter. Accordingly, I admitted the SAF in evidence. The contents of the SAF are as follows:

I. The accused's arrest and background

1 The accused person is Mohamad Noor Bin Abdullah, a 39 year old Singaporean (D.O.B: 18 July 1977) and holder of NRIC No.: [xxx]. At the material time, he was unemployed.

2 On 12 October 2011 at about 10 am, officers from the Central Narcotics Bureau ("CNB"), Singapore were instructed at an operations briefing to proceed to Blk 336 Woodlands Avenue 1, Singapore to conduct observation on the unit at #08-523. They were informed to look out for a male Malay known by the nickname "Boy", who was suspected of involvement in drug activities. The CNB officers then proceeded to the vicinity of Blk 336 Woodlands Avenue 1, and kept observation. At about 11.16am, the accused, who fitted the description of "Boy", was seen walking at the ground floor of Blk 336 with a sling bag and a plastic bag. He then entered a car bearing registration number SGW 5275L ("the Car") which was driven by another person.

3 The CNB officers then followed the Car from Blk 336 Woodlands Avenue 1 to the car park at Blk 4 and Blk 5 Marsiling Road. At the car park, near to Blk 5 Marsiling Road, the accused handed an envelope, which he knew contained heroin, to an unknown female Chinese. The Car left the car park at about 11.30am. The officers continued following the Car until it reached the car park behind Blk 525 and Blk 527

Jurong West Street 52, Singapore, which was in the vicinity of Blk 523. There, at about 11.50am, the officers stopped the Car and effected arrest of the accused who was in the front passenger seat.

II. Search and seizure

4 After his arrest, the sling bag and plastic bag which the accused was seen carrying when he was at Blk 336 Woodlands Avenue 1 were searched by the Station Inspector Tay Cher Yean, and they found, *inter alia*, the following items which were suspected to contain controlled drugs:

Marking	Location of exhibit	Description
K1	Front passenger seat of the Car (At K)	One black sling bag
K1A1	Inside K1	One black plastic bag
K1A3		One black plastic bag
K1A1A	Inside K1A1	One white envelope containing five packets of brownish granular substances believed to be heroin (collectively marked "K1A1A1") (Exhibit P171)
K1A3A	Inside K1A3	One white envelope containing five packets of brownish granular substances believed to be heroin (collectively marked "K1A3A1") (Exhibit P175)
K1A3B		One white envelope containing five packets of brownish granular substances believed to be heroin (collectively marked "K1A3B1") (Exhibit P177)
L1	From the front	One red plastic bag with

Marking	Location of exhibit	Description
	passenger floor mat (at L)	wording "Official Team Merchandise"
L1A	Inside L1	One "H&M" plastic bag containing three bundles of granular substances, each wrapped with newspaper believed to be heroin ("L1A1", "L1A2" and "L1A3") (Exhibits P194 to P199)
L1B		One black plastic bag containing one newspaper wrapped bundle of granular substances believed to be heroin ("L1B1") (Exhibits P201 & P202)
L1C		One black plastic bag containing one newspaper wrapped bundle of granular substances believed to be heroin ("L1C1"). (Exhibits P204 & P205)
L1D		One black plastic bag containing one newspaper wrapped bundle of granular substances believed to be heroin ("L1D1"). (Exhibits P207 & P208)

5 The said six bundles and 15 packets of granular substances ("the Drugs") were placed in tamper-proof bags and handed over to Senior Station Inspector Ng David ("SSI Ng").

6 On 12 October 2011 at about 7pm, SSI Ng handed over the Drugs to the investigating officer at the time, then Inspector Almumin Ehsan Bin Akbar Ali ("IO Almumin").

III. Analysis of the Drugs

7 IO Almumin later handed the Drugs over to the Health Sciences Authority, Singapore (“HSA”) for analysis. Upon analysis of the Drugs, Ms Tan Sylvia, an analyst with the Illicit Drugs Laboratory of the HSA issued, on 14 August 2012, the following nine certificates under s16 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) (Exhibits 84-86 and 91-96):

Exhibit	Lab No.	Analysis results
K1A1A1	ID-1132-02251-021	Five packets containing 39.52g granular/powdery substance which was analysed and found to contain not less than 0.10g diamorphine , at a confidence level of 99.9999%
K1A3A1	ID-1132-02251-022	Five packets containing 39.49g granular/powdery substance which was analysed and found to contain not less than 0.12g diamorphine , at a confidence level of 99.9999%
K1A3B1	ID-1132-02251-023	Five packets containing 39.41g granular/powdery substance which was analysed and found to contain not less than 6.02g of diamorphine , at a confidence level of 99.9999%
L1A1	ID-1132-02251-032	One packet containing 451.1g of granular/powdery substance which was analysed and found to contain not less than 29.29g diamorphine , at a confidence level of

		99.9999%
L1A2	ID-1132-02251-033	One packet containing 455.1g of granular/powdery substance which was analysed and found to contain not less than 6.10g diamorphine , at a confidence level of 99.9999%
L1A3	ID-1132-02251-034	One packet containing 454.2g granular/powdery substance which was analysed and found to contain not less than 6.30g diamorphine , at a confidence level of 99.9999%
L1B1	ID-1132-02251-035	One packet containing 456.2g granular/powdery substance which was analysed and found to contain not less than 6.50g diamorphine , at a confidence level of 99.9999%
L1C1	ID-1132-02251-036	One packet containing 454.0g granular/powdery substance which was analysed and found to contain not less than 6.79g diamorphine , at a confidence level of 99.9999%
L1D1	ID-1132-02251-037	One packet containing 455.5g granular/powdery substance which was analysed and found to contain not less than 6.31g diamorphine , at a confidence level of 99.9999%

8 Collectively, the exhibits marked “K1A1A1”, “K1A3A1”, “K1A3B1”, “L1A1”, “L1A2”, “L1A3”, “L1B1”, “L1C1” and “L1D1” containing not less than 2,844g of granular/powdery substance were found to contain not less than 61.75g of diamorphine, a Class A Controlled Drug listed in The First Schedule to the MDA.

IV. Statements recorded

9 During the course of investigations, the following statements were recorded from the accused, namely:

(a) One contemporaneous statement recorded by SSI Ng on 12 October 2011 at about 1.04pm (Exhibit P132).

(b) One cautioned statement recorded by IO Almumin under s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) on 13 October 2011 at about 1.50am (Exhibit P143).

(c) One cautioned statement recorded by then Deputy Superintendent Lui Su Lin (“DSP Lui”) under s 23 of the CPC and on 7 November 2012 at about 10.25am (Exhibit P151).

(d) Five investigation statements recorded by IO Almumin under s 22 of the CPC on:

(i) 20 October 2011 at about 1.45pm (Exhibit P139);

(ii) 22 October 2011 at about 8.40am (Exhibit P140);

(iii) 26 October 2011 at about 8.20am (Exhibit P141); and

(iv) 31 January 2012 at about 9.50am (Exhibit P142).

(e) One investigation statement recorded by DSP Lui under s 22 of the CPC on 5 June 2013 at about 10.05am (Exhibit P145).

10 The above-mentioned statements were recorded in English. The statements were read back to the accused in English at the end of every recording and the accused affirmed his statements by appending his signature on every page of the statements.

11 In recording the above statements, no threat, inducement or promise was made or given to the accused by CNB officers or any other officer or person in authority involved in the investigations against the accused. The contents of all statements were voluntarily provided by and accurately recorded from the accused.

V. Investigations

12 Investigations revealed that sometime in August 2011, the accused, Mohd Anuar bin Sujak (“Anuar”) and persons unknown had agreed to perform specific tasks in relation to procuring, storing and delivering heroin for the purpose of trafficking. Pursuant to the agreement, the accused was to deliver heroin to Anuar’s customers.

13 Sometime on 11 October 2011, Anuar instructed the accused to make a drug delivery to a place in Jurong West the next day (i.e. 12 October 2011). Anuar promised Noor \$100 for the said delivery and the accused agreed.

14 On 12 October 2011, the accused received the following calls with instructions on the delivery of the Drugs:

(a) At about 10 am, Anuar called the accused, whilst the latter was at the Flat, and told him to:

(i) take a red plastic bag (later marked as “L1”) and a white plastic bag (later marked “L1A”) from the storeroom of the Flat. Both the accused and Anuar knew that “L1” and “L1A” contained heroin;

(ii) wait for a call from a Malaysian male who would provide further instructions on when and who to deliver “L1” and “L1A” (with the 6 bundles) to; and

(iii) take envelopes, which both the accused and Anuar knew that each envelope contained heroin, from the storeroom of the Flat. Anuar informed the accused that he would provide further details on the delivery of these envelopes later in the day.

The accused proceeded to assist Anuar. After retrieving the relevant items from the storeroom, the accused put “L1A” (with its contents) inside “L1”. He also placed the said envelopes into his black sling bag.

(b) Subsequently, the accused received a call from an unknown Malaysian male who instructed him to deliver “L1” and “L1A” to one “Hassan” at Blk 523 Jurong West. The accused acknowledged the said instructions. The call was made from a Malaysia-registered phone line. The said Malaysian male informed the accused that “Hassan” was a male Chinese and also provided the latter’s contact number which the accused saved in his mobile phone as “Hassan (JW)”.

(c) At about 11am, Anuar called the accused and told him to deliver one of the envelopes to an unknown female Chinese at Blk 5 Marsiling Road before proceeding to Jurong West. The accused acknowledged what the accused had conveyed to him.

15 At about 11 am, the accused left the Flat carrying his black sling bag (containing the envelopes of heroin) and “L1” (containing 6 bundles of heroin). At about 11.16am, the accused boarded the Car, driven by Hairil, and sat in the front passenger seat. Hairil then drove the Car to the car park at Blk 4 and Blk 5 Marsiling Road. There, the accused delivered one of the envelopes to the said unknown female Chinese, as earlier told to do so by Anuar.

16 The accused then requested Hairil to drive the Car to Jurong West. At about 11.30am, the Car left the said Marsiling Road car park. At about 11.50 am, the Car reached the car park behind Blk 525 and Blk 527 Jurong West Street 52, which was in the vicinity of Blk 523. There, CNB officers stopped the Car and placed the accused under arrest.

17 As at the time of his arrest on 12 October 2011, the accused was not authorised under the MDA or the regulations made thereunder to traffic in a controlled drug.

5 Upon admission of the SAF in evidence, the prosecution rested its case. I found that the prosecution had made out a *prima facie* case and called upon the accused to give his defence in accordance with s 230(1)(m) of the CPC. The accused elected to remain silent. Thereafter, I found that the evidence before me was sufficient to prove the accused’s guilt and convicted him of the Charge.

6 The prosecution tendered a certificate by the Public Prosecutor stating that the accused had substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore. After hearing submissions by counsel, I agreed that the evidence showed that the accused's involvement in the offence was restricted to transporting, sending or delivering the controlled drug which was the subject of the Charge. Accordingly, by operation of s 33B(1)(a) of the MDA, this court had a discretion to impose a sentence of life imprisonment with caning instead of the death penalty.

7 After considering the accused's antecedents and his counsel's plea in mitigation, I found that this was an appropriate case to exercise the discretion to impose the lesser punishment. Accordingly, I sentenced the accused to life imprisonment with effect from the date of his arrest on 12 October 2011 and to the mandatory minimum of 15 strokes of the cane.

Lee Seiu Kin
Judge

Lau Wing Yum and Tan Yanying (Attorney-General's Chambers) for
the public prosecutor;
Masih James Bahadur (James Masih & Company), Prasad s/o
Karunakarn (K Prasad & Co) and Christopher Anand s/o Daniel
(Advocatus Law LLP) for the accused.