

Public Prosecutor v Leong Soy Yip and Another
[2009] SGHC 221

Case Number : CC 12/2009
Decision Date : 29 September 2009
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Tan Kiat Pheng and Samuel Chua, DPPs for the prosecution; Laurence Goh Eng Yau (Laurence Goh Eng Yau & Co) and Peter Ong Lip Cheng (Peter Ong and Raymond Tan) for the first accused; Wee Pan Lee (Wee Tay & Lim) and Francis Ow Sin Min (Archilex Law Corporation) for the second accused
Parties : Public Prosecutor — Leong Soy Yip; Yip Mun Hei
Criminal Law – Statutory offences – Misuse of Drugs Act

29 September 2009

Tay Yong Kwang J:

Introduction

1 The first accused, Leong Soy Yip ("Leong"), born on 5 July 1956, was tried and convicted on the following capital charge:

That you, Leong Soy Yip, on the 18th day of January 2008 at about 9.10 am along the pavement under the overhead Mass Rapid Transit track near Block 415 Ang Mo Kio Avenue 10, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act (Cap 185), to wit, by having in your possession for the purpose of trafficking 31 small packets of substance containing not less than 18.43 grams of diamorphine, without any authorization under the Misuse of Drugs 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 and punishable under section 33 of the said Act.

2 At the joint trial, the second accused, Yip Mun Hei ("Yip"), born on 8 February 1972, was tried and convicted on the following related capital charge:

That you, Yip Mun Hei, on the 18th day of January 2008 at about 9.00 am along the pavement under the overhead Mass Rapid Transit track in the vicinity of Blocks 406 and 413 Ang Mo Kio Avenue 10, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act (Cap 185), to wit, by delivering 31 small packets of substance containing not less than 18.43 grams of diamorphine, to one Leong Soy Yip (NRIC No. No. S1182621J) without any authorization under the Misuse of Drugs Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the Misuse of Drugs Act and punishable under section 33 of the said Act.

The prosecution's case

3 In the early morning of 18 January 2008, officers of the Central Narcotics Bureau ("CNB")

attended briefings on an operation which was to take place later that morning. Two CNB officers were detailed to look out for Yip, who was staying in a rented room at 103 Lorong N, Telok Kurau, Singapore, as the CNB had received information that he would be delivering a consignment of heroin to Leong in the vicinity of Ang Mo Kio Avenue 8 later that morning. The two CNB officers proceeded to Yip's place of residence and saw his car (a black Mitsubishi Lancer with registration plate SGR 7235R) ("Yip's car") parked in the compound of the house there. At about 8.30 am, Yip drove his car out of the compound and made his way to Ang Mo Kio housing estate.

4 In the meantime, another team of CNB officers arrived in the vicinity of Ang Mo Kio Avenues 8 and 10 to look out for Leong who was residing at Block 420 Ang Mo Kio Avenue 10 #12-1145 ("Leong's flat"). At about 8.30 am, Leong was seen walking from Block 420 to a coffeeshop at Block 421 where he bought some food and a packet of beverage. Leong left the coffeeshop and walked down a flight of steps leading to the pavement under the Mass Rapid Transit ("MRT") track running parallel to Ang Mo Kio Avenue 8. Leong then walked along the pavement towards a bus stop near Block 405 and sat on a stone bench behind the bus stop.

5 At about 8.55 am, Yip drove his car into the carpark near Block 456. A short while later, he drove out of the carpark and proceeded to another carpark near Block 413. Around that time, Leong started walking back along the pavement towards Block 420. At about 9 am, he met Yip along the pavement near Block 413. Yip was carrying a white plastic bag and a red plastic bag in his left hand. The two of them walked very slowly side by side in the direction of Block 420 and along the way, Yip handed the two plastic bags to Leong. The two men then parted ways with Yip going up the steps leading to Block 413 while Leong continued walking towards Block 420 with the two plastic bags.

6 The CNB officers moved in to arrest both Yip and Leong. Yip was searched and found to have on his body his identity card, his wallet, his mobile phone, a key pouch with a car key and a bundle of cash. Yip's car was located and guarded by CNB officers. Leong was found to be carrying one big red Da Wang Bao packet (exhibit E) and one white plastic bag (exhibit F), which contained a small yellow packet of Boogie BBQ snacks (exhibit F1). Leong was handcuffed and escorted to a CNB vehicle parked nearby where he was searched and found to have with him his identity card, a bunch of keys and a mobile phone.

7 A little later, a team of CNB officers led by SSSG Tony Ng arrived at the said CNB vehicle and took over custody of Leong. Another team of CNB officers led by SSI Khong Chung Leong arrived to take over custody of Yip.

8 SSSG Tony Ng and his team brought Leong up to Leong's flat. They gained access by using one of the keys found on Leong. Inside the flat, Leong surrendered a pair of black striped pants to SSSG Tony Ng. Its right rear pocket contained a plastic packet with a bundle wrapped in newspapers. The bundle consisted of several small packets of white powdery substance while its left rear pocket contained a small cylindrical plastic container which in turn contained a long straw and eight short straws of white powdery substance and a small packet of white powdery substance.

9 The CNB officers opened the Da Wang Bao packet (seized earlier at the time of arrest) and found 30 smaller packets of white powdery substance therein. The Boogie BBQ snacks packet (also seized earlier) was found to contain a hongbao (or red auspicious packet for presenting gifts of money to others). Inside the hongbao, there was a small packet of white powdery substance and a \$10 note. The individual finds were placed back in their original packaging and each exhibit was then kept in separate transparent ziplock plastic bags.

10 While in Leong's flat, SSSG Tony Ng recorded a statement from Leong regarding the contents of

the Da Wang Bao, the white plastic bag and the things found in the pockets of the pair of pants. The CNB officers then discovered a big yellow "MAMEE" noodle packet in the flat's kitchen. When that was opened up in Leong's presence, it was found to contain six smaller packets of white powdery substance. They were returned to their original packaging and placed in another ziplock plastic bag. A second statement was then recorded from Leong regarding this second find. SSSG Tony Ng then placed all the exhibits, which were in their original packaging and in separate ziplock bags, into a bigger CNB exhibit bag and they escorted Leong to CNB Headquarters in town.

11 In the meantime, SSI Khong Chung Leong and his team of officers went with Yip to Yip's car. In the boot of the car, they found a "Giant" supermarket plastic bag containing three red Da Wang Bao packets (exhibits A1, A2 and A3), one small empty yellow "Mini Toons" plastic bag and two small packets purportedly containing groundnuts. They also found a big red plastic bag containing three red Da Wang Bao packets (exhibits B1, B2 and B3). One of the Da Wang Bao packets was opened up in Yip's presence. It contained a sealed plastic bag inside which were many small packets of white granular substance.

12 Yip was then brought to the back seat of a CNB vehicle which had been driven to the lot next to Yip's car. There, SSI Khong Chung Leong took the Da Wang Bao packet which had been opened up earlier and opened up the said sealed plastic bag that was inside. There were 30 small packets of white granular substance inside. Everything was then placed back into the original packaging. The CNB officers then brought Yip in his car to his rented room in Lorong N, Telok Kurau.

13 Nothing incriminating was found inside the rented room. The CNB officers then opened the remaining five Da Wang Bao packets seized earlier from Yip's car. There was a sealed plastic bag containing small packets of white granular substance inside each of them. The two small packets that were supposed to contain groundnuts were each found to have a packet of crystalline substance. All the exhibits were returned to their original packaging and kept by one of the CNB officers. A bundle of cash amounting to \$3,000 was found in Yip's trousers pocket. At two points of time while they were in the rented room, SSI Khong Chung Leong recorded two statements from Yip. The CNB officers then brought Yip to CNB Headquarters.

14 At the carpark of CNB Headquarters, a thorough search was made of Yip's car in the presence of the investigating officer, ASP Soh Choon Hock ("ASP Soh"). Inside the boot, the CNB officers found a white "Tesco clubcard" plastic bag containing two small packets purportedly containing groundnuts and one small yellow packet of Boogie BBQ snacks. Yip was then brought up to the CNB office.

15 There, photographs were taken first of the exhibits found in Yip's car followed by those that Yip had handed over to Leong. Different CNB officers held on to the exhibits that were seized from Leong and his flat and those seized from Yip's car. Leong and Yip remained silent throughout the photography session.

16 The exhibits were then brought to another room where they were weighed in the presence of Leong and Yip. After Leong and Yip signed in the book in which the respective weights had been recorded, the exhibits were kept in ASP Soh's safe. Leong's urine samples were then taken. In the afternoon that day, a third statement was recorded by SSI Khong Chung Leong from Yip regarding the exhibits found in Yip's car boot during the search at the CNB carpark.

17 The 31 small packets of substance which Yip had handed to Leong were analysed and found to contain not less than 18.43 grams of diamorphine (or heroin), the subject of the charges. Leong's urine samples were also analysed and found to be negative for drugs.

18 Two cautioned statements under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") and three statements under s 121 of the CPC were recorded by ASP Soh from Leong with Wu Nan Yong ("Wu") interpreting in and from Hokkien. The voluntariness of the statements was not challenged. However, during the trial, Leong alleged that the statements were not accurately recorded as Wu did not interpret properly what Leong had said in Hokkien. Wu had unfortunately passed away by the time of the trial. ASP Soh however is a Hokkien and could speak and understand the dialect. He was therefore able to testify that Wu interpreted Leong's words accurately.

19 In the statements, Leong admitted that he sold heroin for a living. He said that he obtained the drug supplies from a Malaysian syndicate and would usually order a minimum of 30 small packets of heroin. He received the heroin from Yip on at least three occasions before 18 January 2008, the date of the present incident. The drugs would come in packets of "MAMEE" noodle snacks. For the incident in question, he had placed an order for 30 small packets of heroin for the price of \$7,500 two or three days before the incident. That morning, Yip telephoned him and they arranged to meet at 8am at Ang Mo Kio Avenue 8. Leong brought only \$3,000 with him. That day, the drugs came in a Chinese New Year red plastic packet with Chinese words (Chinese New Year in 2008 fell on 7 and 8 February).

20 Three statements under s 122(6) of the CPC and four statements under s 121 of the CPC were recorded from Yip by ASP Soh in January 2008. Yip spoke in English. On 3 October 2008, Inspector Lee Chai Hwa, who had taken over the case from ASP Soh, recorded another statement from Yip under s 121 of the CPC. In these statements, Yip said he was working as a drug courier in order to earn a living and to clear his debts. He began by delivering small quantities of Ketamine and Erimin-5 tablets to the customers of a certain Jeffrey within Singapore. Later, he collected larger quantities of these drugs from one Ah Neng, Jeffrey's supplier, in Malaysia, and brought them into Singapore. After Jeffrey was arrested, Yip started working for Ah Neng and Ah Boy (Ah Neng's boss). Yip would go to Malaysia to collect the drugs which were usually packed in "MAMEE" noodle snacks packaging and deliver them to Ah Boy's customers in Singapore. Leong was one of those customers. Yip also collected the payments for the drugs which he would hand over to his bosses in Malaysia on his next drug run.

21 The statements went on to say that on 17 January 2008, Yip drove to Malaysia to collect more supplies of drugs. Ah Neng put a red plastic bag and another white one containing a total of seven red coloured packets on the rear seats of Yip's car. Ah Boy then told Yip to deliver one of the seven packets to Leong together with a small yellow titbit packet that was left over from the previous delivery. On the morning of 18 January 2008, Yip telephoned Leong to confirm the meeting place. Yip was late. After Yip handed over the two packets, Leong passed him a bundle of cash and told him it was \$3,000.

The case for the two accused

22 Leong testified that he dealt in and ordered only the drugs Erimin-55 and Dormicum-15 from the Malaysian suppliers and not heroin. He therefore did not know and had no reason at all to suspect that Yip was delivering heroin to him that morning. However, no Erimin or Dormicum pills were found when the CNB went with him to his flat. Leong also raised the possibility of cross contamination between the drugs that he had received from Yip that morning and those found in his flat after his arrest by the CNB officers. The amount of heroin alleged to have been received by him from Yip that morning might therefore not be accurate.

23 Leong agreed that he was a drug trafficker and that his only source of income in the last quarter of 2007 was from such illegal activity. He also agreed that he had ordered heroin from his Malaysian supplier before and that heroin (in 14 small packets, one long straw and eight short straws)

was found in his flat. He claimed to have consumed part of the heroin from previous deliveries and that it followed that he would have consumed part of the heroin in question here too, thereby lowering the weight of the drug for trafficking to less than 15gm. He claimed that he consumed heroin for three days consecutively, then stopped for the next three or four days before repeating the cycle again. He said he consumed more than one sachet of heroin per week. On 18 January 2008, he had not consumed heroin for about four days, i.e. it was at the tail end of his abstinence period. However, no drug consumption paraphernalia were found in his flat. Leong's urine samples also showed no traces of drugs.

24 Leong claimed that he ordered 50 slabs of Erimin-55 and 100 slabs of Dormicum-15 from the Malaysian syndicate for delivery on 18 January 2008. In fact, he said, the drugs suppliers had asked him to get heroin from them but he told them that he did not want to deal in heroin. He thought the Da Wang Bao packet handed over by Yip contained Chinese New Year titbits and that the yellow Boogie BBQ packet contained the two drugs that he ordered. When asked whether the small yellow packet looked like it was capable of containing the 150 slabs of the drugs that he ordered, Leong explained that the suppliers might not deliver the exact quantity ordered each time. He actually had more than \$9,000 with him that morning but handed only \$3,000 to Yip. It was supposed to have been Leong's final transaction with the drug syndicate.

25 Leong alleged that the recorders of his statements did not faithfully record everything he said. He also alleged that the interpreter (the late Wu) who assisted the recording officers did not interpret accurately his words such as the Hokkien words "tok" or "yeok", which could mean merely drugs and not necessarily heroin.

26 Yip said that he did not know and had no reason to believe that the Da Wang Bao and the Boogie BBQ packets contained heroin. He thought the contents were either Ketamine or Erimin-5 pills. He also alleged that the drugs in question could have been mixed up with the other heroin exhibits that were seized from Leong's flat or from the boot of his car.

27 Yip agreed that he was in debt in 2007 and in January 2008. He got to know Jeffrey in late 2006 and bought the car in question in February 2007. Initially, Yip planned to call Jeffrey as a defence witness but changed his mind subsequently in the course of the trial. This was because the prosecution had not put to Yip that his testimony about Jeffrey was untrue. Jeffrey paid him \$10 to \$20 for each delivery of Ketamine and Erimin to Jeffrey's customers. Sometime in mid-2007, he went with Jeffrey to Malaysia where he was introduced to Ah Neng and instructed to collect the said drugs from Ah Neng in future. Thereafter, Yip would drive his car between Singapore and Malaysia on the drug runs on behalf of Jeffrey. Yip was paid \$50 by Jeffrey for each trip.

28 Subsequently, Jeffrey was arrested and imprisoned. Ah Neng then telephoned Yip and asked him to go over to Malaysia. When Yip went to Ah Neng's house in Malaysia in September 2007, he told Ah Neng about his financial woes. Ah Neng introduced Ah Boy to Yip and asked him whether he wanted to bring "things" into Singapore. When he asked what "things" they were, Ah Boy told him not to ask too much if he was interested in doing the job for which he would be paid \$300 per packet of "things" delivered to Singapore. Yip knew that the "things" referred to drugs and that the delivery would be on a bigger scale than his jobs for Jeffrey as he would be paid so much more. Yip then agreed to work for Ah Boy.

29 A few weeks later, Ah Neng told Yip to go to Malaysia to collect the "things". Yip decided not to know what the "things" were as he needed money quickly. He drove his car to Ah Neng's house where he was handed two big packets of titbits. Ah Neng placed the packets on the rear seats and told him not to hide them so as not to arouse suspicion from the authorities. Yip would deliver the

packets, usually packed as "MAMEE" noodle snacks, to customers in Singapore.

30 One of the customers was Leong, variously referred to as Ah Yee, Er Zai or Ah Ang. Yip delivered drugs to Leong at least six times before 18 January 2008 when they were arrested. Most of the deliveries took place in Ang Mo Kio, which was why Leong was listed as "Bros Ang" in Yip's mobile telephones. From about end October 2007, Yip would also collect money from Leong besides delivering drugs to him. He would hand the money to his bosses in Malaysia on his next trip there.

31 In the afternoon of 17 January 2008, Yip drove his car to Malaysia. Ah Neng placed the "Giant" supermarket plastic bag and the big red plastic bag on the rear seats. There were a total of seven Da Wang Bao packets. These were left within sight so that the Singapore authorities would believe that they were nothing more than food items.

32 After driving into Singapore without incident, Yip moved the packets to the boot. When he spoke to Ah Boy, he was told that Leong had ordered one packet of drugs and was instructed to deliver the relevant items to Leong at 8.30am on 18 January 2008.

33 On 18 January 2008 morning, Yip took the white "Tesco clubcard" plastic bag containing two small yellow packets of Boogie BBQ snacks from his rented room and brought them to his car. These were left over from his previous delivery. After confirming the location of delivery with Leong, Yip drove his car to Ang Mo Kio Avenue 10. In a carpark there, he took out one of the two yellow packets and placed it in a white plastic bag. Ah Boy had instructed him to pass this to Leong as a Chinese New Year gift. He then drove to the carpark near Block 413, parked his car there and went to meet Leong with one Da Wang Bao packet and the small yellow packet. When he met Leong, he handed over the packets to him, telling Leong that the small yellow packet was a Chinese New Year gift from Ah Boy. Leong said he was aware of it. After collecting \$3,000 from Leong, they parted ways. Yip was arrested as he was making his way back to his car.

The decision of the court

34 Under s 18(2) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("MDA"), Leong and Yip are presumed to know that the 31 small packets in question contained diamorphine as they were in possession of the same at the material times. The presumption in s 17(c) of the MDA deems Leong to have in possession of the drugs for the purpose of trafficking as he was proved to have had in his possession more than 2 grams of diamorphine. This latter presumption applies only if possession of the drugs is proved rather than presumed by law (see *Ramis A/L Muniandy v PP* [2001] 3 SLR 534).

35 The conduct of Leong and Yip showed that they knew that what they had transacted in on 18 January 2008 was heroin and not some other substance. Leong did not utter anything, whether in shock or in protest, when the two packets in question were opened up in his flat to reveal 31 small packets of white powdery substance. Erimin and Dormicum pills would have looked quite different from the white powdery substance. He also remained silent during the photography session and the weighing of the drugs in CNB. Similarly, if Yip only dealt with Ketamine and Erimin, he did not express any surprise or horror when one of the six Da Wang Bao packets found in the boot of his car was torn open to reveal its contents. Subsequently in his rented room, he showed the same nonchalance when the other five Da Wang Bao packets were opened up in his presence to reveal white powdery substance. He also remained silent during the photography and the weighing sessions in CNB.

36 Although Leong claimed to be a seller of Erimin and Dormicum and not heroin, it was only heroin that was found in his flat. It was quite obvious from the size of the yellow Boogie BBQ packet that it could not contain 150 slabs of the drugs that he purportedly ordered. If there was only partial

delivery, no evidence was led on how many were supposed to have been delivered that morning. Further, Leong had admitted in his statements that the Da Wang Bao and the yellow packets contained heroin sachets and that he intended to sell each sachet for \$300. In his statements, no mention was made of Erimin and Dormicum. The only Chinese New Year gift from the drug suppliers for Leong was the extra sachet of heroin and the cash contained in the hongbao inside the sealed yellow packet.

37 Despite Leong's attempts at discrediting the statements, I was satisfied that ASP Soh had no difficulty understanding what he was saying in Hokkien and that the interpreter was not remiss in his duties. The statements were also properly read back to Leong before he was asked to sign them.

38 Yip admitted in his statements that he had delivered drugs to Leong on a number of occasions before 18 January 2008. Yip's passport and the call details of Yip's and Leong's mobile phones indicated that whenever Yip spoke to Ah Boy and Leong on the same day on six occasions, Yip would go to Johor and return to Singapore the same day. On two other occasions, Yip talked to Ah Boy over the mobile phone, went to Johor and returned the same day but contacted Leong the following day. On one occasion, Yip talked to Ah Boy and then went to Johor that day but returned to Singapore the following day, when he then contacted Leong. This evidence supported what Yip said in his statements about having delivered drugs to Leong on a number of occasions before 18 January 2008. Further, Leong also admitted in his statements that Yip had been delivering heroin to him.

39 Yip admitted that he lied in his first statement where he denied knowledge of the contents of the six Da Wang Bao packets found in his car. He did not inform the recording officers at any time that he thought he was delivering Ketamine or Erimin on 18 January 2008. In any event, no such drugs were found on Leong and Yip or in Yip's car or in their respective place of residence.

40 Both Leong and Yip raised the possibility of a mix-up in the drug exhibits. This, they submitted, was a crucial matter as each sachet of heroin weighed about 0.6gm and it would take only a difference of about six sachets to bring the total weight of the heroin in question to 15gm or less, thereby rendering the death penalty inapplicable. Yip submitted that the CNB officers had been lackadaisical in the gathering of evidence particularly because they had failed to notice two other packets purportedly containing groundnuts and one other Boogie BBQ packet in the boot of Yip's car when they first searched it at the carpark in Ang Mo Kio. On this allegation of a possible mix-up of the drug exhibits found in the various locations, I was satisfied that the CNB officers in question had assiduously ensured that the drugs exhibits seized were properly identified and kept in separate resealable plastic bags even though some of these bags were then carried together in a larger exhibits bag back to the CNB. The photography session at the CNB was also carried out meticulously to avert any chance of a mix-up of the drug exhibits. The same attention was given to the exhibits when they were weighed in another room.

41 Based on the conduct of Leong and Yip (see [\[34\]](#) above) and their respective statements, it was clear beyond reasonable doubt that both of them knew what drug they were dealing with on 18 January 2008. Yip knew that he was delivering illicit drugs and suspected at the very least that they could be heroin because of the large amounts of money involved in the transactions and because of the higher pay-outs by his bosses for the work done. He chose not to enquire further as he wanted the delivery work. Such wilful blindness is regarded as being equivalent to actual knowledge and cannot exonerate Yip here (*Tan Kiam Peng v PP* [2008] 1 SLR 1). All the evidence pointed to their knowledge of the contents of the Da Wang Bao and the Boogie BBQ packets which Yip handed to Leong in the morning of 18 January 2008.

42 Leong was not able to rebut the presumption in s 17(c) of the MDA (see [\[33\]](#) above) on a

balance of probabilities. He claimed to have consumed part of previous batches of heroin and logically therefore would have consumed part of the heroin in question here too. That could result in the total amount of heroin falling below the level at which the mandatory death penalty becomes applicable. However, as pointed out earlier, there was no drug consumption equipment found in his flat. Further, his urine samples showed no evidence of any drug consumption. In my opinion, his alleged consumption pattern [see [\[22\]](#) above] was contrived to meet the prosecution's evidence that there was no trace of heroin in his urine samples and, at the same time, to create the impression that he consumed a fair amount of heroin every week. It was much too coincidental that he was arrested at a time when he had not consumed heroin for some four days. There was also no evidence of any drug withdrawal symptoms after his arrest. It was also plain from his statements that the heroin in question was for the purpose of selling to others.

43 I therefore found that the prosecution had made out its case against both Leong and Yip beyond reasonable doubt and I convicted both of them on their respective charge. The mandatory death sentence provided in the MDA was passed on them accordingly.

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