

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 237

Criminal Case No 52 of 2016

Public Prosecutor

v

Tan Kim Hup

GROUND OF DECISION

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

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

Tan Kim Hup

[2016] SGHC 237

High Court — Criminal Case No 52 of 2016

Choo Han Teck J

11–12, 19 October 2016

20 October 2016

Choo Han Teck J:

1 Tan Kim Hup (“the accused”) faced 19 charges for various offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). At the trial before me, the prosecution applied to stand down 18 of the charges and proceeded on a single charge that the accused:

...on 23rd September 2014, at or about 9.00 p.m., at unit #06-11 of Grandlink Square, Geylang Lorong 44, Singapore, did traffic in a Class ‘A’ Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), to wit, by having in your possession for the purpose of trafficking twenty seven packets containing 4456.6 grams of granular/powdery substance which was analysed and found to contain not less than 126.4 grams of diamorphine, without 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) of the said Act, which offence is punishable under section 33(1) of the said Act, and further, upon your conviction for the said offence, you may be alternatively be liable to be punished under section 33B of the said Act.

2 The accused indicated that he wished to plead guilty. I did not accept his plea and asked the prosecution to adduce evidence to prove its case pursuant to s 227(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). Section 227(3) stated that:

(3) The High Court shall not record a plea of guilty in a case where the accused pleads guilty to an offence punishable with death unless the accused has been committed to stand trial in the High Court under Division 2 of Part X for the offence, and evidence is led by the prosecution to prove its case at the trial.

3 The prosecution called 38 witnesses. The accused did not challenge any of the evidence and declined to cross-examine any of them. At the close of the prosecution's case, I found that there was sufficient evidence to call the accused to give his defence. The accused elected to remain silent. At the end of the trial, I found that there was sufficient evidence to prove beyond a reasonable doubt that the accused was guilty of the charge and convicted him accordingly. The 18 charges that were stood down previously were withdrawn by the prosecution following the conviction of the accused.

4 The arrests, seizures of exhibits, chain of custody, as well as the analysis of the exhibits in the charge before me were undisputed. On 23 September 2014, the accused and one Lim Kee Wan ("Lim") were arrested in the car-park of Grandlink Square, Geylang Lorong 44, Singapore, by officers from the Central Narcotics Bureau (CNB) on suspicion of them having committed offences under the Misuse of Drugs Act. The accused and Lim were escorted to the rented apartment of the accused at Grandlink Square ("the Apartment"). There, the CNB officers recovered 27 packets containing diamorphine which formed the subject matter of the charge against the

accused. The 27 packets of diamorphine were subsequently sent to the Health Sciences Authority (HSA) for analysis. The results are listed on the table below.

Marking	Location	Description
E1A	Location 'E' Top left drawer of a wardrobe	One packet containing 14.38g (net) of diamorphine
E2A1		One packet containing 6.04g (net) of diamorphine
E3A1		17 packets containing a total of 0.77g (net) of diamorphine
K1C1	Location 'K' Under a sink in the toilet of the unit's bedroom (collectively, the "K exhibits")	One packet containing 13.61g (net) of diamorphine
K1D1		One packet containing 14.67g (net) of diamorphine
K1E1		One packet containing 13.29g (net) of diamorphine
K1F1		One packet containing 12.98g (net) of diamorphine
K1G1		One packet containing 13.75g (net) of diamorphine
K1H1		One packet containing 12.88g (net) of diamorphine
K1J1		One packet containing 11.90g (net) of diamorphine
K1K1		One packet containing 12.13g (net) of diamorphine

5 Section 17(c) of the Misuse of Drugs Act provided that a person caught in possession of more than 2g of diamorphine was “presumed to have had that drug in possession for the purpose of trafficking”. Section 17(c) stated that:

Presumption concerning trafficking

17. Any person who is proved to have had in his possession more than —

...

(c) 2 grammes of diamorphine;

whether or not contained in any substance, extract, preparation or mixture shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

6 The accused admitted that he was in possession of the 27 packets of diamorphine. The accused's story from his statements adduced through the prosecution witnesses was that he was a drug trafficker who collected, stored, and delivered drugs on the instructions of a person known as 'MK'. In exchange for his services, the accused would be paid and given drugs for his consumption. The accused rented the Apartment approximately 10 days prior to his arrest and used it to store drugs.

7 According to the statements of the accused, most of the diamorphine forming the subject matter of the charge were from a consignment collected by him on 23 September 2014. On 23 September 2014, the accused was driven by Lim to a Chinese temple near his house. There, he met a male Indian drug courier who passed him a brown paper bag (marked "K1") containing diamorphine. The accused knew that "K1" contained diamorphine. The accused and Lim then returned to the Apartment where the accused opened up "K1" and counted the number of packets. The accused found "K1" to contain 10 packets each containing one pound (gross weight) of heroin. From the ten packets of heroin contained in "K1", the accused removed two packets and placed them in other locations within the unit, where they were recovered. The

remaining eight packets were left in the bag “K1” in the toilet where they were eventually recovered by the CNB officers. The rest of the diamorphine, namely, the 17 packets of diamorphine marked “E3A1” was from an earlier consignment. These 17 packets were packed by Lim on 22 September 2014 on the directions of the accused.

8 The DNA evidence corroborated the accused’s story. The accused’s DNA was found on various parts of the drug exhibits recovered from the accused’s apartment. The accused’s DNA was found on the inside and outside of the exhibit marked “E1”, which was the white plastic bag found to contain the packet of diamorphine marked “E1A”. This was consistent with the accused’s account of placing “E1A” into the white plastic bag. The accused’s DNA was also found on the string handles of the brown paper bag marked “K1” which was passed to the accused. On the basis of the evidence before me, I found that the prosecution had proved beyond a reasonable doubt that the accused possessed the 27 packets of diamorphine that contained not less than 126.4g (net) of diamorphine.

9 I also found that the prosecution had proved beyond a reasonable doubt that the 27 packets of diamorphine were meant for the purpose of trafficking. Having elected to remain silent, the presumption of trafficking against him under s 17(c) of the Misuse of Drugs Act was not discharged. Beyond the operation of the presumption, the accused had also admitted in his statements that the drugs seized from the Apartment were meant to be delivered to customers at the instructions of ‘MK’.

10 Accordingly, I convicted the accused of the charge. As the alternative sentencing regime under s 33B of the Misuse of Drugs Act did not apply, I imposed the mandatory sentence of death on him.

-Sgd -
Choo Han Teck
Judge

Andrew Tan and Tan Wee Hao (Attorney-General's Chambers) for
prosecution;
Chia Soo Michael, Hany Soh Hui Bin (MSC Law Corporation) and
Daniel Chia Hsiung Wen (Morgan Lewis Stamford LLC) for the
accused;
