Public Prosecutor v Chen Mingjian
[2009] SGHC 208

Case Number : CC 37/2009

Decision Date : 16 September 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Ng Cheng Thiam, Sharmila Sripathy-Shanaz and Adrian Loo (Attorney-General's Chambers) for the Prosecution; Rupert Seah Eng Chee (Rupert Seah & Co) and B Uthayachanran (B Uthayachanran & Co) for the accused

Parties : Public Prosecutor — Chen Mingjian

Criminal Law – Statutory offences – Misuse of Drugs Act (Cap 185, 2008 Rev Ed) – Trafficking in controlled drugs – Presumption from possession – Quantity of drugs in possession

Evidence – Break in chain of evidence

16 September 2009

Choo Han Teck J:

1 The accused was a 25-year old who was arrested when he went to deliver heroin to a customer at Block 230, Ang Mo Kio Avenue 3. The charge against him in respect of the heroin seized from him there (the second charge) was stood down as it was not a capital charge. The quantity there was stated to be "not less than 7.62g." This was relied upon by Mr Rupert Seah ("Mr Seah"), counsel for the accused, in his defence of the accused in respect of the first charge, which was the capital charge upon which the accused was tried before me. The first charge arose from the heroin found in the room of a flat at Block 745, Yishun Street 72 ("the Flat"). This was the flat belonging to the parents of the accused. The room in question was occupied by the accused and his 17-year old brother. The younger brother was not involved in the proceedings before me. The heroin found in the Flat amounted to 50.05g. They were found in three different places in the room of the accused. A lot was found in a cupboard next to the bed, one was found in the bottom drawer of his closet, and one in a red paper bag on the floor near the windows. These facts were not disputed by the accused. The charge against him was for possession of the 50.05g of diamorphine for the purposes of trafficking. The Second Schedule of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed) ("the Act") provided the punishment for an offence under s 5(1)(a) read with s 5(2). The penalty on conviction where the drug was diamorphine and the quantity was more than 15g, is death.

2 The prosecution adduced various statements made by the accused including his statement under s 122(6) of the Criminal Procedure Code, (Cap 68, 1985 Rev Ed) containing confessions to possession of diamorphine and also to acts of trafficking. These statements, save for one point, were not challenged by the accused and were admitted into evidence. The evidence adduced was sufficiently incriminating against the accused and his defence was therefore called in rebuttal. The accused elected to testify. His testimony was consistent with the statements he made to the investigating officer, Insp Chee Tuck Seng ("Insp Chee"). The main dispute regarding the statements recorded by Insp Chee concerned the word "heroin". The accused testified that he did not use the word heroin and that he told Insp Chee that the drug he was trafficking was "peh hoon". Unfortunately, the statements were recorded through an interpreter in Mandarin, Mr Wu Nan Yong, who died before the trial commenced. He conceded, however, that he knew that "peh hoon" was a reference to drugs. He did not elaborate whether he meant prohibited drugs under the Act. Although

drug trafficking paraphernalia (such as plastic sachets, a plastic sealer, and a small weighing scale) were also found in his room, there was no evidence that the accused was himself a drug user. Although the evidence of Mr Wu Nan Yong would have been helpful, I was satisfied that the accused knew that "peh hoon" was heroin. Insp Chee testified that he questioned the accused who, in response, used "peh hoon" and heroin interchangeably. I did not rely upon this part of Insp Chee's opinion as crucial, but it was important as part of all the factors upon which I formed the view that I could not accept the accused's testimony that he did not know that the drugs in question were heroin. On his own evidence, he said that he was told by Din (one of his customers) that the drugs were heroin. The many lengthy statements were read back to the accused each time the recording ended. The narrative did not indicate a point in which the accused might have been unclear what the substance described as "heroin" was. I was satisfied that the accused knew that he had been arrested for a serious drug trafficking offence and there were no indications of any concern by him that the offences were capital offences. I was of the view that the statements were properly and accurately translated as to reflect "peh hoon" as heroin, and that there was no uncertainty on the part of the accused as to what kind of drug it was that he was being charged for trafficking. I did not accept his evidence that he did not know that "peh hoon" was heroin.

3 The next defence was not in respect of the uncertainty as to the nature of the drug in the possession of the accused, but that he ought not to have been charged for a capital offence. Mr Seah's argument was that in each case, where drugs were found in the possession of the accused - whether they were in his bag at the place where he was arrested, or in the cupboard, or in the drawer, or in the paper bag on the floor – the total weight was less than 15g. Counsel submitted that the accused had intended to traffic, and did indeed traffic in the drugs, he did not at any one time or place traffic or intend to traffic in more than 15g of heroin. Section 5(1) and (2) of the Act provides as follows:

> **5**. — (1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —
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> (a) to traffic in a controlled drug;
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> (b) to offer to traffic in a controlled drug; or
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> (c) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.
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> (2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

The reference to the drug in the possession of an accused cannot be read in any way other than as a reference to all the drugs found in the possession of the accused at the time of his arrest or at any one point in time before his arrest. Section 33 and the Second Schedule of the Act provide that if the amount of heroin in question was not less than 15g the penalty shall be death. There is no basis to imply the condition that the 15g referred to in the Second Schedule referred only to the weight of drugs found in any one spot. The proper and normal meanings of the statutory provisions in this regard have no special connotation. They mean and refer to the entire heroin in the possession of the accused, whether they were kept separately or in one parcel. Mr Seah argued at length in his submissions that the Court of Appeal in *Tan Kiam Peng v PP* [2008] 1 SLR 1 favoured the wide interpretation of legislative intent in that the presumption of trafficking must relate to the drugs actually trafficked, which on the evidence, showed that the parcel that the accused was caught with was less than 15g. I do not think that that was what the Court of Appeal had in mind. When a person

such as the accused was caught with more than 15g of heroin it is no defence to a capital charge to say that he proved that he only trafficked in less than 14g on each occasion. He had the entire lot for the purposes of trafficking. Using counsel's phrase, "the proved fact outweighs the presumed fact", the proved fact in this case was that the accused was trafficking in the drugs that he had in his possession.

4 Mr Seah submitted that there was a break in the chain of possession of the seized drugs and therefore, the weight of the drugs in question cannot be accepted as having been proved beyond reasonable doubt. There was a period of about two days between the time the seized drugs were photographed and weighed in the presence of the accused and the time they were sealed by Insp Chee. I agree that it is extremely important that the chain of possession is properly accounted for and that there should not be a single unaccounted moment if it meant that the drugs adduced at trial were not the drugs seized from the accused. I agree with counsel that the procedure of accountability is extremely important. On the facts before me, I was of the view, having regard to the weight and evidence of the Health Sciences Authority officers, that the argument by Mr Seah that there could have been a contamination of the seized drugs was speculative, and not, on the facts, sufficient to raise a reasonable doubt in my mind. Weighing and sealing the drugs in the presence of the accused is naturally the more desirable practice, but in this case, I was satisfied that the prosecution's case was not affected. I think that it was not a matter of law, but a question of fact, that a breach of this procedure should result in giving the benefit of doubt to the accused as a matter of course as counsel submitted.

5 On the evidence, I was satisfied beyond reasonable doubt that the accused was in possession of the heroin found in his room, and that he had them for the purposes of trafficking. The prosecution had proved its case beyond reasonable doubt against the accused and I therefore found him guilty as charged, and convicted him accordingly, and sentenced him to suffer death.