

Public Prosecutor v Yeoh Aik Wei
[2002] SGHC 225

Case Number : CC 48/2002
Decision Date : 24 September 2002
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Eugene Lee, Paul Chia and Desmond Lee (Attorney-General's Chambers) for the prosecution; Lee Teck Leng (briefed) and Alan Moh (briefed) (Tan Peng Chin & Partners) for the accused
Parties : Public Prosecutor — Yeoh Aik Wei

Judgment

GROUND OF DECISION

1 The accused is a 24 year old male Malaysian. Before his arrest, he resided in Johor Baru but worked in Singapore as a maintenance technician. He was tried and convicted on the following charge which carries the death penalty.

"That you, Yeoh Aik Wei, on or about the 7th day of March 2002, at about 12.46 am, in a motor car JEK 682 at Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, 327.59 grams of diamorphine, without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 7 of the Misuse of Drugs Act, Chapter 185 and punishable under section 33 of the Misuse of Drugs Act."

THE PROSECUTION'S CASE

2 On 7 March 2002, at about 12.45 am, the accused drove JEK 682, a Honda car, from Johor Baru into the Woodlands Checkpoint. He was alone in the car. He was stopped by CPL Yeo Kia Huat, one of the police officers who were conducting a routine check at the arrival channel, and was asked to open the boot of the Honda in the Customs Inspection Pit. The accused unlocked the boot and alighted from the car to open the boot for inspection.

3 When CPL Yeo lifted up the mat covering the well of the spare tyre, he found four bundles covered with newspapers therein. When asked in Mandarin what the bundles contained, the accused replied that he was not sure. CPL Yeo then took out one bundle and instructed the accused to tear it open. The accused squatted at the kerb and began to tear away the plastic wrapping. CPL Yeo noticed that the bundle contained some granular substance and, suspecting it was controlled drugs, immediately placed the accused under arrest.

4 Other police officers and two narcotics sniffer dogs with their handlers were called to the scene. At about 1.25 am, the dog handlers carried out a search of the Honda and the dogs reacted when they were at the right and the left sides of the boot. The lining at the sides of the boot was then pulled off by the police officers who found another four bundles, two behind the lining on the right side and two behind the lining on the left. All this was done in the presence of the accused who remained calm throughout.

5 All the bundles were removed by the police officers from the boot and placed on the kerb next to the Honda. Two officers stood guard over the accused and the eight bundles.

6 Insp (now ASP) Omer Ali Saifudeen of the Central Narcotics Bureau ("CNB") arrived at the Woodlands Checkpoint at about 2 am. He was briefed on the happenings by CPL Yeo. He then took over custody of the eight bundles seized from the Honda. A further search on the Honda revealed nothing else.

7 The accused and the eight bundles were brought to the CNB office while the police officers guarded the Honda. An Instant Urine Test on the accused produced a negative result.

8 At 2.50 am, ASP Omer recorded a statement from the accused with CPL Francis Tan interpreting in Mandarin. The questions and answers recorded in his pocket book were:

"Q1 What language are you comfortable in?

A Chinese.

Q2 (Pointing to one of the bundles, which was transparent and the contents can be seen)

What is this?

A 'Drugs' (English).

Q3 Whose is it?

A I only know his nickname is 'Tua Bui'.

Q4 What is it for?

A I do not know.

Q5 Did 'Tua Bui' ask you to bring this to him?

A No.

Q6 Why did you bring this in?

A (Accused remained silent for a while before answering) 'Tua Bui' asked me to drive the vehicle to someone in Singapore.

Q7 Who put the drugs in the car?

A I did not see who put the drugs in.

Q8 How much is each bundle?

A Don't know.

Q9 How much were you paid to bring this in?

A \$200/- for the autopass.

Q10 Do you have anything else to say?

A Nothing."

The questions and the answers were read back to the accused by CPL Francis Tan in Mandarin. The accused then signed in the pocket book. He added that he had answered 'drugs' to question 2 as one of the policemen had said that they were drugs. He said he did not know who that

policeman was. ASP Omer testified that the period of silence in question 6 was slightly over ten seconds while CPL Francis Tan estimated it to be about 30 seconds. CPL Francis Tan was not a certified interpreter of CNB but did obtain an A2 grade in his GCE 'O' level examinations.

9 Insp Saherly bin Limat of the Enforcement Division of CNB, the investigating officer, arrived at the Woodlands Checkpoint at about 4 am and was briefed on the facts of the case by Insp Omer. He then took over custody of the eight bundles from Insp Omer. When the Scene of Crime Unit arrived, Insp Saherly instructed photographs to be taken of the Honda and the bundles seized. He then returned to his office with the bundles and the accused's passport while the accused was brought to Alexandra Hospital for a pre-statement medical examination.

10 At around 8.35 am, the accused was escorted into Insp Saherly's office. The eight bundles seized earlier were then weighed in the accused's presence.

11 Between 9 am and 9.30 am, Insp Saherly recorded a statement from the accused pursuant to section 122 (6) Criminal Procedure Code ("CPC"). This was done with the assistance of a certified Chinese interpreter. The accused elected to speak in Mandarin. In that statement, the accused's words were :

"I have nothing to say."

12 At about 3.05 pm that day, Insp Saherly recorded a statement under section 121 CPC from the accused with the assistance of the same Chinese interpreter. In that statement, which was admitted in evidence without challenge, the accused said :

"I am known as "Ah Wei" to my family and friends. I have been working at Rubycon for almost 10 months. Previously, I was employed in a few other companies in Singapore. I started working in Singapore in the year 2000, after completing my studies. I studied at a Polytechnic in Kedah. The above given address is my old address. I have just shifted to a new rented house about four or five days ago. I can only remember the address as 50, Jln Mentega 5. I share this house with two of my cousins and one friend. My cousin's girlfriend and my friend's girlfriend also stays there.

2 On 6.3.2002, at about 11.30 am, "Tua Pui" came to my new house to look for me. I was alone at that time. He was with another male person. I do not know the male person. They came in a car. Tua Pui said that he needed my help. He wanted me to drive a car containing a package into Singapore when I am on my way to work. He did not tell me what the package contained. I did not agree to help him. However, I owe Tua Pui RM\$2,000. He asked me to pay him the money if I do not help him. If I helped him, he would write off the RM\$2,000 which I owe him. I told him I will think about it and give him an answer after I return from work. Tua Pui and his friend left after that. At about 2 pm, I left for work at Queenstown in Singapore. I went to work using my own motorcycle, JEJ 9405. I finished work at about 11 pm and went back to Johor.

3 Upon entering Johor, I called Tua Pui from a public phone at about 11.30 pm. His handphone number is 016-7552675. I asked him where he was so that I could collect the car from him. He told me that he will be waiting for me at "Mavesta" Apartments at Permas Jaya. I then proceeded to the said place. Upon reaching, I parked my motorcycle along the road outside the apartment. I saw Tua Pui inside the apartment compound. I then walked into the compound towards Tua Pui. I walked pass the security guardhouse. Tua Pui gave me one remote control with a car key. I am shown a brown coloured remote control and I confirm it to be the said one. (Accused was shown a brown coloured remote control with a car key

earlier seized from him). Tua Pui also gave me a blue NOKIA handphone. He opened it to insert a SIM card and gave me another separate SIM card. He also keyed into the phone a number that I am supposed to contact upon reaching Singapore. I do not know the number. I am shown a blue NOKIA handphone and a separate SIM card and I confirm them to be the said items. (Accused was shown a blue NOKIA handphone containing one SIM card and a separate SIM card). He also gave me an Autopass card with JEK 682 written behind it, S\$200 cash in 2 pieces of hundred dollar note. I am shown an Autopass with the words JEK 682 and 2 hundred dollar notes and I confirm them to be the said items. (Accused was shown an Autopass with the words JEK 682 and 2 hundred dollar notes). He then brought me to a Honda Accord parked in the compound. He instructed me to call his friend using the number given earlier upon entering Singapore. His friend would then meet me and take over the car. His friend will also help me get return to Johor.

4 From the apartment, I drove to the Johor Immigration Checkpoint. I then crossed the causeway and entered the Woodlands Checkpoint. My car was stopped by the police and they did a check on my car. They recovered 4 bundles from the spare tyre compartment. They asked me to take out one of the bundles and open it. They then asked me what the bundles were. I answered that I do not know. They told me that the bundles contained "drugs". A further search was made using dogs. The police recovered another 4 bundles, 2 on the left boot compartment and another 2 on the right boot compartment. They were hidden behind the lining of the boot compartment. I was then brought into an office where my urine samples were taken. I was also asked some questions which I answered and these were written down. After that I witnessed the photo taking of the drugs and the car. I was then sent to a hospital for a checkup. After that, I was sent to another office where I was given a meal and my statement was recorded. I was then sent for another medical checkup and subsequently sent to a police lockup.

5 I have known Tua Pui for about 8 months. My friend introduced him to me. Sometimes we meet at coffeeshops to chat and drink coffee. In the last few months I got to know that Tua Pui also sells Ecstasy tablets. He also lends money to people. Just before the Chinese New Year, I borrowed RM\$2,000 from him. I used the money for my Chinese New Year spending. He does not give me any receipt for the borrowed sum. He wrote it in his small book. I was supposed to collect my salary today, 7.3.2002 and pay off part of my debt. However, he got hold of me earlier and made me pay for the debt by helping him drive the car in.

6 I wish to state that I had never seen the drugs before. When Tua Pui first approached me for help, I thought he wanted me to drive a car with a package containing Ecstasy."

13 The next day (8 March 2002), the exhibits were brought to the Scene of Crime Unit for fingerprint dusting. Two prints were subsequently developed from some of the exhibits but they did not match the accused's fingerprints. The contents of the eight bundles were analysed by the Centre for Forensic Science, Health Sciences Authority and were found to contain not less than 327.59 grams of diamorphine, the subject of the charge.

14 Among the things seized from the accused on 7 March 2002 was a piece of paper with Chinese words. It was not addressed to anyone and was undated and unsigned. The translation read :

"When you all read this letter, I may have left you all forever. Don't feel sorry for

me. I have no regret over this. I am tired of walking the journey of life. I have lost my joy, satisfaction or happiness.

A most joyful event in life is to have a partner truly in love with you. As for me, I am always a failure. I have let my past love slip and lost it forever. I truly regret, upset and feel sorry. Superficially, I appear as if nothing has happened but I do care about this love. Please call 04-6437924 and send my regards to Hui Min. I was in the wrong in the past. I indulged in gambling and neglected her. I lost all my money and no surprise that she left me. I heard that she would be getting married, is it true?

Whenever I see lovers going in pairs, I am envious of them because they are blessed with love of bliss and they know how to treasure each other.

In life, I do not know how to treasure kinship and friendship. I have lost your zeal in doing anything nor bother to show any concern. Sorry to say that kinship and friendship are very hypocritical. When you are rich, people will befriend you and when you are poor, people will despise you. May be I was a bit stupid without realising that all of you care for me.

I feel excited on the very thought of leaving this painful world. It is like freeing myself from such agony. I can give up fame and gain, the gay and material world and finally leave in peace.

Please tell my 3 bosom friends that I am leaving

1. Lok Lok (Johor)
2. Boon Lee (Johor)
3. Chee Ping (Sp)"

The words "Lok Lok (Johor)", "Boon Lee (Johor)" and "(Sp)" were written in English.

THE CASE FOR THE ACCUSED

15 The accused grew up in Kedah but was residing in Johor Baru at the time of his arrest. He has a diploma in mechanical engineering from Kedah Polytechnic. At the material time, he was working on the afternoon shift in Rubycon from 3 pm to 11 pm, travelling to and from Singapore on a motorcycle.

16 He repeated in essence what he had said in the statement quoted above. Tua Pui or Ah Pui was a loan shark. When Tua Pui gave him the option of helping him to drive the car into Singapore or repaying him the RM2,000, the accused did not have the money to repay the loan. He was afraid that if he did not pay Tua Pui by night time on 6 March 2002, Tua Pui might kill him. Tua Pui had mentioned several times before that he had caused those who did not repay their loans to be knocked down by vehicles.

17 At that time, the accused thought the packet that was to be brought to Singapore in the car contained Ecstasy tablets. This was because, in November 2001, when the accused was with Tua Pui in a coffeeshop, someone telephoned Tua Pui and the accused was told by Tua Pui later that the caller was from Singapore and wanted to purchase Ecstasy from him. The accused asked Tua Pui whether he was afraid of the death penalty should he be arrested for selling Ecstasy. Tua Pui replied that Ecstasy would not attract the death penalty under drug laws. The accused knew nothing about drugs then and was not involved in the sale of drugs. He therefore believed what Tua Pui had told him.

18 While at work on 6 March 2002, the accused mulled over Tua Pui's request for his help earlier that day. As he did not have the

RM2,000 to repay Tua Pui, he decided to agree to help him do the task. He reckoned that if he was caught doing so, he would at the worst be imprisoned whereas he might well lose his life that night if he refused to help Tua Pui. He did not think that bringing a packet of Ecstasy into Singapore in a car would attract the death penalty.

19 At the Mavesta Apartments in Johor Baru where the accused met Tua Pui at close to midnight on 6 March 2002, he asked Tua Pui whether the packet in the car contained Ecstasy. Tua Pui said it was Ecstasy but told him he need not know where the packet was kept. The accused then asked Tua Pui whether he was sure that Ecstasy would not attract the death penalty and was re-assured by Tua Pui. The accused testified that if he had known that the packet contained heroin, he would not have undertaken the task of driving the car as he knew that dealing in heroin would attract the death penalty.

20 At Woodlands Checkpoint, when the boot of the car was opened and the accused saw four packets, he was shocked. He felt cheated as he had been told there was only one packet. When he was told to open one of the packets and was asked by the police officer what was in it, he replied that he did not know. He was then told by the police officer that the packet contained drugs. He was handcuffed and made to sit down on the kerb. He was asked to lower his head and not to look at the vehicles passing by.

21 When questioned by Insp Omer later, he could not understand some of the questions and had to ask CPL Francis Tan to repeat himself. As far as he could recall, he did pause before answering the questions but he did not think there was any long pause.

22 When he was later charged with trafficking in heroin, he did not know what to say and therefore replied that he had nothing to say. He had expected to be charged for selling Ecstasy and not for trafficking in heroin. He did not dare to tell the recording officer that he thought the packet contained Ecstasy as he was afraid that Tua Pui had also lied to him about Ecstasy not attracting the death penalty.

23 In cross examination, the accused said he did not tell CPL Yeo that the packet he was unwrapping was Ecstasy as he felt cheated and was at a loss as to what to do. He had seen Ecstasy in photographs in newspapers before and knew that it was in tablet form like Panadol tablets. The yellowish substance that was like soil that he saw when unwrapping the packet did not look like Ecstasy to him. He did not know what it was. Only one police officer said the bundles contained drugs.

24 When questioned by Insp Omer later in the office, the accused did not say that the bundles contained Ecstasy as what he had seen was not Ecstasy. He was not asked and therefore did not say anything about Tua Pui forcing him to bring the drugs into Singapore. He also did not tell Insp Omer that there was supposed to be only one packet as he did not have any witnesses or other proof and thought that no one would believe him.

25 The accused also explained that he did not agree to Tua Pui's request in the morning of 6 March 2002 as he believed that the packet contained Ecstasy and he knew it was an illegal substance. He was the one who asked Tua Pui for some time to think about his request but was given time instead to repay the RM2,000. He could not borrow money from his relatives and his friends to repay Tua Pui on 6 March 2002 as he was alone in the house that day. In any event, he had tried borrowing money from them before but was turned down. He therefore felt that he had no one to rely on but himself. The RM2,000 that he had borrowed was to be repaid in six instalments of RM400 each, totalling RM2,400. As of 6 March 2002, he had repaid only one instalment. He was told by Tua Pui to repay the entire outstanding sum as he was late with the second instalment by four days already then. He would have received over S\$500 in salary on 7 March 2002 but could only afford to pay Tua Pui the interest for the four days he was late, which was RM40 per day.

26 The accused said he did not seek help from the authorities as Tua Pui had not done anything to him yet and he could not prove the threat made against him. He did not want to leave Johor Baru as he did not wish to leave his job in Singapore.

27 During the twenty to twenty five minute journey from the Mavesta Apartments to the Johor Baru Checkpoint, the accused did not stop to look for the packet in the car as he did not know where it was hidden. It did not occur to him that Tua Pui would lie to him. He did not think the whole transaction that night was suspicious. To him, it was a simple case of owing Tua Pui money and carrying out the task asked of him in order to write off the debt. The S\$200 handed over to him by Tua Pui was meant to be handed over by him to the person taking possession of the Honda in Singapore.

28 The accused acknowledged that he was the author of the note written essentially in Chinese. He wrote it during a rest period while at

work on 6 March 2002 because he had decided by then he would help Tua Pui drive the car into Singapore, knowing he would be jailed if caught doing so. He had not committed any offence before and did not know what to expect in prison. Prison was therefore like another world to him. He disagreed that it was a suicide note written with the death penalty in mind. It was not addressed to anyone in particular. He was upset as no one could help him and he therefore wrote the note to express his feelings. He agreed that the note was related to the task that he was going to undertake for Tua Pui and that he was not contemplating suicide then. "Leaving this painful world" in the note meant going to jail.

THE DECISION OF THE COURT

29 Section 7 of the Misuse of Drugs Act ("MDA") states that "except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug". In *Abdul Ra'uf bin Abdul Rahman v PP* [2000] 1 SLR 683, the Court of Appeal said (at paragraph 26) :

"To establish an offence under s 7 of the (Misuse of Drugs) Act, the prosecution must show that the appellant imported the diamorphine into Singapore without prior authorisation under the Act or its regulations. It is settled law that the word 'import' should be given the same meaning as defined in s 2 of the Interpretation Act (Cap 1), namely, 'to bring or cause to bring into Singapore by land, sea or air'. Since the importation of controlled drugs is not a strict liability offence, it is incumbent on the prosecution to show that the appellant knew or intended to bring the diamorphine into Singapore."

30 On the evidence, it is clear that the act of unauthorised importation has been proved. The accused was the driver of the Honda and was the only person in the car at the time of his arrest. The drugs in question were found in the boot of the car. He brought the said drugs into Singapore in the car. The only issue is whether he knew that what he was importing into Singapore was diamorphine.

31 Section 21 of the MDA provides :

"If any controlled drug is found in any vehicle, it shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being".

The diamorphine found in the Honda is therefore presumed to be in possession of the accused. That brings into play the presumption in section 18 (2) of the MDA which states :

"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 the drug".

It is therefore incumbent on the accused to prove, on a balance of probabilities, that he did not know that what he was importing into Singapore was diamorphine.

32 The accused failed to mention in his statements that he had asked Tua Pui at the Mavesta Apartments whether the packet in the Honda contained Ecstasy. He also did not say in his statements that he had asked Tua Pui whether dealing in Ecstasy carried the death penalty. There was also no mention of any express or implied threat by Tua Pui if he should refuse to do him the favour of driving the car into Singapore and fail to discharge the debt by nightfall on 6 March 2002. There was no good reason why he failed to disclose these material facts. Even if the accused could be excused for not stating these material facts because he was not asked by Insp Omer, surely there was no excuse for saying "I have nothing to say" when invited to make a statement by Insp Saherly pursuant to section 122(6) CPC. These matters could not therefore have been true.

33 Even if he did ask Tua Pui about the contents of the packet and was assured that it contained Ecstasy, the fact remains that he did not

bother to check the packet or even find out where it was hidden in the Honda. Ignorance is a defence only when there is no reason for suspicion and no right and opportunity of examination (*Yeo Choon Huat v PP* [1998] 1 SLR 217 at paragraph 22). The accused knew he was involved in an illegal transaction. He was dealing with a known drug peddler who was also a loan shark who would stop at nothing to punish those who failed to keep their obligations to repay loans. There was no reason at all to trust Tua Pui. He intentionally turned a blind eye to the contents of the packet and could not now rely on his professed lack of knowledge about the actual contents.

34 The note in Chinese found on him was obviously a farewell note to his family or his friends. He penned it at work on 6 March 2002 after Tua Pui's request earlier that morning and it was related to what he had decided to do by then – drive the car with the packet into Singapore for Tua Pui. It clearly contemplated an imminent death. He acknowledged in Court that he knew that trafficking in diamorphine attracted the death penalty. It could only mean he knew the nature of the drugs he was going to transport that night and that the drugs would be of such quantity as would attract the death penalty.

35 Further, when the first four bundles were discovered at the Woodlands Checkpoint, the accused appeared calm. He did not seem perturbed at all to see the number of packets nor the contents of at least one of them. He remained calm even when the other four packets were subsequently discovered. He also said absolutely nothing that would have been consistent with his present plea of innocence.

36 On the facts of this case, the accused has failed to rebut the presumption in law that he knew the nature of the drug that he was importing into Singapore. Indeed, the evidence shows that he knew very well that he was importing diamorphine and that he would face the death penalty if caught but was quite prepared to face the consequences for the reasons set out sadly in his 'farewell note'.

37 Counsel for the accused alluded to the possible defence of duress provided in section 94 of the Penal Code in the light of the accused's testimony about having been coerced by Tua Pui into driving the Honda into Singapore. The authorities show that such a defence is available only if the threats give rise to reasonable fear of 'instant death' and only if the threats have been 'imminent, persistent and extreme' (*Wong Yoke Wah v PP* [1996] 1 SLR 246; *Teo Hee Heng v PP* [2000] 3 SLR 168). Counsel for the accused conceded, quite correctly, that even if the Court were to accept that the accused was coerced by Tua Pui to drive the Honda into Singapore, the requirement of 'instant death' was not satisfied in this case.

38 The Prosecution has therefore proved the charge against the accused beyond reasonable doubt. I convicted the accused and sentenced him to suffer death, the mandatory punishment under the MDA.

Sgd:

TAY YONG KWANG

JUDICIAL COMMISSIONER

SUPREME COURT