

Public Prosecutor v Sharom bin Ahmad and Another
[2000] SGHC 59

Case Number : CC 2/2000
Decision Date : 14 April 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Mathavan Devadas, Ferlin Jayatissa and Edwin Loo for the prosecution; S S Dhillon (Dhillon Dendroff & Partners) with Sarbrinder Singh (Yong Koh & Partners) for the first accused; Peter Fernando (Leo Fernando) with Yeo Chee Teck (Ang Jeffrey & Partners) for the second accused
Parties : Public Prosecutor — Sharom bin Ahmad; Boksenang bin Bocheh

JUDGMENT:

GROUND OF DECISION

Events of 20 March 1999

1. Officers of the Central Narcotics Bureau mounted an operation at the Costa Sands Chalets at Pasir Ris. They were on the look out for Sharom bin Ahmad (also known as "Boy Dol" or "Boy") who was believed to be using motor cycle FQ9032M.
2. At about 4.10 pm Sharom and his girlfriend Norsila binte Mohd (also known as "Angel") were seen leaving the chalets on the motorcycle. The officers trailed them as they went on their way first to Tampines Street 34, then to Century Square Shopping Centre at Tampines Central 1. From Tampines they went on to Bedok North St. 4 before going to the car park along Ang Mo Kio Avenue 10 at about 7.15 pm.
3. The couple left the motor cycle carrying shopping bags and walked towards Block 420, where they took the lift to the eleventh floor. Instructions were issued to arrest them when they return to the motor cycle.
4. At about 8.30 pm Sharom and Norsila returned to the motor cycle, and were arrested. A key chain with four keys was recovered from Sharom. He was asked if they belonged to him, and he confirmed that. Also recovered was a Marlboro cigarette box containing a sachet of substance suspected to be heroin. This cigarette box was tucked in his waistband. Upon being questioned, Sharom claimed that he and his girlfriend had come from a coffee shop at the next block.
- 5 The officers took Sharom and Norsila up to the 12th floor of Block 420. Using the seized keys, they gained access to #12-1131 which is a one-room flat ("the Ang Mo Kio flat"). They searched the flat and recovered two items suspected to contain drugs. One was a green-and-black haversack which was in the room next to a cupboard and the other was a plastic bag placed below the sink in the kitchen.
6. When the haversack and its contents were shown to Sharom, he was distraught. He knelt down so that his forehead touched the ground, and appeared to be near to tears. Ten packets of substance were recovered from the main compartment of the haversack and two sachets of substance were found in the front compartment. Sharom was questioned about them -

Q: What is this, 10 packets?

A: It is heroin

Q: Whose is this?

A: I do not know, I do not know how this is here.

Q: Is the bag yours?

A: The bag is mine

Q: Are the 2 sachets yours?

A: No they are not.

7. The suspected drugs were analysed subsequently. The 10 packets were found to contain not less than 59.94g of diamorphine and the two sachets contained 0.23g of the same drug, while the sachet recovered from Sharom contained another 0.34g of the drug.

8. Inside the plastic bag were a weighing scale, 21 empty sachets, and a cigarette box containing a sachet of substance and a piece of metal foil. He was questioned about them and admitted that those items belonged to him. The sachet was analysed and found to contain 0.15g of diamorphine.

9. The worn clothes of Sharom and Norsila were found soaking in pails in the toilet, and a motor cycle cover for the motor cycle they were using was found in the hall.

10. When the investigation officer Inspector A Muruganandam arrived at the flat, he also questioned Sharom on the drugs in the haversack, and the exchange was recorded –

Q: Whose haversack is that?

A: Mine.

Q: What is inside the haversack?

A: Heroin.

Q: How many?

A: They told me that it is 10 packets.

Q: How do you know there is heroin inside?

A: After the officers showed me.

Q: Who does it belong to?

A: To the owner of the house.

Q: Who is he?

A: Accused referred to a photograph which was recovered in the house.

Q: What is his name?

A: 'Bob'.

11. Subsequently, at the CNB offices, the inspector questioned him further -

Q: Whose heroin are those in the haversack?

A: It belongs to 'Bob Senang'.

Q: Where does he stay?

A: At Blk 420 Ang Mo Kio Ave 10 #12-1131.

Q: What other details do you know about 'Bob Senang'?

A: I know that he sells heroin.

12. The officers also searched two other places. They went with Sharom and Norsila to Blk 80 Bedok North Road #02-268, the address shown in Sharom's identity card, and then to Blk 195 Kim Keat Avenue #04-324 where Sharom claimed he and Norsila were staying. Nothing incriminating was found in these premises.

13. Subsequent to his arrest, statements were recorded from Sharom. The first statement was a cautioned statement made on 24 March in response to a charge of trafficking in the recovered diamorphine with Norsila. In this statement, he said

The ten large packets of heroin found in the haversack are not mine. As to the one sachet found in the kitchen I admit that they are mine.

The other two sachets of heroin found in the side pocket of the haversack are not mine either.

I went to this place to change my clothings. I went there with 'Norsila'. I just had bought some new clothings. The keys to the house at Blk 420 Ang Mo Kio was obtained from the owner known to me as 'Bok Senang' who was at the Chalet.

My intention of going to the house was also to retrieve the sachet of heroin from the kitchen. This heroin sachet belongs to me.

I wanted to bring this sachet of heroin was meant to be brought to the Chalet at Costa Sand UDMC Chalets.

The heroin packets found in the haversack belongs to 'Bok Senang' who is the owner of the house. I know that 'Bok Senang' deals in drug trafficking.

Although I know that 'Bok Senang' deals in drugs, I do not know that he deals in large amounts.

I admit that the haversack belongs to me which I had placed there on **Friday before my arrest.**

As far as I know 'Norsila' who was arrested with me has nothing to do with all the heroin found in the house. She accompanied me to the house. That is all.

(Emphasis added)

14. Thereafter, investigations statement was recorded on 25 and 31 March and 5 April. In these statements he explained how Boksenang's heroin came to be in the haversack. He recounted that

36 I have been to Bok Senang's house at Blk 420 Ang Mo Kio Ave 10 on about three occasions. The first time was on the Sunday prior to my arrest. On early Sunday morning I was gambling at the void deck of a Block at Lorong Ah Soo. ... Bok Senang invited me and Norsila to his house on this day and he told me that Saddam is coming too. I left Lorong Ah Soo at about 8.00 am with Norsila in my motor bike. Bok Senang asked me to buy breakfast before coming to his house and he left with Saddam at about the same time.

37 After buying breakfast at the Ang Mo Kio Interchange Macdonald's I reached the void deck of Blk 420 Ang Mo Kio Ave 10 at about 10.00 am. I then called Bok Senang and confirmed his address before going up to his house at unit #12-1131. ... On this day I was carrying the haversack with me and Bok Senang wanted to borrow my haversack that day. I did not ask him why he needed the haversack.

38 So on that day before leaving Bok Senang's house I cleared my belonging inside and I handed over the haversack personally to him. ... **I was staying at Bok Senang's house from Monday till Friday morning ..**

41. I have been having my haversack which is green with linings since 1996. **I only parted with it on the Sunday** when I went to Bok Senang's house...

(Emphasis added)

15. Sharom also referred to his visit to Boksenang's room in the Jelapang Road flat on Friday 19 March. He stated –

21 On the last occasion I was at this place with Bok Senang and another person whom I call as 'Bai'. However I have heard Bok Senang call him 'Bujang'. **This was on the Friday before my arrest.** I went to this place because Bok Senang asked me to go there. At the same time I had run out of heroin supply myself. It was about 8.00 am when I reached Blk 520 Jelapang Road.

22 At about 9.00 am Bai had called Bok Senang and told him that he was downstairs. Bok Senang then went down to meet Bai at the void deck and they came up together. I remained behind in the room. I then saw Bai carrying a red coloured shopping bag. I was smoking heroin which was given to me by 'Saddam' who is also renting another room at the said house. I was also told to go out of the room when Bai and Bok Senang came in. Bok Senang asked me to get out.

23 After about 10 minutes I returned to the room and saw the red shopping bag on the floor of the room. I was aware that there were heroin packets in the red

shopping bag and asked Bok Senang's permission to have a look at the heroin. I took out about three packets of heroin from there and handled them to have a look. This was the first time that I have seen so much heroin. This was the largest amount of heroin that I have seen Bok Senang having. After handling the heroin packets I placed them back into the red shopping bag. The heroin found in my haversack on 20 Mar 99 (Saturday) when I was arrested at Blk 420 Ang Mo Kio Ave 10 looked similar to the one that I saw and handled in Blk 520 Jelapang Road. I believe that these are the same heroin.

(Emphasis added)

16. He added that

25 After being in Bok Senang's for about ten minutes I left the room and went to the next room which was rented out by Saddam. I then smoked heroin with Saddam in his room. Saddam was the one who provided the heroin. When I left Bok Senang's room Bai was there still and was smoking heroin with Bok Senang. When I left Bok Senang's room the three packets which I had handled were still on the floor. I know that there were some more packets of heroin inside the red shopping bag.

17. On 19 March he and Norsila went to the Costa Sands chalets as the guests of Boksenang and his wife who were celebrating their common birthday which falls on 21 March. On 20 March he asked Boksenang for the keys to the flat.

30 Bok Senang asked me why I wanted the keys and I told him that I wanted to get my sachet of heroin which I had left at the kitchen. Bok Senang then took a bunch of keys from his trousers' pocket and handed over to me. There were three keys in the bunch and they were attached to a black bushy key chain. This was the first time that Bok Senang had handed over his house keys to me. Norsila was with me then when Bok Senang handed over the keys to me. ...

31 After taking the keys I left to my sister's house at Blk 360 Tampines Street 34. ... We then proceeded to Blk 86 Bedok North Road and I had my haircut there. After having my haircut we proceeded to Blk 420 Ang Mo Kio Ave 10 in my motor bike.

32 We arrived at Blk 420 Ang Mo Kio Ave 10 at about 7.00 pm and I opened the padlock and the house door using the keys given to me by Bok Senang. In the house I took the heroin out the heroin sachet which I had kept at the kitchen. I then smoked some of the heroin with Norsila. I then split the remaining heroin into two sachets of heroin. I had with me in the white plastic bag some empty sachets for this purpose. I then placed one sachet of heroin in a Marlboro cigarette box. The Marlboro cigarette box was placed back into the white plastic bag. The other sachet was also placed into a Marlboro cigarette box and I kept it with me.

33 Whilst I was doing this Norsila was busy cooking something in the kitchen. Norsila then took a bath and I changed into my new track pants and T-shirt. I did not take a bath. I soaked my old clothing into a pail of water. After changing into my new track pants I tucked the Marlboro cigarette box containing a sachet

of heroin under my pants. After Norsila was ready we left Blk 420 Ang Mo Kio Ave 10. ...

34 We left the house after being there for about 45 minutes and during all the time I was in the house I did not notice the haversack. I did not know where it was placed and never knew that there were drugs in it. When we reached the car park we were arrested.

Arrest of Boksenang

18. Boksenang (also known as "Bob Senang" or "Bob") was not arrested with Sharom. He evaded arrest till 28 July 1999.

19. A cautioned statement was recorded from him on 31 July, on a charge of trafficking the heroin in the flat with Sharom on 20 March. His statement was

I have nothing to say right now. I need time to think about it. The drugs found in my house does not belong to me. I do not know whose drugs they were. That is all.

20. In subsequent investigation statements made on 31 July and 2 August he said that he had not moved into the Ang Mo Kio flat from the time he rented it in February 1999. He and Norsila stayed at a rented room in a flat at Blk 520 Jelapang Road #03-289 ("the Jelapang Road flat") since December 1998. He had allowed Sharom to stay in the Ang Mo Kio flat since February without payment after Sharom told him that he needed to move because the CNB was aware that he was staying and trafficking drugs there at Kim Keat Avenue.

Statement of 11 August

21. Boksenang made a statement on 11 August which he claimed was involuntary and inadmissible. In view of this, a trial-within-a-trial was conducted to determine whether it was admissible. I will refer to Boksenang's evidence first, although he gave evidence after the investigation officer and the interpreter.

22. Boksenang confirmed that prior to 11 August the investigation officer had recorded statements from him, and that those statements were made voluntarily. The statement on 11 August was recorded under different circumstances. Before the recording started Inspector Muruganandam warned him in the presence of the interpreter "You better make your statement properly so that I will have an easy job. If not, I will arrest your wife because she is the second owner. This is the law."

23. He pleaded with the inspector not to arrest his wife because she had given birth three weeks earlier, and she did not know anything about the heroin. The inspector did not relent, and the interpreter Sofia binte Sufri confirmed that his wife could be involved as the second owner of the flat.

24. He thought about his children and was so concerned that no one would look after them if his wife was arrested that he decided to "follow what he told me to do."

25. The inspector referred him to portions of Sharom's statements about the loan of the haversack,

the Jelapang Road flat and the drugs. He told the inspector that all that was untrue, but the inspector dismissed that and told him that he had the power to detain him as long as he wanted. He felt that the inspector wanted from him a statement which was consistent with Sharom's statements, so "I just followed what he told me to do. I do not know what I was doing" and "Just to please him, I just followed whatever he said" although the inspector did not tell him what to say. While the statement was being recorded the inspector comforted him by saying "Don't be afraid. Do co-operate, I can empathise with you. I would let you see your wife. This is special for you as long as you co-operate". The inspector also told him not to be afraid because there was no evidence against him except that the flat was his, and told him that he would try to get the charge reduced to a non-capital charge. In the circumstances, he yielded, and the statement was recorded.

26. Inspector Muruganandam testified that he questioned Boksenang, the questions were interpreted into Malay, Boksenang's answers were interpreted into English, and the statement was recorded in a narrative form. The completed statement was then read back to him in Malay, he was given the opportunity to correct it before he signed it.

27. The inspector agreed with Mr Fernando that he had referred Boksenang to Sharom's statements but said that that took place during the recording of the statement on 2 August and not on 11 August. He also agreed with counsel that Boksenang had protested that he cannot say something that would kill him, except that this did not take place on 11 August and was said on 31 July.

28. The inspector also denied that he threatened to arrest Boksenang's wife, assured Boksenang that there was no evidence against him, or promised to have the charge against him reduced or to give him visiting privileges.

29. The interpreter Sofia binte Sufri corroborated the inspector's evidence that there was no threat made to arrest Boksenang's wife, and no assurance was given that there was no evidence against him. On the reduction of the charge, her evidence was that the inspector did not make any promise and had only advised Boksenang to bring that up with his counsel.

30. I reviewed the evidence and considered counsel's submissions before I ruled on the statements' admissibility. Boksenang had alleged inducement, threat and promise were employed to get him to make a statement that was consistent with Sharom's statements.

31. The inspector had recorded three statements from Boksenang before 11 August, and that on those occasions, he had not used any inducement, threat or promise when he recorded the statements. Sharom's statements were recorded well before Boksenang was arrested on 28 July. If the inspector wanted Boksenang to conform with Sharom's statements, he could have asked him to do that from the time he recorded the first statement, and not wait till 11 August.

32. The inducements, threats and promise were alleged to have been made in the presence of the interpreter, but her evidence was that the inspector did not make any of them.

33. I noted that Boksenang added to his complaints as the *voir dire* went on. It was not raised to the inspector and the interpreter, or in his own evidence-in-chief that the inspector threatened him with indefinite detention if he did not co-operate. It was a serious threat, but Boksenang only mentioned this during cross-examination.

34. After reviewing the evidence, I did not believe Boksenang's complaints. I did not accept that he made his statement on 11 August as a result of any inducement, threat and promise from the inspector, and I found that the prosecution had proved beyond a reasonable doubt that the

statement was a voluntary statement.

35. I therefore admitted the statement in evidence. In this statement Boksenang said

12. I am now referred to a photograph in a album showing a green bag and I am also shown a green bag physically. (Recorder's Note: Accused was shown album showing a green haversack marked as A and also the same green haversack bag seized from accused Sharom Bin Ahmad on 20 Mar 99 at Blk 420 Ang Mo Kio Ave 10). I can identify the bag as that which I have seen Boy Dol carrying with him all the time that I have met him. The bag does not belong to me and I have never taken custody of the bag from Boy Dol at any time. I am very sure that the bag belongs to Boy Dol and I am aware that there were money in the side pocket of the bag when Boy Dol came to see me at Blk 520 Jelapang Road on the Friday before my birthday. I know that there was more than \$1,000/- in the bag and if that is my money why haven't I removed it and kept it with me.

13. Boy Dol visited me at Blk 520 Jelapang Road in my rented room on this day. Boy Dol visited me in the morning at about 9 to 10 a.m. and I was in the room with my wife and I was waiting for the arrival of Boy Dol as he have called me before coming. After Boy Dol arrived I asked my wife to leave the room and wait in the hall. When Boy Dol came to my room he was carrying the same green bag which was shown to me. He had the bag over his shoulders and I also saw him carrying a chrome helmet. After the arrival of Boy Dol in about 20 minutes Bob arrived and he brought with him a fruit carton into my room. Bob had brought inside the fruit carton about 25 packets of heroin. Each packet of heroin weighs about 1 pound or about 450 grams. I know about the weight because I had a digital weighing scale in my room all the time.

14. I received all the 25 packets from Bob for \$2,400 per packet and I paid the cash amount of about \$60,000 for all the 25 packets of heroin. Out of the 25 packets of heroin I gave 10 packets of heroin to Boy Dol which I sold at \$3,500 per packet. I saw Boy Dol taking the ten packets of heroin from the fruit carton and placing it into the green bag. When Boy Dol gave the money for the ten packets of heroin I saw him take the money from the side pocket of the green bag. I saw him counting the money in front of me when he paid me. After that I notice that he had a balance of about \$1,000 or more and placing this money in the green bag. I also saw Boy Dol take the ten packets of heroin straight from the carton and placing them one by one inside the green bag. All the packets of heroin came in a plastic packet wrapping.

15. At the time when I was in the room with Boy Dol and Bob my friend Saddam Hussain who is staying in the next room also came over and I sold him two packets of heroin from the same consignment. I sold the two packets of heroin for \$3,500 each packet. Saddam Hussain paid me only \$5,000 and he owed the balance of \$2,000 to me. After the transaction with Saddam Hussain he left the room. Left in the room were Boy Dol, Bob and myself only. The three of us then smoked some heroin in the room using Chasing the Dragon method. We took some heroin from the packets of heroin which Bob brought in the fruit carton to smoke. After this Boy Dol left with the green bag filled with ten packets of heroin which he had taken from the fruit carton. Boy Dol is aware that I am getting the heroin from Bob but he cannot negotiate directly with Bob as I am the one who

would deal with Bob.

16. When Boy Dol was leaving my room the ten packets of heroin I warned him not to place the heroin in my flat at Blk 420 Ang Mo Kio Ave 10 #12-1131. I advised him to place it in Surrey Mansion which is near Newton. I know that Boy Dol has an apartment at Surrey Mansion. When I told Boy Dol not to put the heroin packets which he had carried in the green bag in my flat at Blk 420 Ang Mo Kio he agreed.

36. On this evidence the prosecution charged Sharom and Boksenang that they

on or about the 19th day of March 1999, in Singapore, were party to a criminal conspiracy, and in such capacity, agreed with one another to do an illegal act, namely to traffic in diamorphine, a controlled drug specified in Class A of the Misuse of Drugs Act Chapter 185, whereby (they) were both in possession of 60.17 grams of diamorphine at Block 420 Ang Mo Kio Ave 10 #12-1131 for the purposes of trafficking, an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act, and (they) have thereby committed an offence punishable under section 120B(1) of the Penal Code.

37. The person referred to as "Saddam" or "Saddam Hussain", who is actually Mohamed Hussain bin Abdul Rahman was called as a witness but he refused to testify. The person referred to as "Bai" or "Bob" who was established to be Zakaria bin Hashim was not a witness as he was not apprehended.

Defence of Sharom

38. Sharom's case was that he was staying at a rented room in Blk 195 Kim Keat Ave at the time of his arrest. He was staying there with his girlfriend Norsila since January 1999 after he failed to report for urine tests.

39. He had known Boksenang since 1996 and he also knew Boksenang's wife Lisfah, whom he knew as "Adik", and Lisfah's sister Hamidah (or "Midah").

40. He had been to Boksenang's room at Jelapang Road, the last occasion being on 19 March 1999, and he had also been to Boksenang's Ang Mo Kio flat. He denied Boksenang's claim that he and Norsila were occupying the Ang Mo Kio flat and asserted instead that Boksenang, Lisfah and Hamidah stayed there.

41. The first occasion that he was at the Ang Mo Kio flat was on Sunday 14 March after he and Norsila met Boksenang at the eve of a wedding celebration at Lorong Ah Soo the previous night. On Sunday morning Boksenang invited him and Norsila to the Ang Mo Kio flat. They went to the flat in the morning where they met Boksenang, Lisfah, Hamidah, Mohamed Hussain and his girlfriend. He and Norsila were at the flat till about 4-5 pm. When they were about to leave the flat, Boksenang asked to borrow the haversack he was carrying. This was a haversack that he usually carried with him to hold his belongings and Norsila's belongings. Although Boksenang did not say why or how long he wanted the bag, he lent it to him.

42. The next occasion he was at the Ang Mo Kio flat was on Thursday, 18 March. He and Norsila went there on Boksenang's invitation. They spent the night there with Boksenang, Lisfah and Hamidah. On

Friday morning Boksenang told him he would be going to the Jelapang Road flat and he decided to go there too because he want to replenish his stock of heroin from Mohamed Hussain.

43. He left the Ang Mo Kio flat on his motor cycle and made his way to Jelapang Road while Boksenang and Lisfah went there in a taxi. Norsila and Hamidah remained in the Ang Mo Kio flat.

44. He met Boksenang and Lisfah at the Jelapang Road flat where Mohamed Hussain had rented another room. After entering the flat he slept in Boksenang's room till Boksenang woke him and told him his friend was at the foot of the block. Boksenang left the flat and returned with the friend, Bai, whom he had seen before, but they were not acquainted. Bai was carrying a big red plastic bag.

45. Boksenang and Bai went into Boksenang's room, and he went to Mohamed Hussain's room. He smoked heroin with Mohamed Hussain for about 10-15 minutes before returning to Boksenang's room. He saw packets of heroin placed on the plastic bag and examined three of the packets. After handling them he wiped the packets, put them back where he found them and went back to Mohamed Hussain's room. He spoke with Mohamed Hussain for a time, and when Mohamed Hussain appeared intoxicated, he returned to Boksenang's room. He saw three packets on the floor, and went back to Mohamed Hussain's room and smoked more heroin till he fell asleep.

46. He slept till Norsila called him on his handphone. After speaking to her, he left the flat and returned to the Ang Mo Kio flat. Throughout his time at the Jelapang Road flat he did not see his haversack.

47. He had a quick meal at the Ang Mo Kio flat and then left with Norsila. They went to Norsila's mother's house at Teban Gardens and from there they made their way to the Costa Sands chalets, arriving at about midnight.

48. On Saturday afternoon he told Boksenang that he wanted to go to the Ang Mo Kio flat to retrieve the sachet of heroin he had kept in the kitchen. He had obtained this sachet from Mohamed Hussain at the Jelapang Road flat on the day before, and had kept the sachet at the flat so that his friends at the chalet would not consume it. Boksenang handed him the keys to the flat, the first time that Boksenang lent them to him.

49. He and Norsila left the chalets. First they went to visit his sister at Tampines, then they went to the Tampines Mall where he and Norsila bought clothes for themselves, and then they went to Bedok North where he had a haircut before they returned to the Ang Mo Kio flat.

50. They were in the flat for less than an hour. Norsila tidied up the kitchen and warmed up some food. She had a shower and they put on the new clothes they bought and soaked the clothes they had worn in pails. He retrieved the plastic bag from the kitchen. Beside the sachet of heroin, there was a weighing scale and 21 empty sachets in the bag. He had these items because he sold heroin to friends when he needed money and used the scale to measure the heroin. He divided the sachet into two parts. One part was to be taken to the chalets while the other part was to be kept in the kitchen. While they were in the flat he and Norsila smoked heroin.

51. They received a call from Boksenang who asked them to return to the chalet. He replaced the plastic bag and its contents to its depository in the kitchen, and placed the portion of heroin intended to be brought to the chalets in a cigarette box that he was carrying. They then left the flat to return to the chalets, only to be arrested at the car park.

52. When he was arrested, he lied about where he had come from because he was afraid that they

would discover the heroin and the scale in the kitchen of the flat.

53. When he was brought back to the flat the haversack was brought in front of him. The contents of the plastic bag were also shown to him. He admitted that the haversack and the drugs and weighing scale in the kitchen were his but denied ownership of the drugs in the haversack.

54. He explained that when he saw the haversack and its contents, he knelt down and almost cried because he was in a shock. He told the investigation officer at the flat that the heroin in the haversack belonged to Boksenang because the heroin was of the same colour as the heroin he saw in the Jelapang Road flat, therefore he suspected that the drugs were Boksenang's.

55. His counsel brought him through parts of the statements recorded from him. He was referred to his cautioned statement where he said he had placed his haversack in the Ang Mo Kio flat the Friday before his arrest. This was inconsistent with paragraphs 38 and 41 of his investigation statement and his evidence in court that he lent the haversack to Boksenang on Sunday. He maintained that he said Sunday and not Friday when his cautioned statement was recorded.

56. His attention was also drawn to paragraph 38 of his statement where he said "I was staying at Bok Senang's house from Monday till Friday morning" which was at variance with his oral evidence that he had only spent one night there. He said that was his mistake, and reiterated that he only spent Thursday night there.

Boksenang's defence

57. He was married to Lisfah on 9 December 1998. After they were married they rented and stayed in a room in the Jelapang Road flat. Mohamed Hussain rented another room in the same flat.

58. He also rented the Ang Mo Kio flat from the HDB because he wanted a place of his own to stay in. He was allotted the flat and received the keys on 1 February 1999. After taking possession of the flat, it was substantially furnished. There were a grille gate, kitchen cabinets, linoleum flooring, a cupboard, a television set, refrigerator, washing machine, a bed, mattresses and pillows.

59. However he and Lisfah did not move into the flat because he had resumed his heroin habit, and was afraid that he would be traced to his rented flat and be tested for drugs. He allowed Sharom to occupy the flat because Sharom needed a place to stay, and he gave him a set of keys to the flat.

60. He knew Zakaria bin Hashim as "Bai" or "Bob". He bought heroin from Bai for his own consumption, and Mohamed Hussain was also a customer of Bai. Bai would deliver drugs to the Jelapang Road flat.

61. During the period 14-19 March he was not at the Ang Mo Kio flat. He did not meet Sharom on Sunday 14 March and did not borrow his haversack. He met Sharom on Friday 19 March when Sharom came to the Jelapang Road flat at 9-10 am. Sharom was there to meet Mohamed Hussain, and was carrying a haversack when he arrived.

62. After Sharom arrived at the flat, Bai also came to the flat. Bai had come by prior arrangement because he wanted to buy a sachet of heroin from Bai for his own consumption. Bai was carrying a fruit carton which he took into his room. Subsequently Mohamed Hussain joined him, Bai and Sharom in the room.

63. Bai handed him the sachet of heroin he had wanted. Sharom and Mohamed Hussain also bought heroin from Bai. Sharom bought 10 packets and placed them in his haversack. Mohamed Hussain bought 2 packets and returned to his room, but Sharom remained in the room with him and Bai and the three of them smoked heroin together. After about 15 minutes Sharom left his room and went to Mohamed Hussain's room where he remained till he left the flat in the afternoon, taking his haversack with him. As Sharom was leaving, he told Sharom not to take the haversack to the Ang Mo Kio flat, and Sharom assured him he would not do that.

64. That night he, Lisfah, Sharom and Norsila were at the chalets, and they all spent Friday night there.

65. He did not instruct Sharom to go the Ang Mo Kio flat on Saturday. Sharom told him that he and Norsila were going to the flat, but he did not join them. He and Lisfah left the chalets when CNB officers raided the place and he heard about Sharom's arrest from his friends the next day. He and Lisfah stayed at Jelapang Road flat for 2-3 days then moved out and went into hiding from the CNB officers.

66. He was taken through his investigation statements. He qualified the reference to there being 25 packets in Bai's fruit carton. He said that he did not count them and had mentioned a number on the inspector's instruction. He also did not know the weight of a packet but was told that by the inspector.

67. More importantly, he denied that he bought 25 packets of heroin from Bai for \$2,400 a packet, but the inspector had insisted that he bought them. He also did not sell packets of the heroin to Sharom and Mohamed Hussain, but the inspector insisted that Bai did not exist, and told him to admit that he sold the heroin to Sharom and Mohamed Hussain, and he complied so that his wife would not be arrested and would be able to look after their children.

Evaluation of the defences

Sharom

68. Sharom denied Boksenang's assertion that he was the occupant of the Ang Mo Kio flat. He only admitted to having been there on Sunday 14 March, Thursday and Friday 18-19 March and Saturday 20 March.

69. I did not accept that his access to the flat was limited to these three occasions. When he was arrested he admitted the keys to the flat he was carrying were his. He had kept his sachet of heroin, weighing scale and empty sachets in the kitchen of the flat. His clothings and Norsila's clothings were soaking in pails in the toilet of the flat and the cover for his motor cycle was found in the hall. The evidence shows that he was not just an occasional invitee to the flat, but that he and Norsila had the use of the flat to themselves or together with Boksenang, Lisfah and Hamidah.

70. I also do not accept his evidence that he had borrowed the keys and had gone to the flat on 20 March to retrieve his sachet of heroin. He claimed that he obtained the keys from Boksenang for that purpose in the presence of Norsila. This was contradicted by Norsila. She said that Boksenang had requested Sharom to go to the flat to throw away some stale rice and that she did not know that Sharom's purpose for going to the flat was to retrieve the heroin.

71. He attempted to minimise his connection with the flat by retracting the admission in paragraph 38 of his investigation statement that he was staying there from Monday till Friday morning and claimed that he only spent Thursday night there. His explanation that he had made a mistake in his statement was not credible to me. A person who had spent one night in a flat may not remember if it was Thursday night or some other night, but he would not say that he stayed there "from Monday till Friday".

72. There were also shortcomings in his claim that Boksenang had borrowed his haversack. It was a bag that he was using to carrying his belongings as well as Norsila's belongings. It was an ordinary haversack which should be available easily and would not cost very much. Yet according to him, Boksenang asked to borrow it from him without saying why he needed it and when he would return it, and he lent the bag to Boksenang with no questions asked.

73. The fact that Sharom mentioned in his cautioned statement that he placed the bag in the Ang Mo Kio flat on the Friday before his arrest (the day Bai delivered drugs to the Jelapang Road flat) was significant. He claimed that he had said Sunday, and not Friday, when he made the statement, but that was contradicted by the interpreter who maintained that he said Friday and had confirmed that when the statement was read back to him before he signed it.

74. I was mindful that Norsila also said that Sharom had left the haversack in the Ang Mo Kio flat on Sunday. She mentioned in her statement –

On that day when I took the bike with Sharom, I was carrying the haversack which was found at Blk 420 Ang Mo Kio 10 with the 10 packets of heroin. This haversack belongs to Sharom and he has been carrying it for about two weeks. I normally place my wallet, my jacket and asthma medicines in the haversack. Sharom normally keeps his personal belonging like wallet and keys to the house in Blk 195 Kim Keat inside this haversack. On that Sunday morning we chit chatted and smoked heroin in Abang Bok's house. I also smoked heroin with Abang Bok, Sharom and Saddam. At about 7.00 p.m. Sharom told me to remove my belonging from the haversack and I did not ask him why and **neither did he tell me so.**

(Emphasis added)

but in her evidence in court, she said that Sharom told her that Boksenang wanted to borrow the haversack. This contradiction raised substantial doubts on the veracity of her evidence on the haversack.

Boksenang

75. Boksenang also sought to distance himself from the Ang Mo Kio flat. He claimed that although the flat was substantially furnished, he had not moved in.

76. He said he did not want to move in because he was consuming drugs at that time. Unlike Sharom, he did not have to report for urine tests. Nevertheless, he said that he was worried that the CNB may make a random check on him at the flat because he has a drug record. That was his only reason not to move into the flat, but his wife Lisfah did not know about it. She said that they did not move in because they had already paid rent for the Jelapang Road room. When it was established that the rent was not paid in advance, but was paid at the end of each month, she said they stayed on at

Jelapang Road because she wanted someone to accompany her as she was pregnant. She did not say anything about Boksenang's fear of arrest, and Boksenang did not know that she did not want to move because she wanted company during her pregnancy.

77. The undisputed facts were that their clothings were kept in the flat, her clothes were hanging up to dry, her talcum powder was on the bedside table and Hamidah's passport was also in the flat. All this evidence corroborated Sharom's and Norsila's evidence that Boksenang, Lisfah and Hamidah were at the flat.

78. I also found that Boksenang was telling the truth when he made his statement of 11 August.. I rejected his claim that the recording officer had threatened to arrest his wife, to detain him indefinitely, assured him there was no evidence against him, promised to get his charge reduced, or offered him visiting privileges to obtain that statement.

79. This was the third investigation statement recorded from him. The investigation statements were recorded by the inspector asking questions, and recording the answers in a narrative form. Each statement covered distinct events, and in the statement of 11 August Boksenang did not change what he had said in his earlier investigation statements.

80. Boksenang claimed that before the statement of 11 August was recorded, the inspector told him what Sharom had said in his statements, and he had made his statement to appease the inspector.

81. However Sharom in his statements claimed that Boksenang had borrowed the haversack, and he did not admit to buying heroin from Boksenang at Jelapang Road on 19 March. Boksenang's admissions in his statement of 11 August did not support Sharom's statements, and could not have been made to satisfy the inspector.

82. I took stock of the evidence. With regard to Sharom the uncontroverted evidence was that the 10 packets of drugs were in his haversack, that he had the keys to the flat. By his own admission, he knew the contents of the haversack to be heroin. I found that he did not lend the haversack to Boksenang, and that he had greater access to the flat than he admitted to. I also found that he had bought the 10 packets of heroin from Boksenang at the Jelapang Road flat and that they were in his possession when they were recovered in his haversack in the Ang Mo Kio flat. In any event, he had not rebutted the presumption arising under s 18(c) of the Misuse of Drugs Act from his possession of the flat keys, that he was in possession of the heroin. He also did not rebut the presumption under s 17 that the large amount of heroin was in his possession for the purpose of trafficking.

83. With regard to Boksenang, the most incriminating evidence against him was his admission that he bought 25 packets of heroin from Bai and sold 10 of them to Sharom.

84. There was no direct evidence of a criminal conspiracy between them to traffic the drugs as contemplated in the joint charge they faced. I had raised the question to counsel whether on the evidence, there was a basis to infer such a conspiracy, and also whether the evidence disclosed that the two accused committed separate offences, and invited their response.

85. After reviewing the evidence and the submissions, I could not accept the prosecution's argument that

Both the first and second accused persons are close friends and not mere acquaintances as would they have this Court believe otherwise. The "renting out" (without authorisation of HDB) of the fully furnished and recently procured

Ang Mo Kio flat by the second accused to the first accused can only give rise to only one satisfactory explanation – there was *consensus ad idem* between both accused that they were going to use the Ang Mo Kio flat as their joint operation centre for their drug trafficking activities while maintaining residences at Kim Keat and Jelapang Road as hide-outs or stores.

I found that the evidence did not lead to an irresistible inference of a criminal conspiracy as alleged in the charge. Instead there was evidence that Sharom had bought 10 packets of heroin and kept them in his haversack together with the two sachets, and evidence that Boksenang sold them to him. I was mindful that their accounts of the events at the Jelapang Road flat differed in that Sharom said that Bai brought the heroin in a red plastic bag, and Boksenang said he carried them in a fruit carton, but I did not regard that as material.

86. Consequently, I amended the charge against them into separate charges that

You, Sharom bin Ahmad, are charged that you on or about the 20th day of March 1999, at about 8.30 pm at Block 420 Ang Mo Kio Ave 10 #12-1131, Singapore, did traffic in a controlled drug specified in Class A of the Misuse of Drugs Act Chapter 185 by having in your possession for the purpose of trafficking not less than 60.17 grams of diamorphine without any 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) and punishable under section 33 of the said Act.

and

You, Boksenang Bin Bocheh, are charged that you on or about the 19th March 1999, between 9.20 am and 11 am at Block 520 Jelapang Road #03-289, Singapore, did traffic in a controlled drug specified in Class A of the Misuse of Drugs Act Chapter 185 by selling not less than 59.94 grams of diamorphine to one Sharom bin Ahmad without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) and punishable under section 33 of the said Act.

87. The drugs for the charge against Sharom was the aggregate of the 10 packets and two sachets in the haversack, and the drugs in Boksenang's charge was the 10 packets in the haversack.

88. I gave counsel the opportunity to recall and re-examine the witnesses, call additional witnesses and to submit on the amended charges, but the offer was not taken up. In the circumstances, I found each accused guilty on the charge he faced, convicted him, and imposed the mandatory death sentence.

Kan Ting Chiu

Judge

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