

Lim Choo Song v Public Prosecutor
[2002] SGCA 16

Case Number : Cr App 26/2001
Decision Date : 19 March 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : James Bahadur Masih (James Masih & Co) and Lee Yih Gia (Ramdas & Wong) (both assigned) for the Appellant; Jaswant Singh and Hwong Meng Jet (Deputy Public Prosecutors) for the Respondent
Parties : Lim Choo Song — Public Prosecutor

*Criminal Law – Statutory offences – Misuse of Drugs Act – Conviction for importing drugs
– Admission of possession in affidavit supporting criminal motion to adduce fresh evidence
– Withdrawal of criminal motion – Effect of withdrawal of criminal motion – Whether appellant may still contend there exists doubt whether he imported the drugs – ss 7, 18(2), 21 Misuse of Drugs Act (Cap 185, 1998 Ed)*

(delivering the grounds of judgment of the court): The appellant, Lim Choo Song, was charged with the following offence:

That you, LIM CHOO SONG

On or about the 16th day of June 2001, at or about 11.10p.m., in a motor car bearing registration number SCV 7067K at the Car Arrival Inspection Bay, 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, 2 packets of granular substances containing not less than 23.43 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 said Act.

After a trial, the appellant was convicted and given the mandatory sentence for importing the stated quantity of diamorphine. He appealed against his conviction. After considering all the evidence, we dismissed his appeal. We now give the reasons for our decision.

Background

When the appellant's motor vehicle, bearing registration number SCV 7067K, was stopped by Central Narcotics Bureau ('CNB') officers at the Woodlands Checkpoint in Singapore on 16 June 2001, he was the only person in the car. He had just driven from Johore Bahru to Singapore. When his car was searched at a car inspection pit, Sergeant Choo Thiam Hock ('Sgt Choo') discovered a plastic bag in the arm-rest compartment of the rear seat of the car. Inside the bag were two brown envelopes containing a granular substance. The appellant was arrested and the bag and envelopes were seized.

Tests revealed that the two packets seized by the CNB contained not less than 23.43g of diamorphine with a confidence level of 99.9999%.

After his arrest, the appellant gave a number of statements to CNB officers. As he spoke Hokkien, his statements, and where relevant, questions posed to him and his answers, were translated by an interpreter.

About two hours after his arrest, the appellant's first statement was recorded when he was questioned by Inspector Omer Ali Saifudeen with the assistance of his interpreter, Sgt Choo. The English transcript of part of this statement is as follows:

Q What is this? (pointing at the bundle)

A I think drugs ...

Q What is it for? Why did you bring it in?

A 'Ah Meng' asked me to bring in and give to 'Ah San'.

Q How much does a packet like this cost?

A I don't know. They gave me 1,000 ringgit to bring this in.

The appellant was offered an opportunity to make a statement when a charge was framed and read to him pursuant to s 122(6) of the Criminal Procedure Code (Cap 68). The consequences of remaining silent and the fact that the penalty, if convicted, was death, was explained to him. An interpreter, Mr Wu Nan Yong, was present. The appellant elected to say nothing.

The appellant's next statement was recorded with the assistance of an interpreter, Mr Tan Chee Leong, on 21 June 2001. It included the following paragraphs:

*1. On 16 June 2001, at about 11.10pm, I was arrested at the Woodlands Checkpoint. I was in my car, a white BMW SCV 7067K. At the rear seat, inside the armrest compartment was a plastic bag. **I knew there was drug inside the plastic bag** .*

2. On 16 June 2001, at about 4pm, I drove my car ... into Johore ... I went horse-betting at Merlin Tower ... Then I proceeded for a hair-cut. At this point in time, I received a call on my handphone from a man known as Ah Meng. Ah Meng asked me to wait for him at the carpark in Jalan Ah Fook at 8-plus pm. He also asked me to help him bring something into Woodlands, Singapore. He promised me ringgit one thousand for the effort ...

*3. At 8-plus pm, I went to the carpark in Jalan Ah Fook ... Ah Meng came in a black car. I saw Ah Meng approaching towards my car with a plastic bag in his hands. He opened the back door of my car ... opened the armrest compartment at the rear seat, placed the plastic bag inside it. He asked me to bring the thing out. **On my part, I knew it was drug, possibly 'bae hoon'** .*

5. Ah Meng asked me to hand over the thing to a man known as Ah San. I was told to drive my car to Woodlands KFC carpark. I do not know Ah San or his contact number. Ah San would be the one to identify me. He knew my car number.

6. At 10-plus pm, I drove my car to the Woodlands Checkpoint ... After that, I drove my car into Singapore ...

8 ... Upon reaching the Arrival Inspection Bay, I was stopped by a Malay CNB officer ...

*13. The officers then forcefully broke open the cover of the armrest compartment. They then found the plastic bag inside. They took out the plastic bag. They asked me if there were **any more** drugs. I said no ... [Emphasis is added.]*

On 22 June 2001, the appellant's fourth statement was recorded with the assistance of Mr Tan Chee Leong at around 2.10pm. In it, the appellant stated, inter alia, as follows:

21. My previous statement of 21/6/2001 was read back to me in Hokkien by a Chinese interpreter. I affirm the statement to be true and accurate. I do not wish to add or change anything ...

*29. When I was arrested, the Indian officer asked me what are these things, pointing at the two packets of wrapping. **I said drug** . He then took a knife and cut open one of the wrappers. He again asked me what are these. **I said drug** . I told him Ah Meng asked me to give to Ah San. **I told him Ah Meng promised to give me ringgit one thousand** . [Emphasis is added.]*

The only issue at the trial was whether the appellant knew that the two packets seized from him at Woodlands Checkpoint contained drugs. The prosecution pointed out that apart from the evidence that the appellant was aware that he had drugs in his possession, the effect of the presumptions in ss 18(2) and 21 of the Misuse of Drugs Act was that he was presumed to be in possession of the envelopes seized from him and that he knew that those envelopes contained drugs.

At the close of the prosecution's case, the appellant's counsel submitted that there was no case to answer. However, the trial judge ruled that there was a case to answer. When informed of this, the appellant elected not to give evidence in court and no other evidence was tendered to advance his case. All the same, his counsel pointed out that he should not be convicted because there was a doubt as to whether or not he was the person who was arrested at Woodlands Checkpoint on 16 June 2001 and there were inaccuracies in the recording of his statements to CNB officers.

The appellant's counsel pointed out that apart from Assistant Superintendent Soh Thiam Loon, no one had identified the appellant as Lim Choo Song or as the person mentioned in the statements of the witnesses. It was also alleged that the appellant's passport and identity card were not identified in court by Sgt Ng Beng Chin, the officer who seized these documents. However, the trial judge said that there was no doubt that the appellant was the person arrested at Woodlands on 16 June 2001. To begin with, when the charge was read to the appellant, he did not deny that he was Lim Choo Song. In fact, he claimed trial. Furthermore, the appellant's counsel, who conceded that the appellant's statements were admissible, posed questions to Inspector Omer Ali Saifudeen and Sgt Choo on the basis that it was the accused who made the statements in question. During cross-examination, there was no dispute that the appellant was the person arrested for having drugs in his car. The trial judge also noted that the appellant had made it clear in his third statement to CNB officers on 21 June 2001 that he was arrested at Woodlands Checkpoint on 16 June 2001. In his fourth statement, which was recorded on 22 June 2001, the appellant admitted that he was driving the car bearing registration number SCV 7067K when he was arrested.

As for the attacks on the accuracy of the interpretation of the statements, it was alleged that the appellant did not say in his first statement that the packets seized from him contained drugs. He had used a Hokkien word 'tok pin', which meant poisonous substances and not drugs. The interpreter,

Sgt Choo, disagreed. However, Mr Tan Chee Leong, who interpreted the appellant's statements on two other occasions accepted, when cross-examined, that 'tok pin' could mean either poisonous substance or drugs. As for the appellant's third statement, which was recorded on 21 June 2001, the appellant's counsel contended that the appellant had not told the interpreter, Mr Tan, that he knew that there were drugs in the plastic bag or that it was possibly 'Bae Hoon'. However, Mr Tan disagreed and said that if the accused had not used that Hokkien phrase, it would not have been recorded in the statement. These alleged inconsistencies were not such as to persuade the trial judge that the appellant had no case to answer.

The trial judge held that in view of the evidence tendered by the prosecution, the accused's statements and his silence, the prosecution had proved its case beyond reasonable doubt.

The appeal

In his written submissions for the appeal, the appellant's counsel argued that the appeal should be allowed because the trial judge failed to give the appellant the benefit of the doubt that he imported the drugs in question into Singapore on 16 June 2001 and failed to regard the appellant's statements to CNB officers as unreliable as their accuracy had been challenged. However, events which unfolded before the hearing of the appeal made it impossible for the appellant's counsel to rely on these grounds.

On 27 February 2002, the appellant filed CrM 4/2002 for the purpose of obtaining an order that he be allowed to adduce fresh evidence to prove his innocence. For this purpose, he filed an affidavit on 26 February 2002, in which he stated that with regard to the matters set out in the charge against him, he was in fact gathering evidence for the CNB. However, when the criminal motion was heard, counsel for the appellant informed the court that he had instructions to withdraw the criminal motion. Leave was given to the appellant to withdraw the criminal motion and we proceeded to hear the appellant's appeal against his conviction.

By withdrawing his criminal motion to adduce further evidence, the appellant placed himself in a difficult position because he had, to date, presented no evidence that he had been authorised to bring the drugs in question into Singapore. The appellant's counsel, Mr James Masih, accepted that the appellant had admitted in his affidavit filed on 26 February 2002 that the drugs were in his possession, albeit for a different purpose. As such, the appellant was no longer in a position to contend that there was a doubt as to whether he had brought the drugs into Singapore. No other argument was advanced as to why the appeal should be allowed. As such, the appellant's appeal was dismissed.

Outcome:

Appeal dismissed.