

Public Prosecutor v Tang Hai Liang
[2011] SGHC 1

Case Number : Criminal Case No 31 of 2010
Decision Date : 03 January 2011
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Mohamed Faizal and Sharmila Sripathy (AG's Chambers) for the prosecution;
Harbajan Singh (Daisy Yeo & Co) and Ranadhir Gupta (A Zamzam & Co)
(assigned) for the defendant.
Parties : Public Prosecutor — Tang Hai Liang

Criminal Law

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 26 of 2010 was dismissed by the Court of Appeal on 06 July 2011. See [\[2011\] SGCA 38.](#)]

3 January 2011

Chan Seng Onn J:

Introduction

1 The accused, Tang Hai Liang, was charged that he:

on the 15th day of April 2009, at or about 1.20 p.m., at Block 133 Lorong Ah Soo #02-428, Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in [his] possession for the purpose of trafficking, one hundred and thirty-six (136) packets containing a total of 1,004.69 grams of granular/powdery substance, which were analyzed and found to contain not less than a total of 89.55 grams of Diamorphine, without any authorization under the said Act or the Regulations made thereunder, and [he had] thereby committed an offence under section 5(1)(a) read with section 5(2), and punishable under section 33 of the said Act.

Facts

2 The facts surrounding the arrest of the accused, which were not challenged, were summarised in the Prosecution's Closing Submissions:

B. FACTS OF THE CASE

3. ... Acting on information received, a party of officers from the Central Narcotics Bureau ("CNB") had, on 15 April 2009, at or about 1.05 p.m., been involved in an operation that led to the arrest of the Accused and one Lim Kee Wan at the void deck of Block 129, Lorong Ah Soo.

4. Upon his arrest, the Accused was escorted to his residence at Block 133 Lorong Ah Soo, #02-248 ("the Flat"). Access to the Flat was gained through the use of keys which had been found on the Accused upon his arrest at the void deck.

5. Once in the Flat, the Accused was asked to lead the officers to his bedroom ("Bedroom 3"), which he did. A search of the air-conditioner in Bedroom 3 by SSgt Derek Wong Ruijun ("SSgt Derek") in the Accused's presence, revealed the existence of, *inter alia*, a paper bag containing two and five packets of substances believed to be heroin (**Exhibits P134** and **P135** respectively) and a digital weighing scale (**Exhibit P168**). The Accused acknowledged, upon such recovery, that the items recovered were his.

6. Sometime thereafter, the Accused was brought into the kitchen. During an ensuing search of the kitchen by ASP Teng Jit Sun Jack ("ASP Jack") in the Accused's presence, a vacuum cleaner stored in a kitchen cabinet was recovered. It was later discovered that the said vacuum cleaner contained five packets *each* containing 20 smaller packets of granular substance (**Exhibits P158** to **P162**), and one packet containing 19 smaller packets (**Exhibit P163**) of granular substance.

7. Thereafter, SSgt Ong Teng Wei Henry ("SSgt Henry Ong") asked the Accused if he had any other drugs to surrender. After considering the matter for a while, the Accused motioned to the cooker hood. As SSgt Henry Ong did not know precisely where the Accused had been motioning towards, he attempted to press a button at the cooker hood area, at which point of time another packet containing what was later ascertained to be 10 smaller packets of heroin (**Exhibit P164**) fell onto the kitchen stove.

8. The exhibits stated above were safeguarded [by] Senior Staff Sergeant Heng Chin Kok ("SSSgt Heng") pending the arrival of the investigation officer. In the interim, at or about 3.20 pm, Inspector Eugene Tan Jun Hao ("Insp Eugene Tan") recorded a contemporaneous statement from the Accused (**Exhibit P110**). In the said statement, the Accused was shown the seized drug exhibits and asked what they were. The Accused confirmed that the seized packets of white granular substances contained heroin. He also informed Insp Tan that he had "*roughly 137 packets of heroin*[]" and that they belonged to him. It would be significant to note that the brown paper bag had not been taken out of the vacuum cleaner at the time of such questioning.

9. Once the Investigation Officer, Inspector Aaron Tang Zhixiong ("Insp Aaron Tang") arrived at the scene (at about 4.10 p.m), he supervised the photo-taking process. He was assisted by Inspector Chee Tuck Seng ("Insp Chee") and Senior Staff Sergeant Stanley Tan ("SSSgt Stanley Tan"). When they eventually left the Flat with the Accused, SSSgt Stanley Tan was in possession of the seized exhibits until about 7.25 pm, when he handed custody of the same to Insp Aaron Tang at the Police Cantonment Complex ("PCC").

10. At about 8.15 pm, the Accused was brought to the PCC Exhibit Management Room. The seized drug exhibits were then weighed in his presence. Weighing of the drug exhibits ended at about 8.30 pm, and the said exhibits were thereafter placed in a locked safe.

C. STATEMENTS OF THE ACCUSED

11. In the course of investigations, a number of statements were taken from the Accused. For the purposes of these proceedings, apart from the statement given to Insp Eugene Tan (considered earlier), five other statements are relevant. The essence of these five statements given by the Accused can be found below:

- a. In his cautioned statement to Insp Aaron Tang on 16 April 2009, at or about 0130 hrs ("**cautioned statement**") (**Exhibit P126**), the Accused admitted, *inter alia*, that he was "*caught with his buyer*" at the void deck of the Flat and that the heroin subsequently found in his Flat, was his. He also stated that his girlfriend, one Chua Wei

Kim (who had been arrested with him), was not involved in his trafficking activities;

- b. In his first long statement to Insp Aaron Tang on 20 April 2009, at or about 2044 hrs ("**first long statement**") (**Exhibit P127**), the Accused intimated that he had turned to "*selling heroin to support myself*". He also confirmed that the seven packets of white granular substances found in the air-conditioner (namely **Exhibits P134** and **P135**) had been placed by him in the air-conditioner and were intended for sale. He also confirmed that the weighing scale that had been found in the air-conditioner had been used by him to weigh the heroin. The Accused also stated that he had kept heroin in the vacuum cleaner (**Exhibit P185**) because he was of the view that no one used or checked the said vacuum cleaner;
- c. In his second long statement to Insp Aaron Tang on 21 April 2009, at or about 1040 hrs ("**second long statement**") (**Exhibit P128**), the Accused confirmed that all the packets of heroin found in the vacuum cleaner (*i.e.* the 119 packets marked as **Exhibits P158 – P163**) belonged to him and that he had concealed them in the said vacuum cleaner (*i.e.* **Exhibit P185**). Further, all the said packets were intended for sale. He also confirmed surrendering the ten packets concealed in the cooker hood (*i.e.* **Exhibit P164**), and informed that these packets were similarly intended for sale. The Accused also explained that he had placed the heroin in three different locations because they served distinct functions in his supply chain: depending on *which would be convenient*, when there were orders from his clients, he would take the drugs from either the air-conditioner or the cooker hood, with the drugs concealed in the vacuum cleaner being the replacement stock should either the drugs in the air-conditioner or the cooker hood run out. The Accused also furnished information as to the price he charged individual clients for heroin. He also stated that he had 3 to 4 regular clients purchasing heroin from him.
- d. In his third long statement to Insp Aaron Tang on 21 April 2009, at or about 1510 hrs ("**third long statement**") (**Exhibit P129**), the Accused explained how he obtained the heroin from his supplier, one "*Ah Heng*". He also reaffirmed the contents of the contemporaneous statement recorded by Insp Eugene Tan (**Exhibit P110**); and
- e. In his fourth long statement to Insp Aaron Tang on 30 October 2009, at or about 1135 hrs ("**fourth long statement**") (**Exhibit P137**), the Accused reaffirmed that all the drugs found in the vacuum cleaner, cooker hood and air-conditioner were intended for sale.

[emphasis in original]

3 All 136 packets of white granular substance seized during the operation were sent to the Health Sciences Authority for analysis. Analyst Ms Lim Jong Lee Wendy ("Ms Lim") testified that these, in total, were found to contain no less than 89.55 grams of diamorphine, *ie*, the amount disclosed in the charge. The breakdown was also set out in the Prosecution's Closing Submissions:

- a. **Exhibit P158** (20 packets in the vacuum cleaner marked collectively as "A1A1A1"): contained not less than 13.28 grams of Diamorphine (see **Exhibit P69**);
- b. **Exhibit P159** (20 packets in the vacuum cleaner marked collectively as "A1A1B1"): contained not less than 13.31 grams of Diamorphine (see **Exhibit P70**);

- c. **Exhibit P160** (20 packets in the vacuum cleaner marked collectively as "A1A1C1"): contained not less than 13.12 grams of Diamorphine (see **Exhibit P71**);
- d. **Exhibit P161** (20 packets in the vacuum cleaner marked collectively as "A1A1D1"): contained not less than 13.25 grams of Diamorphine (see **Exhibit P70**);
- e. **Exhibit P162** (20 packets in the vacuum cleaner marked collectively as "A1A1E1"): contained not less than 13.23 grams of Diamorphine (see **Exhibit P73**);
- f. **Exhibit P163** (19 packets in the vacuum cleaner marked collectively as "A1A1F1"): contained not less than 12.57 grams of Diamorphine (see **Exhibit P74**);
- g. **Exhibit P164** (10 packets in the cooker hood marked collectively as "B1A1"): contained not less than 6.42 grams of Diamorphine (see **Exhibit P75**);
- h. **Exhibit P166** (two packets in the air-conditioner marked collectively as "C2A"): contained not less than 1.30 grams of Diamorphine (see **Exhibit P77**); and
- i. **Exhibit P167** (five packets in the air-conditioner marked collectively as "C3A"): contained not less than 3.07 grams of Diamorphine (see **Exhibit P78**).

[emphasis in original]

4 Further, during testing carried out at the Health Sciences Authority, several of the exhibits were found to contain the accused's DNA. These included, in particular, the Ziploc bag containing Exhibit P162 (*ie*, the 20 packets found in the vacuum cleaner), the cooker hood grill that hid Exhibit P164 (*ie*, the 10 packets obtained from the cooker hood) and the paper bag which contained Exhibits P77 and P78 found in the air-conditioner. During trial, Dr Christopher K C Syn, a Senior Forensic Scientist with the Health Sciences Authority, also confirmed that the lack of DNA on the other exhibits was not conclusive that the accused had not been in contact with them.

5 The accused elected not to give evidence. He did not call any witnesses. As mentioned, no serious challenge to the Prosecution's evidence was mounted. At the close of the trial, there was hardly anything substantive by way of a defence stated by counsel for the accused in his closing submissions. I was given to understand that the manner in which counsel conducted the defence was limited by the accused's instructions.

My decision

6 At the conclusion of the trial, I was satisfied that the charge had been made out. I accordingly convicted the accused. I now give my reasons.

7 The MDA provides:

Trafficking in controlled drugs

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 —

- (a) to traffic in a controlled drug;

(b) to offer to traffic in a controlled drug; or

(c) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.

(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.

8 The drugs seized were analysed and found to contain not less than 85.99 grams of diamorphine, which is a Class A drug. The accuracy of Ms Lim's findings was not challenged. The packets containing these drugs were found in the Flat. The keys to the Flat were found on the accused's person. The accused had acknowledged that the drugs seized were his. His DNA was found on a number of the exhibits seized. In fact, when he was questioned by the CNB officers, he was able to direct them to the cooker hood where some of the packets of drugs were hidden. He had even estimated with accuracy the number of packets of drugs in the house before these were discovered, seized and counted by the CNB officers. There was no question that the accused was in possession of the packets of drugs seized. Pursuant to s 18(2) of the MDA, the presumption therefore arose that he knew the nature of the drug. In any event, the accused clearly knew the nature of the controlled drug he was in possession of. The accused had admitted that the packets contained heroin when questioned by the CNB officers.

9 As the packets seized were found to contain far more than 2 grams of diamorphine, the presumption under s 17(c) of the MDA would also arise that the accused had the drug in his possession for the purposes of trafficking, which is defined in s 2 of the same Act:

Interpretation

2. In this Act, unless the context otherwise requires —

...

"traffic" means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning...

Even in the absence of the presumption, I would find that the accused was trafficking in diamorphine within the meaning of s 2 of the MDA. In his cautioned statement, he admitted that he had been caught at the void deck together with his buyer. In his first long statement, he admitted that he had turned to selling heroin to support himself. In his first and second long statements he had admitted that the drugs found in the air-conditioner, cooker hood and vacuum cleaner were meant for sale. He had even given a detailed explanation as to how these served different functions in his drug supply chain and that he had some regular customers. The diamorphine seized that formed the charge was clearly meant for sale and not for the accused's personal consumption or other purposes.

10 As mentioned, the defence counsel did not raise any arguments in his closing submissions in relation to the merits of the charge. Nonetheless, two legal issues were alluded to in the course of proceedings that, for completeness and given the gravity of the charge, I ought to address.

11 First, counsel for the accused made the suggestion that Insp Eugene Tan was not empowered to record the contemporaneous statement taken from the accused because CNB officers are not empowered to record statements. However, pursuant to s 32 of the MDA, in any case relating to the commission of an offence under the MDA, a CNB officer has all the powers of a police officer under the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") in relation to an investigation into a seizable offence. This includes taking statements from the accused pursuant to s 121 of the CPC.

12 Second, counsel for the accused suggested during the course of cross-examining Insp Aaron Tang that it was crucial that Insp Aaron Tang did not include in his own conditioned statement the weights of the exhibits that he recorded in his investigation diary. However, counsel did not go on to explain the significance. Insp Aaron Tang's explanation that he had not included these weights because they were not as accurate as those put up in the Health Sciences Authority's report was reasonable. In any event, during cross-examination, he provided the weights of the various exhibits that he had recorded in his investigation diary. Counsel did not highlight any particular aspect of Insp Aaron Tang's evidence that ought to be given less weight as a result of his omission.

Conclusion

13 On the evidence, I found that the Prosecution had proved the charge against the accused beyond a reasonable doubt. I therefore convicted the accused and sentenced him to death in accordance with s 33 of the MDA read with the Second Schedule.

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