

Public Prosecutor v Noorazni bin Ithnin
[2009] SGHC 64

Case Number : CC 9/2009
Decision Date : 23 March 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Leong Wing Tuck and Sellakumaran (Deputy Public Prosecutor) for the prosecution; Singa Retnam and Kertar Singh s/o Guljar Singh (Kertar & Co) for the defendant
Parties : Public Prosecutor — Noorazni bin Ithnin

Criminal Law

23 March 2009

Judgment reserved

Choo Han Teck J:

1 The accused ("the Accused") was charged with trafficking in not less than 626.5g of Diamorphine (better known as "Heroin") by transporting it from the car park of Block 75 Whampoa Drive to the linkway connecting Block 32 New Market Road and Block 33 Park Crescent; this being an offence punishable under s 5(1)(a) read with s 33 of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed).

2 Acting on information, on 4 February 2008, a party of officers from the Central Narcotics Bureau ("the CNB") kept the Accused under surveillance. They saw the accused leaving his rented apartment unit at Block 32 New Market Road #07-1052 and boarded a taxi at Upper Cross Street. He arrived and then loitered in the vicinity of Blocks 74, 75 and 81 Whampoa Drive. Later, at the car park behind Block 75, the Accused met one Zhawiah binte Mohamed Nasir ("Makcik") and one Sidek bin Zainal ("Pakcik"), a Malay couple, who had just returned from Johor Bahru that morning in a car borrowed from the Accused.

3 The Accused left the car park of Block 75 Whampoa Drive alone in his car and drove to the multistorey car park at Block 33 Park Crescent. There, the Accused was seen removing a big red plastic bag containing a heavy item from the boot of the car. The Accused carried the red plastic bag over his shoulder and made his way towards the linkway connecting Block 32 New Market Road to Block 33 Park Crescent. He was arrested by CNB officers at the linkway. The red plastic bag was seized by the officers. The CNB officers found a car tyre ("the Tyre") inside the red plastic bag. The Tyre was opened and the CNB officers found 21 bundles of granular substances wrapped in black tape, as well as other paraphernalia related to drug abuse hidden inside the Tyre. The 21 bundles of granular substances were later analysed by Dr Yap Tiong Whei Angeline ("Dr Yap"), an analyst with the Health Sciences Authority, and found to contain not less than 626.5g of Diamorphine. The Prosecution submitted that the street value of this amount of Diamorphine would be \$1.4 million. This was not challenged by the Defence.

4 The Accused later led CNB officers to his apartment unit at Block 32 New Market Road #07-1052. The CNB officers raided the apartment unit and found substances that were subsequently ascertained by Dr Yap to be 14.37g of Methamphetamine, 0.44g of Diamorphine, and 40 tablets containing Nimetazepam. In addition, the CNB officers found paraphernalia related to drug abuse, cash amounting to \$70,000 in an OG bag and cash amounting to \$305,000 in a safe box, and an Omega

watch. The DPP stated from the Bar, to be a fake watch. In my view, it was not significant whether it was a genuine watch or not. The Accused's urine was subsequently tested and was found to be positive for Methamphetamine.

5 From the evidence of the CNB officers who testified, it is clear that the Accused had committed the *actus reus* of the offence of trafficking, *viz*, possession of controlled drugs for the purposes of trafficking (which is defined in s 3 of the Misuse of Drugs Act to include transporting of controlled drugs). The only issue was whether or not the Accused knew that the Tyre contained Heroin. Section 18(2) of the Misuse of Drugs Act states that any person who is proved to have had controlled drugs in his possession will be presumed, unless the contrary is proved, to have known the nature of that drug. With that presumption, the onus was on the Accused to prove on a balance of probabilities that he did not know he was transporting heroin. In his examination-in-chief, he said that on 3 February 2008, one Gino had told him that Makcik needed a car to travel to Johor Bahru. As Gino had previously repaired his car when Makcik had borrowed it to travel to Malaysia, and the speakers of the car needed to be repaired, he agreed to lend Makcik his car again. On 4 February 2008, he sent Gino a text message to enquire about when his car would be returned. He was told that Makcik was already on the way to Singapore. Subsequently, he went to Whampoa to get his car. After retrieving his car from Makcik (and Pakcik (who had also gone to Malaysia)), he called Gino to thank him for a birthday present (*viz*, the Omega watch). He was then asked for a favour, *viz*, delivering the spare tyre in the boot (*ie*, the Tyre) to one Mangila, as the spare tyre did not in fact belong to him (*ie*, the Accused) but to Mangila; his (*ie*, the Accused's) spare tyre was actually with Gino who had used it and would compensate him with \$500-\$1000. He agreed and told Gino to ask Mangila to meet him at Block 32 New Market Road. He claimed that when he arrived at New Market Road, he went to buy a big red plastic bag to carry the Tyre as he did not want to dirty his hands and shirt. After buying the plastic bag and placing the Tyre in the plastic bag, he proceeded to the linkway connecting Block 32 New Market Road and Block 33 Park Crescent where he was subsequently arrested.

6 I am of the view that the Accused had not rebutted the presumption of knowledge. His version of the events was not credible. In a statement to the CNB (dated 7 February 2008), the Accused disclosed that he knew that Gino dealt in heroin and that he had bought Heroin from Gino in the past to consume and to sell (paras 5-7). The Accused also stated that Mangila had told him that he (*ie*, Mangila) wanted to deal in Heroin and asked him (*ie*, the Accused) about Gino (*id* at paras 8-9). In response, the Accused had told Mangila that he would contact Gino for him (*ie*, Mangila) to arrange a supply of Heroin (*id* at para 9). The Accused subsequently called Gino and Gino agreed to supply Mangila with Heroin (*id* at para 10). The Accused then gave Gino's number to Mangila so that they could liaise with each other (*ibid*). All of this was not denied at trial. In a statement to the CNB (dated 8 February 2008), the Accused claimed that Mangila told him on the evening of 3 February 2008 that he was not ready to deal with Gino (at paras 21-22), but I do not think that this detracted from the evidence that the only common interest between the three of them (*ie*, Gino, Mangila and the Accused) related to Heroin.

7 Furthermore, *ex facie*, there was no reason for the Accused to loan his car to Makcik and Pakcik. As the Accused had admitted when cross-examined, Makcik and Pakcik were not well known or familiar to him. The explanation given by the Accused for his loaning of his car to Makcik and Pakcik comes across as very dubious, and, indeed, in my view, untrue. His motivation, in essence, was that Makcik and Pakcik would take the car to Malaysia for him where it would be modified for free by Gino. He elaborated at trial that he would send his car to Gino as Gino had always been involved in repairing cars. But in his statement to the CNB (dated 8 February 2008), he said that Gino would not take money for any modifications as his (*ie*, Gino's) friend would modify the car cheaply (at para 13). This inconsistency further indicated to me that the Accused was not telling the truth. Parenthetically, I would add that there is no evidence that Makcik and Pakcik were involved in drug trafficking and the

Defence did not attempt to suggest otherwise. Makcik and Pakcik, it appears, had been put in touch with Gino by their son when they asked their son to assist in finding some means of transporting fishes to Malaysia for their fish business. Gino subsequently recommended the Accused, who loaned them his car on several occasions.

8 On the whole, therefore, I am not satisfied that the Accused has rebutted the presumption of knowledge. In fact, I am satisfied that the Accused was aware that the 21 bundles of granular substances in the Tyre contained Heroin. On his own testimony, on the morning of 4 February 2008, he had taken a taxi to Whampoa Drive and had waited nearly two hours for his car to arrive. The explanation he gave, that his office was located in front of his premises and he had nothing much to do, can on no accounts be described as credible. Clearly, there was a sense of urgency and anxiety *vis-à-vis* the car, and that could only have been because he knew that it contained Heroin. Indeed, it is very plausible that the Accused had connived with Gino to systematically traffick Heroin into Singapore by hiding it in the tyre of motor vehicles driven by Makcik and Pakcik. The records of the Accused's text messages showed references to spare tyres on 31 December 2007 and 7 January 2008. When cross-examined, the Accused said that the reference to a spare tyre on 31 December 2007 was a reference to a spare tyre from a rental car driven by Makcik and Pakcik to Malaysia on that day and the reference to a spare tyre on 7 December 2007 was a reference to a spare tyre from his car which was driven by Makcik and Pakcik to Malaysia on that day. All this is unlikely to have been a coincidence.

9 The evidence on the Accused's reaction to questions by the CNB as to the contents of the 21 bundles of granular substances found in the Tyre serves to fortify my belief that the Accused knew that the 21 bundles contained Heroin. In the course of the recording of a contemporaneous statement, which was done at the Accused's apartment unit after it was raided, the Accused was shown one of the 21 bundles of granular substances found in the Tyre and was questioned as to its contents. The reply, as recorded in the pocketbook of SSSgt Mohamed Afendi bin Ideris ("SSSgt Affendi"), who recorded the contemporaneous statement, was "maybe Heroin drug". SSSgt Affendi later testified that the Accused had asked him to replace the word "Heroin" with "drug" after he (*ie*, SSSgt Affendi) had read back the statement to the Accused. Just after the arrest took place, the Accused had also been shown one of the 21 bundles of granular substances found in the Tyre and was questioned as to its contents. In a statement to the CNB (dated 9 February 2008), the Accused said that he replied that he had no knowledge of the contents as he was scared and shocked, but at that point in time, he knew that the bundle contained Heroin as he had trafficked and consumed Heroin previously (at paras 32–33).

10 For the foregoing reasons, I find that the Prosecution has proved its case against the Accused beyond reasonable doubt. I therefore convict the Accused and sentence him to suffer the mandatory death penalty.

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