

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 124

Criminal Case No 14 of 2016

Between

Public Prosecutor

... Public Prosecutor

And

Mohd Taib bin Ahmad

... Accused

GROUND OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] —
[Trafficking in controlled drugs]

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Public Prosecutor
v
Mohd Taib bin Ahmad

[2016] SGHC 124

High Court — Criminal Case No 14 of 2016
Lee Seiu Kin J
22, 24, 29–30 March 2016

30 June 2016

Lee Seiu Kin J:

1 The accused was charged with an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) for trafficking in controlled drugs. The charge read as follows:

That you, MOHD TAIB BIN AHMAD,

on 20 June 2013, at or about 12.40pm, at Block 37 Tanglin Halt Road #05-135, Singapore, did traffic in a controlled drug listed in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, by having in your possession for the purpose of trafficking, two (2) packets containing 896.6 grams of granular/powdery substance, which were analysed and found to contain **not less than 21.92 grams of diamorphine**, without 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 further, upon your conviction under section 5(1)(a) read with section 5(2) of the said Act, you may alternatively be liable to be punished under section 33B of the said Act.

2 At the end of the trial, I found that there was sufficient to prove beyond reasonable doubt that the accused was guilty of the charge and convicted him. As the alternative sentencing regime under s 33B of the MDA did not apply, I imposed the mandatory death sentence on him.

3 The accused also faced a second charge of trafficking under the same provisions of the MDA involving 23.15g of diamorphine, which was stood down and subsequently withdrawn following the conviction of the accused.

Background facts

4 The following facts were not in dispute. In the morning of 20 June 2013, a team of Central Narcotics Bureau (“CNB”) officers was deployed to the vicinity of Hong Leong Building at Robinson Road to conduct surveillance. They had received information that the accused and another person known as “Roszaly” were involved in drug-related activities and were travelling in a black Hyundai Accent with registration plate number SFZ 3450Z. The CNB officers intercepted the car at the junction of Marina Boulevard and Marina Bay Link Mall. The accused and “Roszaly” were in the vehicle with one other person, and all three were placed under arrest. The trial before me concerned only the accused.

5 The officers searched the car and recovered a leopard-print plastic bag containing three bundles of granular/powdery substance from the front passenger floorboard. These exhibits were marked “H1B1”, “H2A” and “H3A” and formed the subject of the charge that was stood down. The officers also found a digital weighing scale in the glove compartment of the car, as well as some rolled-up pieces of paper and stained foil. The three bundles of granular/powdery substance marked “H1B1”, “H2A” and “H3A” were sent to

the Health Sciences Authority (HSA) for analysis, and were subsequently found to contain not less than 23.15g of diamorphine, a controlled drug. At the time of arrest, the accused denied knowledge of the drugs and whom they belonged to. He claimed that the bundles were already in the car when he hitched a ride from “Roszaly” to Bedok.

6 At about noon that same day, the accused was brought to Block 37 Tanglin Halt Road #05-135 (“the Flat”). The Flat belonged to his sister, with whom he was staying at the time. The accused stored his belongings in his niece’s bedroom. The officers searched the Flat and recovered more items that were suspected to be drugs or drug-related paraphernalia from the said bedroom. These included two bundles of granular/powdery substance which were marked “B1A1A” and “B1A2A”. These form the subject of the charge against the accused. The CNB officers also recovered four digital weighing scales, and empty sachets and unused plastic bags. The two bundles of granular/powdery substance marked “B1A1A” and “B1A2A” were sent to the HSA for analysis, and were subsequently found to contain not less than 21.92g of diamorphine.

The Prosecution’s evidence

7 The Prosecution led evidence from 31 witnesses, comprising CNB officers who were involved in the surveillance, arrest and escorting of the accused, HSA analysts who analysed the drugs and forensic evidence, officers from the Technology Crime Forensic Branch (“TCFB”) who extracted text messages and call logs from the accused’s mobile phones, and CNB officers and interpreters who were involved in the recording of statements made by the accused in the course of investigations. Statements of the accused were also tendered in court.

8 The following were the evidence against the accused. Two bundles of granular/powdery substance which were found to contain not less than 21.92g of diamorphine were recovered from the accused's place of residence, to which he held the keys. The accused also admitted to being in possession of the said drugs. He had surrendered the two bundles of granular/powdery substance and informed one of the CNB officers that they belonged to him. A diverse assortment of packing material, including plastic bags and sachets, string, and packing tape, as well as four weighing scales were recovered from the same room in which the drugs were found. The accused's DNA was found on two of the weighing scales, as well as on the packaging of all three bundles of drugs and the digital weighing scale which had been retrieved from the car at the time of arrest.

The accused's statements

9 The accused made a number of statements to the CNB officers from the time he was arrested. After the CNB officers had searched his residence and seized several case exhibits, the accused was questioned on the two bundles in the Flat and what he intended to do with them. The following is an extract from the accused's contemporaneous statement:

Q7: What is this?

A7: "*Ubat*" [*ie*, diamorphine].

Q8: How many?

A8: Two "*batu*" [*ie*, pounds]

Q9: Who does it belong to?

A9: It's mine.

Q10: For what?

A10: To sell.

Q11: How you sell?

A11: If people ask for one, I sell like that. If ask for *set*, I make *set* use plastic “babalong” [*ie*, packets or sachets] and sell *set*.

Q12: How much one *set*? And one “*batu*”?

A12: One *set* 900 (hundred?), one “*batu*” five thousand.

[emphasis in original]

10 In his investigation statements, the accused related his involvement in drug trafficking. In 2007, the accused had become acquainted with a Malaysian who was known to him as “Abang”.

11 The accused assisted “Abang” by trafficking drugs on two occasions. The first occasion occurred on 17 June 2013. “Abang” had offered the accused \$500 for each drug collection and delivery that he performed. The accused accepted the offer as he needed money for his daily expenses and leisure activities, as well as to repay his debts. “Abang” then handed the accused a mobile phone and instructed him to wait for his call on the transactions. The accused received a call from “Abang” later that evening at about 10.00pm, instructing him to collect two and a half “*bolas*” (*ie*, bundles) of drugs. The drugs were concealed behind a vending machine inside a multi-purpose hall near the Flat. There was also an envelope containing \$500 in cash for the accused. The accused retrieved the items and repacked the “*bolas*” into another plastic bag. On the instructions of “Abang”, the accused left the repacked “*bolas*” under a metal bench at the void deck of the Flat later that night at about 11.30pm.

12 The second occasion started with a phone call from “Abang” on 19 June 2013, the day before the arrest. At about 8.30pm, “Abang” instructed the accused to collect four “*bolas*” from the vicinity of the Flat. Two of these

“bolas” were to be prepared for delivery to Block 201 along Bedok Avenue 1 or 2 the next morning, and one of these two “bolas” was to be divided in half. The accused proceeded to repack the “bolas” for delivery in the Flat. He first weighed all four “bolas” using a digital weighing scale to ensure that they were of the same weight. He then picked two “bolas” at random for repackaging into three bundles as instructed, comprising the one full “bola” and two halves of a second full “bola”. These three bundles were placed in a leopard-print plastic bag. These were the bundles that were subsequently recovered from the car at the time of arrest, and formed the subject of the charge that was stood down. The accused left the remaining two “bolas” in the Flat. These two bundles were subsequently recovered when the CNB officers searched the Flat on 20 June 2013, and formed the subject of the proceeded charge.

13 In his statements, the accused also confessed that he felt “scared and worried” about his arrangement with “Abang” to collect and deliver drugs. The accused knew that he was “dealing [*sic*] big amount of drugs and if caught it will be capital charge”. He nevertheless chose to assist “Abang” as he reckoned that it would only be temporary. The accused also claimed responsibility for the offence and stated that he was willing to face the death penalty.

14 At the end of the Prosecution’s case, I found that a *prima facie* case had been made against the accused and I called upon him to give evidence in his defence.

The accused's evidence

15 The accused elected to give evidence. But his defence was essentially one of mitigation. He admitted to the charge and asked for leniency in sentencing, citing his full cooperation with the authorities and his remorse. He emphasised that his role was merely to collect and deliver the drugs, acting entirely on the instructions of “Abang” who would pay him \$500 for each transaction. He further testified that two other persons, who were known to him as “Steven” and “Apit”, were also involved in the transactions. He claimed that “Steven” was his supplier and that he was supposed to hand over the two bundles of drugs found in the Flat to “Apit” on the night of 19 June 2013, but “Apit” did not show up. On cross-examination, the accused confessed that he neither gave the names nor the contact details of “Steven” or “Apit” at the time of arrest or during follow-up investigations even though he had every opportunity to do so, and only disclosed the information at trial. The accused also maintained that he was unable to furnish any contact details of “Abang” even though the mobile phone which was used to communicate with “Abang” had been recovered. The accused did not call any other witnesses to give evidence on his behalf.

The verdict

16 The elements for a charge of trafficking under s 5(1)(a) of the MDA are as follows (see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]):

- (a) Possession of a controlled drug;
- (b) Knowledge of the nature of the drug; and

- (c) Proof that possession of the drug was for the purpose of trafficking which was not authorised.

The act of trafficking is defined in s 2 of the MDA to mean selling, giving, administering, transporting, sending, delivering or distributing drugs, or offering to do any of these acts.

17 Evidence of possession and knowledge led by the Prosecution were not disputed by the accused. Based on the events from the time of his arrest to the search at the Flat as well as the accused's own statements, I found that there was sufficient evidence to prove beyond reasonable doubt that the accused had possession and knowledge. The accused had in his custody the keys to the Flat in which the drugs were found, raising the presumption of possession under s 18(1)(c) of the MDA. In any event, the accused had also admitted that the drugs belonged to him and that he was the one who had left them in his niece's bedroom. Similarly, there was clear evidence of knowledge. The accused readily identified the contents of the bundles as "ubat" at the time the Flat was searched, and he had seen the contents of the bundles himself. In any event, the presumption of knowledge in s 18(2) of the MDA was invoked.

18 There was also ample basis to find that the accused had intended to traffic the drugs found in the Flat. In the accused's contemporaneous statement recorded at the time of the search, he admitted that the drugs were for sale. He also provided details as to how he would sell the drugs, and the prices. The accused neither challenged the accuracy nor the admissibility of the contemporaneous statement at trial. Furthermore, drug packing paraphernalia, including weighing scales and a diverse assortment of packing material, had been recovered from the same room in which the drugs had been found. A

digital weighing scale, on which the accused's DNA was found, had also been retrieved from the car in which he was travelling at the time of arrest. It was clear from the evidence that the accused had engaged in acts well within the meaning of "trafficking" under s 2 of the MDA. Even on the accused's version at trial that he was merely involved in delivering as opposed to selling the drugs, all that is required is an intention to hand the drugs to another person. Whether or not the recipient must be known or identified is immaterial (see *Mohd Halimi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548 at [6]). That the accused had intended to traffic the drugs which formed the subject of the proceeded charge was therefore clearly established.

19 Overall, having considered the evidence and parties' submissions in totality, I was satisfied that the Prosecution had proven the charge against the accused beyond reasonable doubt. I therefore found him guilty as charged and convicted him accordingly.

The alternative sentencing regime under s 33B of the MDA

20 In the course of trial, the learned deputy stated that the Public Prosecutor ("the PP") would not certify that the accused had substantively assisted the CNB in disrupting drug activities within or outside Singapore. The court was therefore not in a position to consider the alternative sentencing regime under s 33B of the MDA (see *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2014] 4 SLR 773 at [53] and [54]). Nevertheless, the argument that the accused was merely transporting drugs and that he had rendered substantive assistance to the authorities occupied a substantial part of defence counsel's closing submissions. It was eventually conceded that this was not the appropriate forum to raise arguments on the latter, and in any event counsel confirmed that the accused had no intention to apply for a

review of the PP's decision. Nevertheless I would like to record an observation on this matter which I had made in the course of oral submissions.

21 The Prosecution's position was that the accused had not rendered substantive assistance for the purposes of s 33B(2)(b) of the MDA ("the Substantive Assistance Provision"). The learned deputy noted that the accused sought to demonstrate that he was being cooperative by naming "Steven" and "Apit" only on the eve of his verdict and sentence, even though he could have provided the information at the point of arrest almost three years ago. She stated that information as to other persons involved in the drug chain should be provided "as soon as possible" before the trail runs cold. Therefore, in determining whether substantive assistance has been rendered, it must be done as soon as possible.

22 It was at this point that I made the observation that, while in most cases, timely information would provide the greatest assistance, it was nevertheless not a requirement under the Substantive Assistance Provision, which states as follows:

the Public Prosecutor certifies ... [that] the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

23 The object of the alternative sentencing regime is to reach further into drug networks by obtaining assistance from couriers, who could furnish leads in identifying the suppliers and kingpins outside Singapore, to disrupt drug trafficking activities (see *Quek Hock Lye v Public Prosecutor* [2015] 2 SLR 563 at [36]). The aim of the Substantive Assistance Provision, as emphasised during the second reading of the Misuse of Drugs (Amendment) Bill (see Singapore Parliamentary Debates, Official Report (12 November 2012) vol

89), is to enhance the operational effectiveness of the CNB. In my view, while timeliness of the information provided is an important factor in determining its utility and therefore whether this has substantively assisted the authorities in disrupting drug trafficking activities, this is only one factor in considering the quality of the information, albeit a very important one. There may well be information which is so important that, notwithstanding that it is disclosed at a very late stage, it leads to a disruption of the drug trafficking syndicate. What is relevant is the utility of the information. Although timeliness will usually enhance that quality, tardiness need not invariably reduce it to insignificance.

Conclusion and sentence

24 In the result, the evidence was sufficient to prove beyond reasonable doubt the accused's guilt in relation to the charge of drug trafficking. There was no reason that the mandatory death penalty regime should not apply in the present case. I therefore convicted the accused and passed the mandatory death sentence on him.

Lee Seiu Kin
Judge

Hay Hung Chun and Charlene Tay Chia (Attorney-General's
Chambers) for the Prosecution;
Mahendran s/o Mylvaganam and Chitra Balakrishnan (Regency
Legal LLP) for the accused.