

Public Prosecutor v Mohd Halmi bin Hamid and Others
[2005] SGHC 143

Case Number : CC 26/2004
Decision Date : 12 August 2005
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Winston Cheng Howe Ming and Deborah Tan (Deputy Public Prosecutors) for the Prosecution; Yahya Syed and Seeni Syed Ahamed Kabeer (Syed Yahya and Partners) and R Gupta (A Zamzam and Co) for the first accused; Ismail Hamid (Ismail Hamid and Co) and Gill Zaminder Singh (Hilborne and Co) for the second accused; Martin Marini (Yeo Marini and Partners), Nicolas Tang Tze Hao (Drew and Napier LLC) and Lam Wai Seng (Lam W S and Co) for the third accused
Parties : Public Prosecutor — Mohd Halmi bin Hamid; Mohamad Bin Ahmad; Abdul Salam s/o Mohammad

Criminal Law – Statutory offences – Misuse of Drugs Act – Trafficking in controlled drugs – Whether presumptions under ss 17 and 18 of Act may be used together – Sections 17, 18(1), 18(2) Misuse of Drugs Act (Cap 185, 2001 Rev Ed)

Evidence – Weight of evidence – Confession – Whether confession of second accused reliable and satisfactory evidence of third accused's guilt – Whether safe to convict third accused in absence of other cogent independent or corroborative evidence – Section 30 Evidence Act (Cap 97, 1997 Rev Ed)

12 August 2005

Kan Ting Chiu J:

1 The three accused persons in this case faced separate, related charges. The first accused, Mohd Halmi bin Hamid, who is also known as Halmi or Samad, was charged that he:

on or about the 7th day of January 2004, at about 11.00 a.m., inside the lift of Blk 108 Yishun Ring Road, Singapore, did abet one Mohamad Bin Ahmad (NRIC No. S1709089E) to traffic in diamorphine, a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by intentionally aiding the said Mohamad Bin Ahmad to take possession of the said drug for the purpose of trafficking by giving the said Mohamad Bin Ahmad 2 packets containing not less than 75.56 grams of diamorphine, without any authorisation 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 section 12 of the Misuse of Drugs Act and punishable under section 33 of the said Act.

The second accused, Mohamad bin Ahmad, was charged that he:

on or about the 7th day of January 2004, at about 11.40 a.m., at the junction of Yishun Avenue 2 and Yishun Ring Road, Singapore, in motor vehicle SBQ 4739 M, did traffic in diamorphine, 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 2 packets containing not less than 75.56 grams of diamorphine, without any authorisation 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) of the Misuse of Drugs Act and punishable under section 33 of the said Act.

while the third accused, Abdul Salam s/o Mohammad, who is also known as Salam, was charged that he:

on or about the 7th day of January 2004, at about 10.00 a.m., in Singapore, did abet one Mohamad Bin Ahmad (NRIC No. S1709089E) to traffic in diamorphine, a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by instigating the said Mohamad Bin Ahmad to collect for [him] 2 packets of substance containing not less than 75.56 grams of diamorphine, which the said Mohamad Bin Ahmad did collect on the 7th day of January 2004, at about 11 a.m., inside the lift of Block 108 Yishun Ring Road, Singapore, in order to take possession of the said drug for the purpose of trafficking and [he had] thereby committed an offence under section 5(1)(a) read with section 5(2) and section 12 of the Misuse of Drugs Act and punishable under section 33 of the said Act.

2 With their consent, the three charges were tried together. Although the first accused pleaded guilty to the charge, the Prosecution was directed to prove its case against him, and eventually he made his defence to the charge. The other two accused pleaded not guilty and claimed trial.

3 All three charges related to the same two packets which contained not less than 75.56g of diamorphine. The principal offender was the second accused who was charged with trafficking the drugs by having them in his possession for the purpose of trafficking. The first accused was charged with abetting him by delivering the drugs to him. The third accused was charged with abetting the second accused by instructing him to collect those drugs from the first accused.

Arrest of the accused persons

4 In an operation by officers of the Central Narcotics Bureau ("CNB"), the second accused was kept under surveillance on the morning of 7 January 2004. The second accused was observed as he got into motor car SBQ 4739M in front of the Shafiqah Restaurant at South Buona Vista Road at about 10.50am, and drove off. The car was trailed as it made its way to Block 111 Yishun Ring Road at about 11.30am, where it stopped for a short while before making its way to the rear of Block 108 Yishun Ring Road. The second accused left the car and walked to the lift at Block 108 empty-handed. A few minutes later, he came out of the lift with a white plastic bag, returned to the car, and drove off. The officers trailed him and the car to the junction of Yishun Ring Road and Yishun Avenue 2 where they moved in and arrested him and recovered the white plastic bag which was placed behind the front passenger seat.

5 The other two accused were arrested separately on the same day as the second accused. The first accused was arrested when CNB officers raided a flat at Block 106 Yishun Ring Road #04-239 at 11.40am. The third accused was arrested at 2.20pm when he was walking with another person along Serangoon North Avenue 1.

The cases against the accused persons

6 At the conclusion of the trial, I convicted and sentenced the first and second accused on the charges they faced, and acquitted the third accused. I will deal with the cases of the first and second accused before I deal with the third accused's case.

Statements of the first accused

7 Statements were recorded from the first accused, which were admitted in evidence at the

trial without objection from him. Three statements were recorded in Malay on 7 January 2004 at 1.15pm, 2.00pm and 5.00pm respectively. English translations of the statements were tendered in evidence, salient extracts of which are set out below:

(a) From the first statement:[\[1\]](#)

Q3: Today did you sell drugs to anyone?

A3: Don't have.

Q4: Do you know him?

[The accused was shown a photograph of the second accused]

A4: Don't know.

(b) From the second statement:[\[2\]](#)

Q1: Did you sell drugs to anyone today?

A1: Don't have. I send only.

Q2: To who you send?

A2: To two people. One Chinese, one Malay.

Q3: Is this the Malay guy you pass the drugs to?

[The accused was shown a photograph of the second accused]

A3: Yes.

(c) From the third statement:[\[3\]](#)

Q4: Today, what time did you give the Malay person drugs?

A4: Around eleven in the morning.

Q5: How much drug did you give him?

A5: One packet.

Q6: Where did you pass him the drugs?

A6: Fifth floor, block 108.

8 On 12 January 2004, a cautioned statement[\[4\]](#) was recorded from him in which he said:

I know what I did was wrong. I am remorseful. I wish to say that my youngest sister is suffering from kidney cancer. My mother is suffering from heart disease and high blood pressure. I need a substantial sum of money for their treatment. I came from a poor family.

9 Finally, he made an investigation statement where he admitted that he was instructed by a person named Jack on 6 January 2004 to bring heroin to Singapore. Jack gave him three packets which he brought into Singapore, and he in turn handed one packet to the second accused on 7 January 2004.[\[5\]](#)

Statements of the second accused

10 Six statements were recorded from the second accused after his arrest. These statements were admitted in evidence without objection. I set out the relevant extracts of the statements. The first statement[\[6\]](#) recorded at 12.00 noon read:

Q1: This vehicle SBQ 4739M belong to whom?

A1: Mine.

Q2: The plastic bag found behind your front passenger seat belong to whom?

A2: 'Samad'.

Q3: What is inside the plastic bag?

A3: I don't know.

Q4: When 'Samad' give you the plastic bag?

A4: Just now morning 11 plus.

Q5: At where?

A5: At Blk 108 Yishun 5th floor.

Q6: How you contact 'Samad'?

A6: He call me.

Q7: Why 'Samad' give you this plastic bag?

A7: He asked me to help to delivery because I got a car.

Q8: You help him to delivery what you get?

A8: He haven't say anything.

Q9: How many time you help 'Samad' to delivery?

A9: This is a first time.

11 At 12.42pm a further statement[\[7\]](#) was recorded from him after he was shown a photograph of the third accused:

Q1: The person on the picture is who?

A1: 'Salam'.

Q2: Who asked you to collect the plastic bag from 'Samad'?

A2: 'Salam'.

Q3: When 'Salam' asked you to collect the plastic bag from 'Samad'?

A3: This morning around 10.

Q4: Why 'Salam' asked you to collect the plastic bag?

A4: He asked me to help him.

Q5: Did 'Salam' tell you what is inside the plastic bag?

A5: Don't have.

Q6: How many times you help 'Salam' collect the plastic bag from 'Samad'?

A6: This is a first time.

12 On the same day at about 10.20pm, he made a cautioned statement[\[8\]](#) that:

The heroin does not belong to me. I was at work when I received a phone call from my friend, "Salam". Because I have a car, "Salam" asked me to help him and go to Yishun to meet one "Samad" who would hand over to me some stuff. But I do not know what this stuff is. "Salam" asked me to wait for his call to tell me who to send the stuff to. I was driving along Yishun where I was intercepted and arrested.

13 On 14 January 2004, an investigation statement[\[9\]](#) was recorded from him where he recounted the events of 7 January 2004:

10 On 7 Jan 2004 at about 10 am, I received a call from my friend, "Salam". "Salam" called me from his home and his number is 63834897. He called me on my handphone which has the telephone number 91830965. He asked me for help. He asked me to go to Yishun to meet up with "Samad" and get something from him. Half an hour later, I received a call on my handphone. This time, it was a different person. I do not know who he is. The person on the line is a man and he spoke to me in Malay. He asked me what time I can reach Yishun to fetch the thing from him. He told me to go to Blk 108 Yishun and wait at the carpark near the lift of the said block. I told the person on the line that I was working. I told him that I would go a while later. Ten minutes later, I left my working place and proceeded to the location.

11 I reached there at about 11.20 am. When I was at the carpark, I received a call from the Malay man. He asked me whether I have reached. I told him that I was already in the carpark. He then asked me to wait about ten minutes. After ten minutes, he told me to come up to the fifth floor of Blk 108 to meet up with a person by the name of "Samad". When I took the lift to the fifth floor, I met "Samad". I was in the lift and he was outside the lift. "Samad" then entered the lift and gave me the white plastic bag. "Samad" pressed the fourth floor and exited when the lift stopped at the fourth floor. I did not say anything to "Samad" and neither did he say anything to me.

12 I went down to my car and drove off. When I drove out of the carpark, I called Salam on his handphone number 91833343. I asked "Salam" this thing is for who. He asked me to wait for his call. I then drove off along Yishun Ring Road and I was later stopped by CNB officers at the junction.

14 The recording of the investigation statement [\[10\]](#) continued on 15 January 2004 with clarifications on the statement of the day before:

Q6: When "Salam" asked you to collect the thing from Yishun Ring Road on 7 Jan 2004, what did he tell you do with the thing after you have collected it?

A6: "Salam" told me to collect the thing first and wait for his call.

Q7: Why didn't you ask him what the thing was?

A7: I do not want to meddle in his affairs.

Q8: Did it occur to you that the thing he asked you to collect might contain illegal stuff?

A8: It did occur to me but I felt indebted to him since he got me a job at his brother's restaurant.

Q9: Are you on good terms with "Salam"?

A9: We are on good terms but we do not meet everyday. Even if we meet, we would do so at his brother's restaurant.

Q10: Do you have any knowledge that "Salam" might be involved in drugs?

A10: I suspected that he might be involved in drugs. Sometime he would come to the restaurant and sit at a table with his friends. That seemed very suspicious to me. That is why I suspect that "Salam" might be involved in drugs.

Q11: Since you suspected that "Salam" might be involved in drugs, did it occur to you that the things that he asked you to collect from "Samad" on 7 Jan 2004 might be drugs?

A11: Yes, I suspected that the thing might contain drugs.

15 In the last statement made on 17 February 2004, the second accused was referred to a stored number in his cell phone under the name "ZAli" (it was also referred to as "Zali" in the trial). He identified ZAli as the unnamed Malay man who telephoned him on the morning of 7 January. The second accused said in this statement [\[11\]](#):

I cannot remember who "ZAli" is and I also do not know whether I met him before. The phonecalls between "ZAli" and me on the morning were about the collection of the heroin from Samad.

"ZAli" called me first and he asked me when I can arrive in Yishun. At that time, I was driving and I said in a little while. Then we hung up. About a while later when I reached Yishun, I called "ZAli". I told him that I had reached Yishun. He asked me to go to Blk 108 of Yishun Ring Road and meet Samad. We then hung up.

The defence of the first accused

16 In his defence, the first accused did not retract the admissions made in his statements. He elaborated on his activities on 7 January 2004. He entered Singapore illegally from Johor Baru at about 5.00am carrying with him two packets of drugs, which were delivered to him by an Indian man named Jack. Jack had told him that the packets contained drugs and instructed him to bring the packets to Singapore and to await instructions to deliver them.

17 He took the packets to the flat which was occupied by his mother and brothers. Before his arrest, one Chinese man had come to collect one packet from him. Subsequently, when the second accused came he delivered the second packet to the second accused inside the lift.[\[12\]](#)

18 His defence was that he did not traffic the drugs because he had only delivered them.[\[13\]](#)

The defence of the second accused

19 The second accused was working as a cook at the Shafiqah Restaurant. He was a friend of the third accused. He was employed at the restaurant after the third accused introduced him to the latter's brother who managed the restaurant.

20 In his defence, the second accused's main purpose was not to exculpate himself from the events that took place. He appeared to be more concerned with revealing the third accused's involvement in instructing him to collect the drugs from the first accused.

21 He did not retract the admissions he made in his statements that he had collected the packets from the first accused. He changed the account in some respects. He clarified that when the third accused telephoned him in the morning, the third accused told him to go to Yishun, but did not tell him to collect anything, and on this point, para 10 of his statement of 14 January 2004 was not correct.[\[14\]](#)

22 He also retracted the assertion he made in the statement of 17 February 2004 that he did not remember who Zali was, and did not know whether he had met him before. He admitted that he had actually met Zali on two or three occasions, and that the third accused had introduced him to Zali.[\[15\]](#)

23 He added that when the third accused told him to go to Yishun, he suspected that he would be collecting drugs.[\[16\]](#) He also admitted that he had the opportunity to examine the contents of the bag the first accused handed to him. However, he just opened it, took a look at the bundle inside and did not examine its contents.[\[17\]](#) Therefore he did not know what they were.[\[18\]](#)

Review of the first accused's case

24 There was really not very much that was raised in his defence, and to their credit, counsel for the first accused did not try to argue the unarguable in their closing submissions. They reiterated that:

He said that he was not trafficking and thought that he was assigned to deliver the drugs to somebody.

25 There was no merit in that argument. In law, "traffic" is defined in s 2 of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("the Act") to mean:

- (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.

The act of delivering is therefore trafficking.

26 That argument was also misguided because the first accused was not charged with trafficking. He was charged that he abetted the second accused to traffic by aiding the second accused to take possession of the diamorphine. There was no denial that he delivered the white plastic bag to the second accused with the knowledge that it contained heroin.

27 On the undisputed evidence, the elements of the charge against him were made out. I therefore found him guilty on the charge and convicted and sentenced him on it.

Review of the second accused's case

28 The charge against him was that he had in his possession the diamorphine for the purpose of trafficking. He admitted that the drugs were in his possession after he had collected them from the first accused. He also admitted that he suspected that the things he had collected were drugs, that he had the opportunity to examine them, but he did not do that. When he deliberately turned a blind eye and overrode his own suspicions, he cannot plead ignorance: see *Ubaka v PP* [1995] 1 SLR 267. Further to that, under s 18(2) of the Act, as he was proved to have possession of the drugs, he was presumed to know their nature.

29 Under s 17 of the Act, a person proved to have in his possession more than 2g of diamorphine is presumed to have it in his possession for the purpose of trafficking.

30 The Prosecution in its closing submissions^[19] referred to *Sharom bin Ahmad v PP* [2000] 3 SLR 565 and stated:

In *Sharom v PP* [2000] 3 SLR 565, the court held that s 18(2) and s 17 of the MDA cannot be used together, that is, if the Prosecution sought to invoke the presumption in s 17 to prove the *mens rea* of possession for the purpose of trafficking, they would then be prevented from relying on the presumption of possession found in s 18.

That was a misreading of the case which actually held that the presumptions in ss 17 and 18(1)(c) cannot be applied together.

31 As this was not the first time the mistake had been made, I will review the operation of the presumptions. The correct position is best understood by paying close attention to the words of s 17 and ss 18(1) and 18(2) of the Act:

17. Any person who is proved to have had in his possession more than —

- (a) 100 grammes of opium;
- (b) 3 grammes of morphine;
- (c) 2 grammes of diamorphine;

- (d) 15 grammes of cannabis;
- (e) 30 grammes of cannabis mixture;
- (f) 10 grammes of cannabis resin;
- (g) 3 grammes of cocaine;
- (h) 25 grammes of methamphetamine; or
- (i) 10 grammes of any or any combination of the following:
 - (i) N,α-dimethyl-3,4-(methylenedioxy) phenethylamine;
 - (ii) α-methyl-3,4-(methylenedioxy)phenethylamine; or
 - (iii) N-ethyl-α-methyl-3,4-(methylenedioxy) phenethylamine;

whether or not contained in any substance, extract, preparation or mixture shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

18.—(1) Any person who is proved to have had in his possession or custody or under his control —

- (a) anything containing a controlled drug;
- (b) the keys of anything containing a controlled drug;
- (c) the keys of any place or premises or any part thereof in which a controlled drug is found; or
- (d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

32 Section 17 states that where a person is *proved* to be in possession of more than the stated quantities of drugs, he shall be presumed to have them in his possession for the purpose of trafficking. Section 18(1) states that when a person is *proved* to be in possession of the container, keys or documents of title relating to drugs, he is deemed to be in possession of the drugs. Section 18(2) provides that where a person is *proved or presumed* to have a controlled drug in his possession, he is presumed to know the nature of the drug.

33 It is important to note the distinction between the presumption in s 18(2) and the presumptions in ss 17 and 18(1). The former comes into operation when the prerequisite condition is proved or presumed, whereas the latter come into operation only when the prerequisite conditions are proved.

34 The presumption under s 17 cannot ride on the back of a presumption under s 18(1) because the s 17 presumption only arises when possession is *proved* and not when possession is presumed under s 18(1). However, the presumption under s 18(2) can apply together with a presumption under s 17.

35 In this case, there was no need for a presumption of possession because there was undisputed evidence of that. The presumptions under ss 17 and 18(2) came into operation and were not rebutted.

36 As noted earlier, the definition of "traffic" includes transport. In *Lau Chi Sing v PP* [1988] SLR 106, the Court of Criminal Appeal held that the transportation of drugs with the intention of delivering them to another party would come within the definition, but transportation of drugs with the intention that they be retained by the transporter for his own consumption would not.

37 By his own evidence, the second accused was transporting the drugs for delivery on the instructions of the third accused or Zali. The drugs were not his and were not intended for his own consumption. When he transported the drugs, he was trafficking them.

38 As in the case of counsel for the first accused, counsel for the second accused also did not raise more matters than were appropriate in their closing submissions. They identified the issues of law and stated that the Prosecution had not proved its case beyond a reasonable doubt.

39 I was unable to agree with that. On the evidence before me, the Prosecution had proved its case against the second accused beyond a reasonable doubt, and I therefore convicted and sentenced him on it.

The case against the third accused

40 The third accused denied any involvement in the drugs recovered. He was subjected to rigorous cross-examination by the Prosecution, but he did not falter. The prosecution case against him was lacking in any direct evidence against him (apart from the second accused's evidence) or any admission by him. It rested primarily on the evidence of the second accused, and on the fact that there were telephone calls between them on 7 January 2004. There was no evidence of the contents of these calls except for the second accused's evidence, which was disputed by the third accused.

41 In a case like that, any doubt over the second accused's credibility or veracity would have a deleterious effect on the prosecution case.

42 There were several areas of the second accused's evidence that raised serious questions over his credibility and veracity. First, there was the evidence that when he was shown the photograph of the third accused after he was arrested, he did not identify him until he was shown it for the third time. The Prosecution submitted that, "[W]e may also infer that the 2nd accused was reluctant to identify the 3rd accused during the 1st and 2nd occasion[s] he was shown the picture but only decided to come clean on the 3rd occasion."[\[20\]](#) Whatever may be the reason, there was no doubt that the second accused withheld identifying the third accused. He could have done this because the third accused was really not involved, or he could be trying to conceal the third accused's involvement. In either case, he was not being honest at some part of the investigations.

43 Second, even after he implicated the third accused, there was an inconsistency in his evidence regarding the third accused's instructions to him. In his statement of 14 January 2004, he said that the third accused instructed him to go to Yishun to collect something from the first

accused. When he was in court, he changed that, and said that the third accused had only told him to go to Yishun.

44 Third, there was the evidence about the other key player, ZAli or Zali, who the second accused eventually said was the person who gave him the instructions to collect the drugs from the first accused. The second accused first referred to him as a Malay man, without naming him. When he was confronted with the stored number of ZAli in his cell phone, he said he could not remember who ZAli was or whether they had met before. Subsequently, he admitted that they had met on several occasions.

45 ZAli is a real person. His proper name is Mohamad Ali bin Bajuri, and he has been arrested and is facing trial. He was not called as a prosecution witness at the trial. He was offered to the Defence, which also declined to call him. In the circumstances, the questions whether he had issued the instructions to the second accused, and if he did, whether he did that on his own or in consultation with the third accused, were unanswered.

46 The Prosecution conceded in its closing submissions that:

The primary evidence against the 3rd accused are the statements and oral testimony of the 2nd accused. In *Chai Chien Wei Kelvin v PP* [1999] 1 SLR 25, the Court of Appeal reiterated its approach towards the confession of a co-accused:

The position now is that s 30 [of the Evidence Act, Cap 97] allows the conviction of an accused to be sustained solely on the basis of a confession by his co-accused, provided that the evidence emanating from that confession satisfied the court beyond reasonable doubt of the accused's guilt.^[21]

47 The Prosecution could have added that as the second accused's confession was repeated by him in court, it became direct evidence as well. The Prosecution's difficulty was to show that the second accused's confession or evidence implicating the third accused was reliable. I found it to be so unsatisfactory that it was patently unsafe to rely on it and convicted the third accused in the absence of other cogent independent or corroborative evidence.

48 I had serious doubts in the case against the third accused and I therefore acquitted him. The Prosecution did well to accept the acquittal and not appeal against it.

^[1]P49A

^[2]P49B

^[3]P49C

^[4]P53

^[5]P58, para 30

^[6]P44

^[7]P45

^[8]P57

[\[9\]](#) P55

[\[9\]](#) P55, paras 10-12

[\[10\]](#) P56

[\[11\]](#) P60

[\[12\]](#) Notes of Evidence page 545

[\[13\]](#) Notes of Evidence page 539

[\[14\]](#) Notes of Evidence pages 640, 671, 681

[\[15\]](#) Notes of Evidence pages 677-678

[\[16\]](#) Notes of Evidence pages 666-667

[\[17\]](#) Notes of Evidence page 673

[\[18\]](#) Notes of Evidence page 683

[\[19\]](#) Prosecution's Closing Submissions, para 40

[\[20\]](#) Prosecution's Closing Submissions, para 74

[\[21\]](#) Prosecution's Closing Submissions, para 69

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