

Kum Mun Hou and Another v Public Prosecutor
[2001] SGCA 35

Case Number : CA 18/2000
Decision Date : 09 May 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Lai Kew Chai J; L P Thean JA
Counsel Name(s) : Yang Ing Loong and Ong Cheong Wei (Allen & Gledhill) for the first appellant; Wong Chee Meng Lawrence and Tan Tee Giam (Lawrence Wong & Co) for the second appellant; David Khoo and April Phang (Deputy Public Prosecutors) for the respondent
Parties : Kum Mun Hou; Gue Huay Quee — Public Prosecutor

JUDGMENT:

Grounds of Judgment

1. The two appellants, Kum Mun Hou (Kum) and Gue Huay Quee (Gue), and one Yau Hock Seng (Yau) were tried before the High Court on a charge that they, on 5 January 2000, at about 11 am, along Still Road, in furtherance of their common intention, trafficked in controlled drugs, namely: a quantity of not less than 76.53 grams of diamorphine, by having such drugs in their possession for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 1998 ed) (the Act). At the conclusion of the trial, the judge found that the prosecution had not proved the charge against Yau beyond reasonable doubt, and accordingly he acquitted Yau. As against Kum and Gue, however, the judge found that the prosecution had proved the charge beyond reasonable doubt and convicted them of the charge and sentenced them to suffer death. Both of them appealed against the convictions. We dismissed their appeals, and now give our reasons.

The facts

2. On the morning of 5 January 2000 at about 9.10 am, Kum together with his friend Yau drove to Singapore in a car No. JCV 4973. On the same morning, at about 10.20 am, Gue also drove to Singapore in his car, No. SBQ 3367J. Both parties then met at the Shell petrol station along Joo Chiat Road. At that time, they were both under surveillance by officers from the Central Narcotics Bureau (CNB). The officers trailed them as they drove to an Esso petrol station along East Coast Road. There, Kum and Gue alighted from their cars and went together to the toilet of the petrol station. They then returned to their cars and drove away with Gue in the lead. The CNB officers observed that, at the side road just outside the Esso petrol station, the car No. JCV 4973 (driven by Kum) drew alongside Gue's car No. SBQ 3367J, which before that was in front. The two cars stopped abreast of each other. At that point, the officers saw Yau handing a white carrier bag over to Gue through the windows. Thereafter, the two cars parted company and went off on their own separate ways.

3. The car No. JCV 4973 driven by Kum travelled to Whitley Road, and near Bo Seng Avenue, the car was stopped and both Kum and Yau were arrested by the CNB officers.

4. The car No. SBQ 3367J driven by Gue made its way to Onan Road, where it came to a stop outside the house, No. 253A. Staff Sergeant Lim Jit Tong who was deployed to keep a surveillance on that house, saw Gue alighting from his car and entering the house empty-handed. A few minutes later, Gue was seen returning to the car and retrieving a white bag and returning to the house. At about 11.10 am, he came back to the car empty-handed and drove off. He was trailed by the CNB officers and at the junction of Clementi Avenue 6 and Jalan Lempeng, his car was intercepted by the CNB officers and he was arrested. A search was carried out on Gue and, among other things, two keys were found in his left trouser pocket.

5. Gue was taken back to 253A Onan Road. The CNB officers conducted a raid on 253A Onan Road in the presence of the

accused. They gained entry into a bedroom on the ground floor of the premises with one of the keys seized from him. The officers seized a white carrier bag on a study table in the bedroom. The bag was predominantly white in colour with a logo and the words Super Mobile printed in blue and grey and had blue and grey panels along the sides. Inside the bag were three packets of granular substance, which on subsequent analysis were found to contain 76.53 grams of diamorphine. This quantity of drugs formed the subject of the joint charge against Kum, Yau and Gue. Other drugs and drug trafficking paraphernalia were also recovered from the bedroom and other parts of the house, which were not related to the charge.

6. Senior Staff Sergeant Jimmy Ang Oon Tho recorded a statement from Gue upon his arrest, and also a statement while inside the bedroom at 253A Onan Road. In addition, subsequently at the CNB office, inspector Saherly bin Limat, the investigating officer, recorded four statements from Gue under s 121 of the Criminal Procedure Code (Cap 68, 1985 ed). At the trial, the judge conducted a voir dire to determine if all these statements were made by Gue voluntarily, and at the conclusion he was satisfied that all of them were so made.

The statements

7. We now turn to the statements. In the statement made by Gue, while he and the CNB officers were in the bedroom at No. 253A Onan Road, Gue said that there were two or three packets of heroin inside the room. Senior Staff Sergeant Jimmy Ang Oon Tho, who recorded that statement, and Sergeant Henry Chong Wee Loong, who was present when the statement was recorded, gave evidence that after they entered the room, when SSSgt Jimmy Ang asked Gue where the drugs were, he pointed with his chin to the table where the bag was.

8. In the first statement recorded by inspector Saherly on 10 January 2000, Gue said, among other things, that he was in Johor on the night of 4 January 2000. Kum paged him and later spoke to him, and they arranged to meet at a restaurant in Senai. When they met, Kum told him that he had something to do the following day and asked him if he wanted to do it. The material part of the statement was as follows:

When we met, he said that there was something for him to do tomorrow and asked me whether I want to do it. The thing that he wanted me to do is for him to pass something to me. The something is actually Pei Hoon. He did not tell me exactly what it is but I know because we have done this a few times before. At first, I did not want to do it but he scolded me and I agreed after that. I then asked him to call me tomorrow morning before he enters Singapore. . . .

In the same statement, Gue also admitted that he met Kum at the Esso petrol station and at the side road in front of the station, while the two cars were abreast of each other, Yau handed to him a white paper bag with blue wordings, and that he went to 253A Onan Road and placed the bag in the bedroom and locked the room before he left.

9. The next statement made by Gue, to which we need to refer, was that recorded on 24 January 2000. In that statement, Gue further detailed the meeting with Kum at the restaurant in Senai on the night of 4 January 2000. He also gave a detailed account of the events on the morning of 5 January 2000, which substantially corroborated the evidence of the CNB officers. We set out below the material part of the statement:

14. I then proceeded to make a turn and saw Ah Hou in a car with a Malaysian plate. Ah Hou was driving and there was a small boy sitting beside him. I then turned and stopped in front of a Shell station and waited for Ah Hou to stop his car behind mine. After that I started to move off and Ah Hou followed behind.

15. I then drove until I reached an Esso petrol station. I entered the station and Ah Hou followed. I then parked my car near the air pump and came out of my car

to pump my tyre. Ah Hou stopped his car on the right side of mine. He then came out and went into the toilet. After I finished pumping my tyre, I went into the toilet. Ah Hou was inside and we spoke. I told him that there is no one around. Ah Hou mentioned further up. I then agreed. We then left the toilet and entered our cars. I then drove out very slowly along a small slip road. Ah Hou then drove from behind and stopped beside my car, blocking it slightly. The small boy sitting in the front passenger seat then opened the car door and passed a white paper bag with blue wordings onto my lap. I then took the bag and placed it on the front passenger seat. We then left in separate ways. I then drove to 253A, Onan Road to place the bag in my rented room on the ground floor.

What happened next was exactly as witnessed by the CNB officers.

Kums defence

10. Kums defence was that he was totally innocent of the charge that was brought against him, and that the illegal transaction was between Yau and Gue only. The only business transaction between him and Gue was a legitimate one; it was a timber transaction which was carried out in December 1999.

11. His evidence, so far as material, was as follows. On the night of 4 January 2000, Gue had called him to arrange a meeting on the following day in Singapore at Joo Chiat Road for a discussion, the topic of which Gue refrained from revealing. He thought that Gue wanted to discuss the usual things they talked about, viz. timber or women. He therefore agreed to the meeting.

12. When Kum got home in the early hours of 5 January, he parked his car No. JCV 4973 outside the house where he was staying. He found Yau in the house with someone else. He then went to sleep while Yau was still awake. He left the car keys on the floor of the bedroom where he and Yau slept. He woke up at about 8.00 am, and at 8.15 am, he woke Yau up. At 8.30 am, he drove to Singapore with Yau. When they got to Joo Chiat Road for the meeting, Gue was not there. Kum paged him and he replied saying that he would be slightly late. Kum agreed to wait. Kum and Yau then went to a coffee shop to have a drink and waited for Gue. After waiting a while, they walked to a nearby Shell station. Kum bought some toll coupons while Yau went to use the toilet. They then drove around the vicinity until they spotted Gue's car. They caught up with him and Gue gestured to Kum to follow him.

13. The two cars in a convoy proceeded to the Esso petrol station along Still Road. There, Gue pumped air into the tyres of his car, while Kum went to the toilet behind the station. Shortly, Gue also went to the toilet. While there, Gue told Kum that he had something to do and was not free to talk to Kum. He then told Kum to meet him in Johor Bahru later that night. After this brief exchange, they drove off in their respective cars with Gue in the lead. Just outside the Esso station and along the minor road parallel to Still Road, Kum noticed that Gue had slowed down and come to a halt. Being curious, he stopped next to Gue's car to find out what had happened. At that moment, Gue wound down his window and Yau opened his door. He could not see what Yau was doing as his view was blocked by Yau and also because he was too busy watching his rear view mirror and his front, his car being stationary on the wrong side of the road. However, he heard Gue telling him that he would see him later that night. Yau then closed the door and Kum drove off.

14. Kum denied that he instructed Yau to reach under his seat to retrieve a white bag and hand it over to Gue. His evidence was that he was not even aware of the fact that there was a bag under the front passenger's seat. After his arrest, Kum made no incriminating statements, except that he lied in his cautioned statement that he did not know Gue. His explanation for this was that by then he knew that Gue had been arrested for a drug offence and he was afraid to be associated with Gue.

Gue's defence

15. Gue gave evidence in his defence, which was this. His relationship with Kum was that of a casual friendship, although on one occasion, Kum helped him in the procurement of some timber for his factory. On the night of 4 January 2000, he went to his factory in Johor to give his workers some money. As he left his factory, Kum paged him and they arranged to meet at a restaurant in Senai. When they met, Kum told him that he wanted to show him something concerning the timber trade. He told him to show him only relevant things and asked Kum to call him the next morning before he left for Singapore. He then checked into the Lion City Hotel in Johor to stay the night as it was very late.

16. On the morning of 5 January 2000, at about 10.00 am, Kum paged him again. However, when he called Kum, Kum told him that he was in Singapore already. He told Kum that he was still in Johor, and Kum then instructed him to meet him at a hawker centre along Joo Chiat Road. He then left the hotel and drove to Singapore and proceeded to Joo Chiat Road. He met up with Kum outside the Shell station along Dunman Road and his car was in front. He then gestured to Kum to follow him to the Esso station as he needed to pump air into his tyres and get petrol for the car. He wanted to use the services of the Esso station rather than the Shell station, because he had special privileges there as an Esso card holder.

17. When they got to the Esso station, Kum went to the toilet at the back of the station. Gue pumped air into his tyres and then went to the toilet. In there, he met Kum who told him that he had something to pass to him. He replied in the negative, because he was very busy and wanted to meet his shareholder and a client. He then left the toilet and Kum followed. Just after they left the Esso station, Kum sounded his horn at him. He stopped and Kum stopped abreast of his car, blocking his path slightly. Yau then alighted and, through his open window, put a white paper bag on his lap. He then said to Kum: Im busy. Whats up? Kum replied, See you tonight and then drove off.

18. He then drove on to 253A Onan Road, and the reason he gave was that he did not want to have so many things inside his car. He went into the house with the bag which he placed in the living room. He then used the toilet and left. At no point did he enter the bedroom on the ground floor and he was only in the house for about five minutes.

19. Gue denied that, when he was brought back to the house No. 253A Onan Road, he pointed out the bag containing the drugs with his chin. He also denied that the drugs belonged to him. He further denied that the drugs were handed over to him by Yau or that there had been any agreement between him and Kum for the latter to give him the drugs. As for the other drugs found in the house, Gue again claimed ignorance.

20. Two sets of keys were found upon Gue's arrest; one in his pocket, and the other in the glove compartment of his car. One set was used to gain entry into the bedroom of 253A Onan Road. Gue said that this was the set found in the glove compartment. He also asserted, and this was not disputed by the prosecution, that two other sets of keys were recovered from him, but they were returned to members of his family. These were the keys to his factory in Johor.

The appeals

21. We now turn to the appeals. Dealing first with the appeal by Kum. It was contended on his behalf, first, that the judge should not have rejected his evidence as to the manner he made the appointment with Gue, and secondly, that the judge erred in finding that he instructed Yau to hand the bag to Gue. Neither of the contentions had any merit.

22. In his evidence, Kum admitted that he had an appointment to meet Gue in Singapore on the morning of 5 January 2000. He also admitted they met at Dunman Road and then went to the Esso petrol station at Still Road. As to the meeting and the events that took place at the Shell petrol station and the Esso petrol station, there was the clear and undisputed evidence of the CNB officers, who were then keeping a surveillance of the cars driven by him and Gue respectively. In particular, they saw that, while the two cars were abreast of each other at the side road next to Still Road, a white bag was passed by Yau to Gue through the front window next to Gue. Next, there was the evidence of Yau, who said that while the two cars were abreast of each other, Kum

instructed him to take out a bag, which was then below the passengers seat where he was seated, and hand it to Gue, and he accordingly did so. Yaus evidence on this point was accepted by the judge. There was no dispute that a bag from Kums car was passed to Gue. All this was not the only evidence against him. The most incriminating evidence against Kum came from Gue. Gue in his statements made to inspector Saherly implicated Kum in the commission of the offence. The material parts of these statements have been referred to and it is not necessary to repeat them here.

23. Kums account of the events on that morning contained inherent improbabilities. His evidence suggested that he was made an innocent accomplice by Yau and Gue, and that it was Yau acting on his own who delivered the bag to Gue and that he had nothing to do with it. The judge did not accept Kums evidence. The judge found that in several respects his evidence was unsatisfactory. The judge said:

86. The first accused had put forth his account of events, which I found unsatisfactory. In his statement of 5 January, he stated that he had come to Singapore for sightseeing and that after breakfast at Bukit Panjang, he was going to Eunost to eat. This statement is untruthful because by his own evidence he did not make the trip to sightsee but had come to keep an appointment with the third accused, and that he did not go to Eunost to eat, but went to Joo Chiat to meet the third accused.

87. ..

88. His account of the appointment and the postponement of the discussion lacked credibility. He said that he agreed to meet the third accused in Singapore for a discussion without being told what the third accused wanted to discuss, without knowing whether it would be of interest to him. On that morning when they spoke over the telephone when the third accused told him he would be late, and they met in Joo Chiat before they went to the Esso petrol station at Still Road before the third accused told him that he was too busy to talk. Any reasonable person in his position would be upset or annoyed to be put through all the trouble of coming to Singapore, and waiting for the third accused, to be told that the discussion was to be postponed when it could have been rescheduled over the telephone, yet he was neither angry nor upset, and did not ask the third accused why he did not reschedule the discussion earlier.

89. His account of the events outside the Esso petrol station was also not credible. His evidence was that the third accused had told him that he was not free to talk, and asked to meet that night at Johor, and he had agreed. It did not make sense for the third accused to stop his car along the side road to say again they were to meet that night.

We could find no ground for disagreeing with the judge on these findings.

24. We now turn to Gues appeal. It was contended on his behalf that the bag containing the drugs was foisted on him by Yau and Kum, and that he had no knowledge that the bag contained the drugs. Therefore, he was not in possession of the drugs. However, the countervailing evidence was overwhelming and was extremely cogent. He was seen driving his car to the petrol stations to meet Kum and was seen stopping his car at the side road parallel to Still Road, and at that point, the car driven by Kum came up to his side. While the two cars were abreast of each other, a bag was handed over to him through the window on his side by Yau. Gues evidence was that he was surprised that the bag was placed on his lap and that he intended to return it to Kum later, but in the meanwhile he decided to deposit the bag at 253A Onan Road, as he was afraid that it would clutter his car. This evidence was quite unbelievable. The judge did not accept it. Nor did we. The judge said, and we agreed:

96. I did not accept his evidence that he was surprised when the bag was delivered to him and had said "Why? I am busy." It was significant that the second accused did not hear him say that.

97. I also did not accept his explanation for keeping the bag at 253A Onan Road because he did not want to have too many things in his car. The bag was neither bulky nor heavy, and could easily be kept in the car without causing clutter or overloading. He said he was keeping the bag at 253A Onan Road till he can return it to the first accused. It was unreasonable for him to keep it at those premises which he claimed he had not been to since 23 November 1999, thereby necessitating a return trip to the premises to retrieve it when he could have kept it in the car and returned it to the first accused when they met that night. His evidence that he had left the bag unguarded on the dining table in the living room accessible to the other occupants or visitors to the premises was unbelievable.

25. The other contention advanced in Gue's appeal was that it had not been proven that the bag found in the bedroom of No. 253A Onan Road and containing the drugs was the same bag he was seen earlier carrying into the house. There was a lapse of about 35 minutes between the time he brought the bag into the house and the time he was brought back there by the CNB officers, and during this period, the house was not under surveillance, and someone else could have brought the bag into the house and leave the bag there. We found no merit in this contention. Gue himself said in one of his statements that he brought the bag to No. 253A Onan Road and put it in the bedroom on the ground floor, and thereafter he locked the bedroom before he left. Two CNB officers, SSSgt Jimmy Ang and Sgt Henry Chong, testified that he pointed out the bag with his chin to them, when he was asked if there were any drugs in the room.

26. His statements to Inspector Saherly implicated him and contained clear admissions of his involvement in the trafficking of the drugs, the subject of the charge. Here again, we need not repeat the statements, to which we have referred.

27. In conclusion, the judge found as follows:

98. I accepted SSSgt Ang and Sgt Chong's accounts of the recovery of the bag and found that the third accused's statements to Inspector Saherly truly described the events that took place. I also found that the first accused had instructed the second accused to hand the bag to the third accused. I therefore found that the first and third accused were involved in trafficking the drugs in question.

This finding was fully justified in the light of the evidence adduced, and we could find no ground for disturbing it.

28. The evidence adduced established the following. On the morning of 5 January 2000, at the side road outside Esso petrol station, while the two cars driven by Gue and Kum respectively were abreast of each other, Yau at the direction of Kum handed a white carrier bag to Gue; that this handing over the bag was made pursuant to an arrangement Kum and Gue had made earlier; that the bag contained granular substance, which contained a quantity of not less than 76.53 grams of diamorphine, the subject of the charge; and that both Kum and Gue knew that the bag contained the drugs. Thus, at the material time, both of them, acting in furtherance of their common intention, had possession of the drugs for the purpose of trafficking. The ingredients of the charge had been proved beyond reasonable doubt. Accordingly, the appeals were dismissed.

L P Thean

Chao Hick Tin

Lai Kew Chai

Judge of Appeal

Judge of Appeal

Judge

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