

Public Prosecutor v Mervin Singh and another
[2011] SGHC 222

Case Number : Criminal Case No 16 of 2010
Decision Date : 05 October 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Sellakumaran Sellamuthoo, Geraldine Kang, Ramesh Ethan, Crystal Ong, Sherlyn Neo, Toh Puay Suan, Navih Thevar and Wynn Wong (Attorney-General's Chambers) for prosecution. Selva Kumara Naidu (Liberty Law Practice LLP) and Joseph Tan Chin Aik (Atkins Law Corporation) for first accused. Boon Khoon Lim and Dora Chua Siow Lee (Dora Boon & Company) for second accused
Parties : Public Prosecutor — Mervin Singh and another

Criminal Law – Drug Trafficking

[LawNet Editorial Note: In Criminal Appeal No 18 of 2011, the first appellant's appeal was allowed and the second appellant's appeal was dismissed by the Court of Appeal on 8 March 2013. See [\[2013\] SGCA 20](#).]

5 October 2011

Judgment reserved.

Choo Han Teck J:

1 The two accused were charged for trafficking in 186.62g of diamorphine on 27 November 2008. Mervin Singh ("the first accused") was arrested at 3.10pm along Tampines Avenue 7 and found to be in possession of a pink coloured box for the "Daia" brand detergent ("the pink box") which contained nine packets of granular substance later analysed to be 186.62g of diamorphine, the subject of the charge against the two accused. Subashkaran ("the second accused") was arrested shortly after 3.02pm when he was said to have delivered the pink box to the first accused in lift "A" at Block 485B Tampines Avenue 9. The prosecution's case was that the second accused brought the pink box from his flat in #10-130 Block 485B Tampines Avenue 9 ("the flat") and left the pink box on the floor of lift "A" and walked out of the lift, signalling to the first accused by gesturing with a nod of his head towards the lift. The first accused went into the lift and walked out with the pink box under his arm. Both accused denied the allegations against them.

2 The prosecution case against the first accused was that when he was arrested, he was with Sallehuddin bin Mohammad ("Sallehuddin") and Muhamamad Rizal bin Sumani ("Rizal") in a Subaru Imprezza SGZ 8653, rented by Sallehuddin. Sallehuddin and Rizal were not involved in the charges against the two accused but testified on behalf of the prosecution. The undisputed evidence was that Sallehuddin drove the first accused at the latter's request to Block 485B Tampines Avenue 9. There the first accused told Sallehuddin and Rizal to wait in the car while he went to meet a friend. Station Inspector Goh Teck Hock ("SI Goh") testified that he was watching the first accused at a distance when he saw the first accused enter lift "A" and walking out with the pink box. SI Goh testified that he saw the first accused opening the box and looking into it. Sallehuddin testified that the first accused was not carrying the pink box when he left the car, but returned with the pink box which the first accused placed on the floorboard of the car. Sallehuddin could not see what was in the box. The first accused told Sallehuddin to drive to the "Afghanistan" coffeeshop, but the car was

intercepted and the three men arrested at Tampines Avenue 7. They were driven to Tampines Street 21 and there the pink box, which was not sealed, was opened and the contents taken out. Sallehuddin testified that he said to the first accused, "You told me that you were taking contraband cigarettes but what is this?" The first accused did not reply.

3 The second accused was arrested after he left lift "A" and went to his car. He was brought back to his flat where the Central Narcotics Bureau ("CNB") officers found a packet of granular substance similar to the nine packets in the pink box. The forensic evidence showed that this packet was roughly the same weight as each of those nine packets. A sealer, aluminium foil, a straw and a rolled-up note were also found in the second accused's room in the flat.

4 There was also evidence from the prosecution to show that between 1.24pm and 3.05pm the first accused had called the second accused, both men using their mobile telephones. There was also forensic evidence to show that DNA profiles taken from the pink box and the newspapers used to wrap the nine packets of diamorphine matched the DNA profile of the second accused. The forensic expert testified that the frequency of finding such a match was about one in 14,000. The evidence adduced at the close of the prosecution case showed that if unrebutted, the charges against the first and second accused would warrant a conviction. I therefore called upon the accused to elect whether they would testify or remain silent or adduce other evidence in their behalf. Both accused elected to testify.

5 The defence of the first accused was that he had no knowledge that he would be trafficking in diamorphine because throughout the relevant times he was under the impression that he was buying and collecting contraband cigarettes for his own business. He called one Nizam bin Hamzah who was known as "Sopak" ("Sopak") to corroborate his story that he (the first accused) was at Tampines Avenue 7 to collect contraband cigarettes for Sopak. Sopak's evidence differed slightly in that he (Sopak) was the one who asked the first accused to look for cigarettes. He said that he told the first accused to pick up some cigarettes from someone known as "Ah Boy" if the first accused happened to meet Ah Boy. The thrust of the first accused person's defence was that he picked up the pink box thinking it contained contraband cigarettes. I do not find the first accused person's story about collecting cigarettes for Sopak compelling in any way. It was vague, inconsistent, and did not make much sense. He hardly knew Sopak and no details were given as to why Sopak would trust him and vice versa. Since the pink box in fact contained diamorphine, why would Sopak rely on the first accused to carry out the pick-up if the first accused believed that he was picking up cigarettes? No explanation was given as to why Sopak had no worry that the first accused might have taken away the diamorphine himself, or expose Sopak to the authorities if he (the first accused) did not want to be involved in a drug transaction. In any event, Sopak did not corroborate this. Sopak's evidence under cross-examination was that he did not know about the drugs in the pink box. He also denied talking to "Ah Boy". I took into account that there might be a possibility that Sopak was trying to avoid implicating himself. This was a transaction that involved the two accused in such a way that neither could have participated without knowing that it was a drop-off and pick-up of the diamorphine found. There was a dispute between counsel for the prosecution and the defence as to whether SI Goh was sufficiently close to see what he testified he saw, namely, that the first accused opening the pink box and looking into it. Having heard the evidence of SI Goh and the first accused, I am inclined to believe SI Goh. Even if he was at a distance from the first accused as the photographs showed, it was close enough, in my opinion, for a narcotics officer looking out for a target suspect to be able to see what he saw.

6 The second accused admitted that he was in possession of the packet of diamorphine found in his room but he claimed that he was keeping that for his friend "Kacong". He denied everything else. His explanation as to why the telephone records show connections made between his mobile

telephone and that of the first accused during the material time just before the arrests was that he (the second accused) had passed his telephone to "Ah Boy" and it was Ah Boy who was speaking to the first accused. He told the court that Ah Boy had mysteriously and suddenly appeared at his flat and knocked on his window. I find the defence of the second accused to be incredible, and the manner in which the second accused recounted the events was not persuasive. His defence of that story under cross-examination was also poor and I am unable to find any reasonable doubt in his favour. The problem for the second accused was that he had not only to disassociate himself from the telephone calls through his mobile telephone to that of the first accused, he had also to explain why the first accused told the court that in the call at 3.04pm the speaker said he was on the way down, and moments later, the door to lift "A" opened and the second accused walked out. The first accused also testified that he thought that the second accused was delivering contraband cigarettes when he (the second accused) gestured towards the lift where the pink box was left. The second accused also could not explain why his DNA profile was found on the newspaper wrapping the packets of diamorphine other than to question why the first accused person's DNA profile was not found when he (the first accused) clearly handled the pink box.

7 The prosecution adduced five statements made by the second accused for the purpose of impeaching his credit. Mr Boon argued that those statements were not made by the second accused, and that it was Investigating Officer Agnes Wong ("IO Wong") who created the written statements. Counsel relied on the fact that the prosecutor initially used a copy without the amendments, but I accept IO Wong's explanation that she recorded the statement in her computer and had forgotten that the hard copy she kept in the file was the one before the corrections were made. Nothing turned on the corrections themselves. In any event, I need not go so far as to hold that the evidence of the second accused was impeached by those inconsistent statements, but it was clear that those statements made his story sound even more incredible than it already did.

8 In the course of the prosecution case, the Deputy Public Prosecutor sought to adduce four statements made by the second accused. The second accused challenged the admissibility of the statements on the ground that they were not made voluntarily. At the end of the trial-within-a-trial I was not satisfied that the statements were voluntary and so I did not admit them into evidence. I refer to those statements now only to record the incredible evidence of Dr Muhammad Iqbal ("Dr Iqbal"), the private contract doctor assigned to conduct a pre and post statement medical examination of the second accused. Furthermore, in the course of his evidence, it also appeared that the system adopted for the medical examination of the accused by contract doctors was flawed and needs to be reviewed. I am doubtful whether Dr Iqbal actually examined the second accused. It was not clear how many suspects were examined by Dr Iqbal on 27 November 2008 – other than the first accused. There was no check list for either the doctor or the CNB as to how many prisoners were to be examined in the course of the evening, and there was no record that the names and identities were given to the doctor so that he can satisfy himself that he had examined all of them. In this case, Dr Iqbal might have completely overlooked the fact that he had to examine two and not one accused that day. The report of his examination of the second accused was suspect and could possibly have been completed after the event. The second accused maintained that he was not examined by any doctor at all. If Dr Iqbal's evidence was to be accepted, then he would have examined the second accused in less than a minute. Dr Iqbal did not correct his report and maintained that he was able to examine the second accused, taking his pulse and blood pressure, and asking him questions, all in under a minute. The evidence that the second accused had been properly examined by a medical doctor was not adequately proved.

9 However, given all the rest of the evidence adduced by the prosecution, and testing them against the explanations by the accused persons, I am of the view that the testimonies of the two accused persons and their evidence raised no reasonable doubt in my mind as to their guilt. I

therefore found them guilty as charged, and sentenced them to suffer death.

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