

Public Prosecutor v Yeo Kang Oh
[2001] SGHC 246

Case Number : CC 35/2001
Decision Date : 28 August 2001
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Han Ming Kuang and Edwin San for the prosecution; Rajah Retnam (Rajah Retnam & Co) and Peter Ong (Thomas Loh Partnership) for the accused
Parties : Public Prosecutor — Yeo Kang Oh

Judgment:

1. The accused Yeo Kang Oh faced a charge of trafficking that he on or about the 27th day of January 2001, at about 6.10 p.m., at Blk 9, Toa Payoh Lorong 7 #04-327, Singapore, did traffic in 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, 25.55 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, Chapter 185, and punishable under section 33 of the aforesaid Act.

2. He was arrested in an operation by officers of the Central Narcotics Bureau. The operation was focused on him and another person Tan Jek Cheng ("Tan") and a van GQ 2429L ("the van").

3. In the event he and Tan were arrested separately. Tan was arrested in the van at the junction of Lorong 6 and Lorong 7 Toa Payoh on 27 January 2001 at about 5.45 pm. See Han Keok (the accused's wife) and her infant grandson were also with Tan at that time. The officers recovered from the van a black pouch holding two sachets of heroin and a black sling bag containing a digital weighing scale. A straw of heroin was recovered from Tan's right shorts pocket and a red packet containing two small sachets of heroin was recovered from his left shirt pocket. Tan admitted that the heroin belonged to him and were intended for his own consumption.

4. The officers ascertained that he resided at Blk 9 Toa Payoh #04-327 ("the flat") and seized the keys to the flat from him. They then went to the flat at about 6.10 pm.

5. When the officers raided the flat they encountered more excitement than they anticipated. They opened the flat's door and were about to enter the flat when the accused confronted them brandishing two choppers. As they made a hurried retreat, the accused ran to the rear of the flat, and jumped out from the kitchen window.

6. The accused fell four floors to the ground level. He suffered fractures of the vertebra and a rib. He recovered from the injuries and did not appear to be any the worse for them at the trial.

7. The officers re-entered and searched the flat. It was of conventional layout with a living room, two bedrooms, a kitchen and a utility room at the rear. On the floor of the room there were 50 unsealed sachets of powdery substance and a pile of loose powdery substance and a plastic bag containing 14 sachets of powdery substance. On the bed in the same room there was another plastic bag with five sachets of a similar substance and some empty sachets inside. Two straws of the same substance were also recovered by the officers. The powdery substance recovered was certified upon analysis to have a diamorphine content of not less than 25.55 g.

8. At this point I have to say that the evidence on the recovery and marking of the exhibits was unsatisfactory. The two officers principally involved in that were ASP Teo Chin Seng and ASP Daniel Tan. In ASP Teo's statement he stated

6. At the rear of the kitchen of the flat was a utility room and on the floor of this utility room, I saw various plastic sachets of yellowish substance and a substantial loose amount of the similar substance on a piece of paper lying next to them. Inside a plastic bag, I saw 3 bundles of similar plastic wrappings containing the yellowish substance and inside another plastic bag, I saw another similar bundle. As the drugs recovery was quite substantial, I contacted the duty Investigating Officer (IO) from Special Investigation team (SIT) to proceed to the scene to take over investigations.

9. ASP Tan stated on his part that

3. At about 7.20 pm, I left for the scene. At about 7.50 pm, I arrived at the scene and was briefed by ASP Teo that his party had raided the unit and recovered some drugs in the utility room of the said unit.

10. There was no clear reference in their statements as to where each of the drug exhibits was recovered from. In other cases, direct evidence will be given on the location of the exhibits, with explanations to the opening up or unwrapping of exhibits when this took place. In this case one was left to rely on the photographs tendered to establish that. Even with the aid of the photographs, one cannot tell where exactly the two straws were recovered from, and whether they were found loose by themselves. Greater attention should be given to such matters. I make the point of mentioning this in the hope that standards do not slip. It was fortunate for the prosecution that the accused did not dispute that the drugs referred to in the charge were recovered from the flat, and that the defence made no distinction between one part of those drugs from another.

The connection between the accused and the flat

11. The flat belonged to Tan, who took in tenants. The accused was the tenant for the rear bedroom since 26 December. However the accused was using the flat before then. He moved into the flat in November, before the rear bedroom was vacated by the previous tenants, and shared the utility room which was occupied by Tan. The accused was in urgent need of accommodation because he was on the run (there was a warrant of arrest issued against him for failing to attend court) and he could not stay at his own home at Jalan Membina Barat for fear of being arrested.

The statements

12. The case against the accused rested largely on four statements that he made after his arrest in which he admitted the offence without reservation. The accused did not dispute that he made the statements voluntarily and did not dispute their admissibility, but he disputed the truth of the statements.

13. The accused made a cautioned statement on 2 February to a charge of trafficking the diamorphine in the flat together with his wife and Tan, he admitted that "The heroin belongs to me. It has nothing to do with Ah Jack and my wife."

14. On 8 February, he made his first investigation statement. In this statement he stated that on 27 January, he and Tan went to Woodlands Centre in the van to pay his supplier one Xiao Tee \$5200 for

a pound of heroin he collected the day before.

15. After paying Xiao Tee, he and Tan (who he referred to as "Ah Jack") went to his home at Jalan Membina Barat. He then described what happened

3. I reached home at about 5 plus the same afternoon. I told Ah Jack to return to my home to fetch my wife and my grandson while I went back to the Toa Payoh flat. Upon reaching home, I went to Ah Jacks room which is the utility room, to start repacking the one pound of heroin which I took the previous day. I pour the heroin onto a stack of newspaper and filled the empty sachets using a paper scoop. I filled about 60 over sachets with heroin roughly about 7 to 8 grams each. I stopped repacking and called Ah Jack on his handphone, 94887207. His phone was not on. Next, I paged Ah Jack at 92280047. I waited for about 5 minutes but he did not respond. I then called my wife on her handphone. She did not answer the call. I feel uneasy and went to the kitchen window to take a look. I saw a few man loitering at the carpark. I became suspicious and I wanted to put on my long pants and go out. As I was walking towards the living room, I saw moments (sic) outside the flat. I went back into the kitchen and took 2 choppers to arm myself. I went to stand behind the main door. I swing my chopper when I saw the main door opened. I did not hit anyone. I heard a lot of shouting and I ran towards the kitchen and jumped out of the window.

16. On 9 February another statement was recorded from him. In this statement he referred to the circumstances in which he acquired the heroin and brought it back to Tans flat

7. On 26.1.2001 in the evening, I met a Malaysian Chinese, Xiao Tee, at Woodlands Center to collect one pound of heroin. Xiao Tee was introduced to me by my addict friend, Ah Cheng. I met Ah Cheng by chance and asked Ah Cheng whether he had any source for heroin. He took my handphone number, 94561556, and asked me to wait for phone call. I did not have Ah Chengs contact number as he did not give me. That was about one week before my arrest. Xiao Tee contacted me in the morning of 26.1.2001 and told me that he wanted cash for the heroin. I told Xiao Tee that I did not have the cash. Xiao Tee told me that he would call me again in the afternoon. In the afternoon about 1 pm, Xiao Tee called me again and told me that he would let me have one pound of heroin on credit. I must pay him S\$5200/- within 2 days. I agreed to his suggestion. He then told me to meet him at the money changer opposite the McDonald Restaurant at Woodlands Center at about 5 pm to collect the heroin. I asked Ah Jack to sent me to Woodlands Center in the van. Ah Jack waited for me in the van while I went to the agreed place to wait for Xiao Tee. When I met Xiao Tee, he handed over a yellow plastic bag to me. I told Xiao Tee that I would pay him the money the next day at the same place. Xiao Tee told me that he would call me again to confirm the time. Xiao Tee then went off. I went back to the van and we went off. I then went to the coffeeshop of Blk 158 Meiling Street to borrow money from a loanshark to pay Xiao Tee.

8. When I went back to the Toa Payoh flat, I went to my room to check the content of the plastic bag. I opened it and saw a paper bag, which contained a pound of heroin wrapped in polythene wrapper. I then hide it in my bedroom without Ah Jack knowing. I decided to repack the pound of heroin into sachet

from the next day in Ah Jacks room as I am afraid that my wife might visit me.

and his intentions for the heroin

10. I intend to sell the one pound of heroin to sustain my addiction. I have a few addict friends whom I can sell heroin to. I intend to sell one sachet of heroin for the price of S\$160 to S\$170 as they are my friend.

17. In his statement recorded on 13 February, he referred to his smoking habit, stating that "I was smoking about half a sachet of heroin a day before my arrest."

18. All the statements were recorded by ASP Daniel Tan. Each statement was recorded with the assistance of a Hokkien interpreter, and the accused affirmed that the statement had been read back to him in Hokkien and he affirmed the contents were true and correct. Defence counsel did not raise any issue with him on the manner in which he made the statements, or the manner they were recorded.

Evidence of Tan Jek Cheng

19. Tan knew the accused as "Ah Jun". In his conditioned statement he admitted that he went to Woodlands Centre with the accused on 27 January. He waited in the van while the accused went to look for his friend. After that the two of them went for lunch at Taman Jurong. After lunch they went to the accuseds home at Jalan Membina Barat. They subsequently left Jalan Membina Barat to return to his flat. At the carpark the accused told him to return to Jalan Membina Barat to fetch his wife and grandson. He did as he was told, and was arrested soon after he had picked them up.

20. Tan gave an account of his relationship with the accused. He came to know him through a friend in November. The accused asked if he could provide him accommodation. Although he told the accused there was a bedroom which would be available on 26 December, the accused asked to stay in the utility room with him before that room became available. Consequently the accused moved into the flat, first sharing the utility room, then occupying the vacated bedroom.

21. Tan added in his statement

9. I do not know about Ah Juns trafficking activities. I am aware that he is selling heroin and smoking heroin also. I suspect he is selling heroin in sachets. He did not asked me to help him in his drug trafficking activities. I do not know where he got his heroin supply. I did not know that he kept so much heroin in the house. As far as I know, Ah Soh did not smoke heroin and she is not involved in Ah Juns drug trafficking activities.

10. I do not know how the heroin came about in my room. As I was fetching Ah Soh (the accuseds wife) back to my house, I believed Ah Jun make use of my room to repack the heroin into sachets form as he did not want his wife to know about it.

22. Defence counsel put the accuseds case to him. It was that he agreed to assist the accused to obtain drugs from the latters Malaysian supplier, and that he wanted to have a share of the drugs. When the accused told him he was buying one pound of heroin for \$5200, he gave the accused \$1000 to have a share in the drugs, and the accused provided the other \$4200. After the accused collected the drugs, he told him about it. They had lunch at Taman Jurong, then went to Jalan Membina Barat.

From Jalan Membina Barat, they went to the flat. The two of them went up to the flat where they stored the drugs in the utility room. It was much later, when the accused received a telephone call that he instructed Tan to go to fetch his wife and grandson.

23. Tan denied all that and maintained that he did not know about the purchase, that he did not have a share in the drugs, and that he did not go up to the flat with the accused.

24. Two aspects of the cross-examination were noteworthy. First, the case put by counsel was that the drugs were collected from the supplier on 27 January. Second, it was not put what share of the drugs Tan was to have, or how he was to pay for it.

The defence

25. In his defence the accused said that he and Tan had been to Woodlands on 26 and 27 January. The first occasion was to collect drugs, and the second to pay for them. After collecting the drugs on 26 January, he brought them to the flat and placed them in the utility room.

26. On 27 January he and Tan went to Woodlands to make payment for the drugs. After that they went to Taman Jurong for a meal and then to his home at Jalan Membina Barat. His evidence was that

When I returned home, I took drugs again together with Tan Jek Cheng. A while later, I suggested to him that we return to the flat in Toa Payoh because I wanted to do something. He then drove me in the van and we returned to Toa Payoh. When we reached Toa Payoh, both of us went up to his flat. When we were in the flat, my wife telephoned me. She told me that our grandchild had returned home. I then told Tan Jek Cheng to fetch my wife and my grandchild from Jalan Membina Barat. Tan then left the flat. I remained in the flat waiting for them. I waited for quite some time but they did not turn up and I felt that something was amiss. Now, I suspect that something had gone wrong. When I looked down from the rear window, I saw many people moving around. I felt that something must have gone wrong, so I intended to leave the flat. I did not change my clothing. I saw many people outside and I dare not go out. I did not know who these people were so I carried two choppers with me. Someone opened the door. I saw the CNB officers. I quickly closed the door but they opened the door again. I then used the choppers to frighten them and after that I ran back to the kitchen and attempted to commit suicide, so I jumped down.

27. In answer to his counsels questions he said that Tan was aware of the collection and payment of the drugs which were to be shared equally between them.

28. Counsel also referred him to the statements he made. He said they were not entirely true and that he made them because

All along, my wife was not aware that I was involved in such a thing. She was only aware that I had consumed drugs and that I've absconded. I did not want to put my wife in trouble. So after I was arrested, I did not know how to give a statement. I have no choice but to admit that everything belongs to me.

I was afraid that if Tan Jek Cheng did not want to admit those things found in the vehicle were owned by him, then my wife would be in trouble.

and

If I've admitted that all the things belonged to me, then Tan Jek Cheng would admit that the thing found in the van belongs to him, and my wife would be out of trouble.

29. In cross-examination the accused said that as he and Tan were sharing the drugs equally, Tan was to pay for his share by making weekly payments of \$300-\$400 after making the initial contribution of \$1000. His intention was to sell half of his share of the drugs and to keep the other half of his share for consumption. However, his stance on this was not consistent. He also said in evidence that his share was for his own consumption, and that the drugs were bought for consumption by him and Tan.

30. That was not all, his evidence on his rate of consumption also varied substantially. It varied from a straw or slightly more a day to half a sachet to a day to five sachets a week and half a pound in 30 days. (That would be at least one sachet a day on the basis of his admission that he had filled about 60 sachets with the pound of heroin he bought, not counting the loose pile still to be packed.) There were no medical records of drug withdrawal symptoms during the time he was warded at the Tan Tock Seng Hospital from 27 to 29 January, and he did not say that he developed such symptoms.

31. Towards the end of his testimony, he said that he had told the recording officer on 9 February that only half of the drugs purchased belonged to him, and that he intended to sell half of his share and consume the balance. This was a new development in that it was not put to ASP Tan or the interpreter who assisted in the recording of the statement, as well as being inconsistent with the confirmation at the end of that statement that it was read over to and affirmed by him before he signed it.

32. The prosecutor brought up his cautioned statement -

Q (T)ake the statement at page 123 (the cautioned statement), when you gave this statement, how do you know that Tan Jek Cheng would admit to the drugs in the van?

A The CNB officers told me that Tan Jek Cheng had already admitted ownership of the drugs found in the van.

33. The accused went on to explain that "(o)nce Tan Jek Cheng had admitted the ownership of the drugs found in the van and I had admitted the ownership of the drugs found in the flat, then my wife will have nothing to do with the drugs", and this led to

Q: (S)ince Tan had already admitted to the drugs in the van, your wife is exonerated for the van drugs. Why didn't you say in the statement at page 123 (the cautioned statement) that Tan had a share in it too the flat drugs?

A I wanted to make sure that my wife is really out of trouble; that I wanted to make sure that she would be released before I mention that Ah Jack had a share in the drugs.

34. Later in his evidence, he changed his position. He said he did not know of Tan's admission till the second or third occasion he made his statements.

35. The prosecutor asked why he did not mention in his statement that Tan was with him at the flat before he went to fetch his wife and grandson, and his explanation was that although Tan was at the flat with him between 3 pm and 4 pm and only left at 5 pm, he was too nervous to mention that when he made the statement. The explanation was in conflict with his statement in which he admitted that he reached the flat at about 5 pm (not 3-4 pm), and instructed Tan to fetch his wife and grandson while he went back to (not remained at) the flat. The discrepancies cannot be explained away as the result of nervousness or oversight.

Evaluation of the defence

36. The accused did not say that he was threatened or that any inducement was offered to him when he made the four statements to ASP Tan. The late allegation that his statement was not fully or properly recorded was not credible because that was not put to ASP Tan or the interpreter, and because the statements were read back to him and he had affirmed them to be true and correct.

37. I also did not accept his explanation that he made the admission to secure his wife's release. There was no basis for him to fear that Tan would allege that the drugs in the van were hers. To the contrary, he knew that Tan had admitted the ownership of those drugs even before he made the first statement (although he shifted position on this later, as he did in other aspects of his case).

38. Even if he was moved to do that, there was no reason for him to admit sole ownership of the drugs in the flat if that were not so. He could state the truth (or what he claimed to be the truth), that the drugs belonged to him and Tan, and that would still exonerate his wife. There was absolutely no need for him to say they were all his.

39. His defence was weak and flawed because -

- (i) his counsel did not put to Tan his alleged half share of the drugs and the agreement to pay for it,

- (ii) his evidence that Tan was in the flat with him on 27 January was contradicted by his own statement,

- (iii) his evidence on the intended use of the drugs was inconsistent,

- (iv) his evidence on his consumption rate varied substantially,

and most importantly,

- (v) he admitted guilt in his voluntary statements in the clearest terms.

40. After reviewing the evidence I found that the defence failed to raise any reasonable doubt that the accused was guilty and had admitted to the charge he faced. In coming to this conclusion, I accepted that he may have consumed some of the heroin himself or with Tan if he was not arrested, seeing that they were both heroin abusers, but it was clear from his admissions that the principal purpose for acquiring the pound of heroin was for re-sale, and that any part of that which would have been consumed by him would be insignificant in relation to the large quantity he purchased. Furthermore, there was no reliable evidence for a meaningful apportionment of the amount of the diamorphine for self-consumption (see *Abdul Karim bin Mohd v PP* [1996] 1 SLR 1). Hence I convicted the accused and imposed the mandatory sentence of death on him.

Sgd:

Kan Ting Chiu
Judge

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