Public Prosecutor *v* Sng Chun Heng and another
[2010] SGHC 317

Case Number	: Criminal Case No 3 of 2009
Decision Date	: 26 October 2010
Tribunal/Court	: High Court
Coram	: Tay Yong Kwang J
Counsel Name(s)	: Leong Wing Tuck, Lu ZhuoRen John and Gail Wong, DPPs (Attorney-General's Chambers) for the prosecution; Goh Siok Leng (Christina Goh & Co) and Lam Wai Seng (Lam W S & Co) for Sng Chun Heng; Ong Cheong Wei (Ong Cheong Wei & Co) and Ranadhir Gupta (A Zamzam & Co) for Chan Heng Kong
Parties	: Public Prosecutor — Sng Chun Heng and another

Criminal Law

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 11 of 2010 was dismissed by the Court of Appeal on 6 March 2012. See [2012] SGCA 18.]

26 October 2010

Tay Yong Kwang J:

Introduction

1 The accused, Sng Chun Heng ("Sng") was born on 21 October 1972. He was tried and convicted on the following capital charge under the Misuse of Drugs Act ("MDA")(Cap 185):

> That you, Sng Chun Heng,
>
> on or about the 23rd day of January 2008 in Singapore, did abet one Sng Choong Peng in trafficking in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by instigating Sng Choong Peng to be in possession for the purpose of trafficking 30 packets of substances containing not less than 17.70 grams of diamorphine without any authorisation under the Misuse of Drugs Act or the regulations made thereunder, when you instructed him to collect the said drug from a certain person which he did on 23rd January 2008 at or about 1.55pm in the vicinity of Kampong Arang Road, Singapore, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and section 12 and punishable under section 33 of the Misuse of Drugs Act.

Three other related non-capital charges under the MDA were stood down at the commencement of the trial and subsequently withdrawn upon Sng's conviction on the capital charge.

2 The accused, Chan Heng Kong ("Chan") was born on 19 September 1960. He was tried and convicted at the same trial on the following related capital charge:

> That you, Chan Heng Kong,
>
> on the 23rd day of January 2008 at about 1.55pm at the vicinity of Kampong Arang Road,

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 delivering to one Sng Choong Peng 30 packets of substances containing not less than 17.70 grams of diamorphine without any authorisation under the Misuse of Drugs Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) and punishable under section 33 of the Misuse of Drugs Act.

Two other related charges of drug trafficking were stood down. They were withdrawn by the prosecution after Chan's conviction on the capital charge.

3 This trial started in April 2009 but had to stop abruptly when assigned assisting counsel for Sng had to withdraw as counsel urgently for personal reasons. Further trial dates in November 2009 were given by the registry after another assisting counsel assigned for Sng had had sufficient time to study the case. Unfortunately, assigned lead counsel for Chan, Mr Alan Moh, had to undergo treatment for cancer during the adjourned dates. Sadly, Mr Alan Moh passed away in December 2009. Chan's assisting counsel was then appointed as lead counsel and a new assisting counsel was assigned for Chan.

The prosecution's case

4 Sng and his brother, Sng Choong Peng ("Choong Peng"), resided at Block 12 Kampong Arang Road #04-11, Singapore while Chan resided in Jurong.

5 In the morning of 23 January 2008, a team of Central Narcotics Bureau ("CNB") officers conducted surveillance at Block 12 Kampong Arang Road. Three Chinese men were expected to receive drugs from a person driving a silver-coloured vehicle with registration plate containing the number 702. In the meantime, another team of CNB officers was at the Woodlands Checkpoint to look out for a male Chinese who was believed to be bringing in drugs in the said vehicle.

6 At about 1.10pm, a silver-coloured Toyota Corolla bearing registration plate EP 702P ("Chan's vehicle") arrived at the Woodlands Checkpoint from Malaysia. The driver was subsequently ascertained to be Chan. Chan's vehicle was cleared and it then went onto the Bukit Timah Expressway where it was trailed by CNB officers all the way to Kampong Arang Road.

7 At about noontime at Kampong Arang Road, Sng and Choong Peng were spotted at a hawker centre there. At about 1.20pm, they returned to Block 12. Sng met up with one Ang Cheng Wan ("Ang") at a corner of the void deck there while Choong Peng walked towards the circular pavilion that is adjacent to Block 12. Soon thereafter, Chan's vehicle turned into the carpark of Block 12 and stopped near the pavilion. Chan alighted with a red plastic bag, walked over to a rubbish bin located at the pavilion and left the plastic bag there. He then returned to his car and drove it to another spot nearby.

8 At about 1.55pm, Choong Peng walked towards Chan's vehicle and got into the front passenger seat. A little later, Choong Peng alighted and walked towards the pavilion where he took the plastic bag left by Chan.

9 Chan then drove off in his car. Chan's vehicle was trailed after it left Kampong Arang Road. It eventually stopped and parked at 48, Lorong 25A in Geylang. Chan was arrested as he stepped out of his car. A black Prada sling bag on the front passenger seat was found to contain a bundle of $50 notes amounting to $7,500. In the rear passenger seats, there was a paper bag with the markings "Estebel 1833". Inside that paper bag were four packets of Mamee snack. The four packets were laid out on the ground next to Chan's vehicle. They were then opened up. Drug items found therein were

seized and placed into separate Ziploc plastic bags.

10 Choong Peng continued walking towards the carpark entrance near Block 12. Sng and Ang also walked towards the said carpark entrance where they met up with Choong Peng. The three men then proceeded towards Mountbatten Road where they hailed and boarded a taxi. Ang sat in front while Sng and his brother sat in the rear of the taxi, with Sng directly behind the taxi driver's seat. The taxi travelled to the public housing estate at Chai Chee Avenue.

11 At Chai Chee Avenue, when the taxi stopped, CNB officers moved in towards the taxi. Choong Peng and Ang alighted and bolted. They were chased by the CNB officers and arrested after a brief struggle. Sng remained in the taxi and was also arrested. The plastic bag that Choong Peng had been holding was found on the floor board at the rear compartment of the taxi. Inside the plastic bag was a packet of Mamee snack. It was brought back to the CNB office and handed over to the investigating officer.

12 Sng's bedroom in Kampong Arang was searched by CNB officers. Drug exhibits found in the second drawer of his desk were seized and placed into separate Ziploc plastic bags.

13 At the CNB office, the drug exhibits were systematically photographed and subsequently weighed in the presence of all four arrested men (Chan, Sng, Choong Peng and Ang). The respective weights were recorded in the investigation diary and the arrested men were asked to sign to acknowledge the weights. There was no room for any mix-up of drug exhibits seized from different locations. No allegation of mix-up was raised by Sng and Chan in their cautioned and their long statements.

14 The drug exhibits were analysed by the Health Sciences Authority as follows. The 30 smaller packets found inside the packet of Mamee Monster snack in the plastic bag in the taxi contained not less than 17.70 grams of diamorphine, the subject matter of the two charges set out above. The drugs from the Estebel 1833 paper bag found in Chan's vehicle contained not less than 71.57 grams of diamorphine. Those seized from Sng's bedroom contained not less than 11.97 grams of diamorphine.

15 The mobile phones of Sng, Chan and Choong Peng were also seized by the CNB officers. The call tracing records for these three mobile phones showed that there were four calls between Chan and Choong Peng between 1.28pm and 1.52pm on 23 January 2008. During this period, Chan received incoming calls from only Choong Peng's mobile phone. Between 12.01am and 2.10pm, no call was made between Sng and Choong Peng's mobile phones.

16 Several statements were made by Sng and Chan in the course of investigations. While Sng challenged the admissibility of his statements, Chan did not. A trial within a trial was held accordingly to determine the admissibility of Sng's statements. The parties agreed that only one trial within a trial be conducted for the statements which were made at various points in time.

The trial within a trial (Sng)

17 Sng challenged the admissibility of his statements on the ground that one of the CNB officers at Chai Chee Avenue uttered threats to him. He did not know that officer's name but could recognize him if he saw him. Accordingly, an identification parade was conducted in court for Sng to point out the officer in question. Sng identified the officer as SI Goh Teck Hock ("SI Goh").

18 A total of nine witnesses were called for the prosecution in the trial within a trial. In addition, the prosecution admitted the written statement of the interpreter, Wu Nan Yong ("Wu"), who

assisted the investigation officer in the taking of Sng's statements, under section 378(b)(i) of the Criminal Procedure Code ("CPC"). Wu had passed away before the trial proper commenced. Two medical reports from Alexandra Hospital pertaining to Sng's pre-statement physical examination at about 10.30pm on 23 January 2008 and post-statement physical examination at almost 2am on 24 January 2008 were also admitted by consent. These medical reports indicated no physical injuries on Sng although he complained of having a cough and a runny nose and was prescribed the relevant medication. Ang was offered to Sng as a witness but Sng declined to call him to testify after his counsel had interviewed Ang. Sng was the only defence witness for the trial within a trial.

19 As mentioned in the trial proper, Sng was arrested and handcuffed in the taxi at Chai Chee Avenue. The CNB officers involved testified that Sng was brought out of the taxi and subsequently placed in a CNB vehicle with Ang. Later that day, Sng was brought back to his flat in Kampong Arang Road where a contemporaneous statement was recorded from him by SSI Ang Oon Tho ("SSI Ang"). The statement was read back to Sng who did not make any correction when invited to do so.

20 A statement under section 122(6) of the CPC was recorded at the CNB Headquarters in the early hours of the morning on 24 January 2008 by ASP Senthil Kumaran with the assistance of Wu as the interpreter for Sng who was speaking in Hokkien. Although the ASP did not understand Hokkien, he did notice anything untoward during the recording.

21 Three long statements were subsequently recorded from Sng at various times by ASP Adam Tan, with Wu as the interpreter. Sng did not object to Wu being the interpreter. ASP Adam Tan was able to understand most of what was said in Hokkien. He did not hear Wu making any inducements or promises to Sng during the recording of the statements.

22 Sng alleged that SI Chan Siang Hock punched him once at his right cheek after he had been handcuffed at Chai Chee Avenue. When he asked the CNB officer why he punched him, no reply was given. Sng said that Ang and then Choong Peng were also placed in the CNB vehicle with him. SI Goh asked the three arrested men why they were in Chai Chee Avenue and what the packet in the plastic bag contained. When none of them responded, one of the CNB officers said in Hokkien that since there was no reply from them, all three men would receive the death penalty.

23 Sng testified further that at the Kampong Arang Road flat, SSI Ang asked him whether Choong Peng was his brother. After Sng confirmed that he was, SSI Ang asked him whether he wanted to save his brother. Sng replied that he wanted to. SSI Ang then asked Sng to cooperate with the CNB in order to save Choong Peng and also to avoid the death penalty. The contemporaneous statement was then recorded. Sng also alleged that SSI Ang promised him that if he cooperated with him, all three men would not receive the death penalty.

24 Sng was thus induced into giving the contemporaneous statement at the Kampong Arang Road flat by SSI Ang's repeated promises. The punch and the threat uttered at Chai Chee Avenue also affected him while he was giving the said statement. Sng further alleged that the statement was not explained to him and he could not understand what was written therein. He merely signed when he was told to do so. He denied having said the things recorded in the statement.

25 Sng said that during the recording of the section 122(6) CPC statement by ASP Senthil Kumaran, Wu told him to trust him as he had many years of experience and that if Sng cooperated with the CNB, he would not receive the death penalty. Wu also allegedly told Sng that he had to cooperate if he wanted to save his younger brother (Choong Peng). Sng further told the court that the charge and the notice of warning were not read to him. The statement was not read back to him too. Initially, Sng claimed that he did not say anything at all during the recording. Later, he said that

he did give answers in reply to Wu's question.

26 In relation to the three long statements recorded by ASP Adam Tan, Sng testified that Wu made the following inducements and promises to him during the recording process. Wu allegedly told Sng several times to trust him as he had many years of experience and that if Sng cooperated with the CNB, he would not receive the death penalty. Sng also said that Wu told him that he must cooperate and sign the statements if he wanted to save his brother. Wu also allegedly told Sng to trust him, cooperate and sign the statements, promising Sng that nothing would happen to Sng. Sng further alleged that the statements were not read back to him fully and that he was not informed that he could amend his statements if he wanted to.

The decision of the court in the trial within a trial (Sng)

27 The burden is on the prosecution to prove beyond reasonable doubt that the statements recorded from Sng were made by him voluntarily, free from any inducement, threat or promise.

28 Sng's allegation about the punch was not supported by the two medical reports. There was no record of him having complained to the examining doctor about the assault. The doctor also did not notice any such injury on Sng.

29 Where Sng's allegation about the threat of the death penalty to the three arrested men was concerned, a conscious decision was made not to call Ang or Choong Peng to back up his claim. In the absence of a good reason for this, an adverse inference ought to be drawn against Sng.

30 Sng's testimony about the inducement in the Kampong Arang Road flat was nebulous as to how he was expected to cooperate with the CNB, except perhaps by signing whatever the CNB officer wrote. I believed the evidence of the CNB officers concerned that no such inducement was offered. At that early stage, it was highly unlikely that the CNB would simply concoct a version of the events for Sng to sign when they did not know what Chan, Choong Peng and Ang were going to say.

31 It was unfortunate that Wu had passed away before the trial commenced. There was no reason why Wu would want to keep inducing Sng in the manner alleged. He was only performing his duties as interpreter and had no interest in the conviction or acquittal of Sng on any charge. I believed ASP Senthil Kumaran's testimony that there was a verbal exchange between Wu and Sng during the recording. Sng could not therefore have been silent during the process (although he retracted his position). I also accepted that all the relevant documents were explained to Sng.

32 ASP Adam Tan was no longer with the CNB at the time of his testimony in court. He is currently doing his studies at the National University of Singapore. I believed his evidence and accepted that he would have understood if Wu had made any of the promises and inducements alleged and would have stopped Wu from uttering more such assurances. I also accepted that due process was complied with in the recording of the statements. Despite his professed concern for his younger brother, it would appear that Sng did not at any time enquire from Wu or any of the recording officers about Choong Peng' situation although he was, in his words, continuing to cooperate with the CNB.

33 Considering the totality of the evidence adduced in the trial within a trial, I was satisfied beyond reasonable doubt that Sng's statements were made voluntarily without any inducement, threat or promise. I therefore ruled that his statements were admissible. They were admitted collectively in a bundle marked "H", with irrelevant or prejudicial matters in the statements blanked out. Although some matters mentioned in the statements may not be strictly necessary to prove the charges in issue, they are necessary to appreciate the context of the various sentences and to

better understand the factual background of the entire case.

The trial proper resumes

34 In his section 122(6) CPC statement, Sng admitted that the heroin seized from the taxi belonged to him. He also claimed that Choong Peng and Ang did not know about the heroin and that they had merely gone along with him to Chai Chee Avenue. In his other statements, Sng admitted ownership of the drugs found in the plastic bag in the taxi and acknowledged that the 30 sachets of heroin were for sale and consumption. He also admitted that someone would call him and he would then ask Choong Peng to collect the drugs from that person.

35 In his statements, Sng stated that he started smoking heroin in September 2007. As he got hooked to the drug, he decided to obtain more heroin in order to sell it and feed his addiction. Through one Ah Kow, he managed to get in touch with a supplier (Ah Boy) from Malaysia. He provided his mobile phone number to the supplier so that he could be contacted once supplies of heroin were available. The drug transactions were all on cash terms. The minimum amount for any one delivery was 30 sachets of heroin at $5,000. In October 2007, Sng received his first delivery of drugs. A male Chinese had called Sng's mobile phone to inform him that he had heroin available. They arranged to meet at the multi-storey carpark at Kampong Arang Road. There, Sng handed over $5,500 and took delivery of heroin placed in a plastic bag. Inside the plastic bag, Sng found a big packet of instant noodles. Inside this packet were ten smaller ones containing instant noodles. There were 30 sachets of heroin concealed in the packets of instant noodles.

36 Sng added that he had received heroin some six to seven times in the above manner since September 2007, purchasing 30 sachets of heroin for $5,500 each time. Choong Peng helped him collect the drugs on two or three occasions, knowing that he was collecting heroin.

37 Regarding the events of 23 January 2008, Sng stated that in the evening of 22 January 2008, he received a call on the mobile phone seized from Choong Peng. The call was from a Malaysian telephone number. Sng informed the caller that he wanted to purchase heroin. The next morning, someone called Sng to inform him that he was on his way to deliver the heroin to him. Sng told the caller that he was at Kampong Arang Road. Sng then asked Choong Peng to collect the packet of drugs for him. He handed over the mobile phone and $5,500 in cash to Choong Peng and proceeded to smoke heroin in the flat.

38 After Sng finished smoking heroin, he went to the void deck of the block of flats to wait for Choong Peng as Sng wanted to bring the heroin to Chai Chee Avenue. At the void deck, Ang came up to join Sng. Subsequently, Choong Peng, carrying a red plastic bag, met up with Sng and Ang. Upon being asked, Choong Peng said he had handed over the $5,500 to the man who delivered the drugs. The three men then boarded a taxi to go to Chai Chee Avenue where they were arrested by the CNB officers.

39 In one statement, Sng claimed that he would consume ten out of the 30 sachets of heroin delivered to him and sell the rest. He would consume a maximum of one 8-gram sachet of heroin in one day. He consumed ten sachets in three weeks.

40 Chan made a total of six statements to the CNB officers. He admitted having placed the red plastic bag beside the rubbish bin near Block 12 Kampong Arang Road. After shifting his car to another lot, a male Chinese came up to the car and handed over $5,500. Chan claimed to have collected the plastic bag from a man outside Holiday Inn in Johor Baru where he was also given $2,000 as his commission/transport fee. Because of this handsome reward, Chan admitted that he believed that the

packets found in his car and those he had delivered at Kampong Arang contained drugs.

41 In his section 122(6) CPC statement, Chan stated:

> I have nothing to say to this charge. When I deliver the things to them. I know that they could be drugs. Should I be sentenced to death due to this, I will accept it.

42 In his long statements, Chan explained that he met a man called Franky on board a casino ship in November 2007 and was asked by Franky whether he wanted a delivery job. Chan suspected that the job involved smuggling but agreed to take it up.

43 On 23 January 2008, someone known as Tommy called Chan and told him to go to Johor for a delivery job. Chan drove into Johor in the rented car EP 702P. There, he received a call from Ah Boy who told him to proceed to the main road at Holiday Inn. While Chan was waiting along that road, an old man drove a car towards him. Chan passed him $8,500 from a previous transaction. The old man returned $2,000 to Chan as payment for his previous delivery and told him that the "thing" was in the back seat. Chan took a white plastic bag from the back seat of the old man's car and returned to his own. He then called Ah Boy who instructed him to return to Singapore and told him that there were five "big" and two "small" inside the white plastic bag. Chan noticed five packets of Mamee noodles and two packets of Pagoda brand peanuts in the said bag. He thought they could be something illegal like drugs but did not want to think further about the matter.

44 Upon entering Singapore, Chan called Tommy who asked him to call a certain number (the number of the mobile phone seized from Choong Peng). Chan did so at about 1.28pm. The person on the line told him to go to Kampong Arang Road.

45 When Chan was near Kampong Arang Road, he called the same number and was directed to drive to the carpark near Block 12 and to place the "thing" at a dustbin there. Chan could see a male Chinese standing behind a column near the pavilion as he was driving to the designated area. When he reached the spot, he took out one packet of Mamee noodles, placed it in a red plastic bag and then left it next to the dustbin at the pavilion. He then returned to his car. A short while later, the male Chinese (Choong Peng) boarded his car and handed him $5,500. They then parted company. Chan drove to Geylang and was arrested by the CNB officers there. Although he knew in his heart that he was delivering drugs, he did not enquire further from Tommy or Ah Boy as he was more concerned about making money and not getting arrested. He knew he must be delivering something illegal as the rewards were good for such simple deliveries. He was looking forward to a reward which would be better than the last one of $2,000 as he had to clear his debts.

The case for Sng

46 Sng said that he ordered only 20 sachets of heroin and not 30 on the occasion in issue here. His first purchase of heroin was 30 sachets at the price of $5,500. For the heroin delivered on 23 January 2008, only 20 sachets were ordered but for the same price of $5,500 as the price of the drug had gone up due to the Chinese New Year which was approaching. This was despite Sng having answered "thirty" when asked by a CNB officer on 23 January 2008 about the quantity of heroin inside the red plastic bag. Further, Sng said in a subsequent statement that the minimum amount for each delivery of heroin was 30 sachets.

47 Out of the 20 sachets ordered by Sng, half the number was for his own consumption while the other half would be sold by him at $370 per sachet. He would then use the money made from the sales to purchase more heroin for consumption and for sale. The $5,500 that he paid for the heroin on

23 January 2008 came from a friendly loan of $5,000 and his own cash of $500.

48 Sng also alleged that the contents of the red plastic bag seized from the taxi at Chai Chee Avenue could have been mixed up with the other drug exhibits seized that day from other locations during the handling and, later, the photography and the weighing sessions in the CNB Headquarters. He was not able to fully understand what was going on during the photography and the weighing sessions as nobody explained to him what was happening and he also did not have a clear view of the events unfolding as he was blocked by some CNB officers. Further, when the drug sachets were poured onto the weighing scale by the CNB officers, some sachets fell onto the table and the floor and were picked up and placed back on the weighing scale. This was also said by Sng during the trial within a trial (in which Chan was not involved). When Chan testified, he corroborated Sng on this point, claiming that he suddenly recalled it after hearing Sng's testimony in court. However, Chan said that he was seated with the three other arrested parties and he had a clear view of the photography session.

49 Although Choong Peng, his brother, was offered by the prosecution to Sng and to Chan at the conclusion of the prosecution's case and despite Choong Peng having been interviewed by Sng's counsel, Sng declined to call Choong Peng as his defence witness.

50 Sng testified that he knew the nature of the drugs that would be delivered that afternoon but disputed that he instructed Choong Peng to collect the drugs from Chan. He claimed that Choong Peng had gone down from their home to collect the drugs on his own accord and that he could not therefore be guilty of instigating Choong Peng to be in possession of the drugs.

51 Sng explained that on the night of 22 January 2008, he informed Choong Peng that he had purchased a packet of things and that someone would be calling him (Sng) the next day. He handed $5,500 to Choong Peng for safekeeping in the drawers. Sng agreed that he had, on a previous occasion, asked Choong Peng to collect a packet of things also bought at the price of $5,500. On that occasion, Sng later revealed to Choong Peng that the packet of things was actually heroin.

52 On 23 January 2008, he did not ask Choong Peng to collect the packet. Choong Peng went down on his own accord while Sng was asleep and Sng had to go down later to look for him. When he could not spot Choong Peng, he telephoned him. Choong Peng told Sng that he had handed over the $5,500 to someone. Sng agreed that he called Ang to ask whether Ang wanted to go to Chai Chee with him before he called Choong Peng to find out about the money. His intention of going to Chai Chee Avenue was to store the heroin there.

53 The telephone records adduced by the prosecution showed no telephone call between Sng's and Choong Peng's mobile phones on 23 January 2008.

The case for Chan

54 Chan's defence was essentially denial of knowledge of the drugs. He claimed that he was not aware that the Mamee packets handed to him contained anything other than noodles. There was no reason for him to suspect otherwise. He also denied having delivered drugs to Choong Peng at Kampong Arang Road.

55 Like Sng, Chan also cast doubt on the handling of the drug exhibits seized from various places that day. He claimed that they could have been mixed up in the course of moving them from place to place and while photographing and then weighing them.

56 Chan testified that he was only collecting money on behalf of his employer. He had made it clear to his employer from the start that he would not do anything illegal. However, he soon realised that he was not working in some legitimate business but was instead doing some illegal transaction which he believed related to money-lending. He recounted that he met one Franky on board a casino ship in late 2007 and was offered a job involving the collection of money. On 18 January 2008, one Tommy contacted Chan and told him to drive into Johor Baru. Chan did so but was told on arrival that the boss was not free to meet him. He was then told to return to Singapore.

57 The next day, Tommy called Chan again and instructed him to drive into Johor Baru. Chan borrowed a friend's car and complied. At the main road outside the Holiday Inn, a blue car arrived and pulled up behind Chan's parked car. A man then put a plastic bag at the backseat of Chan's car and told him to return to Singapore where he would be given further instructions.

58 As Chan was heading back to Singapore, he had the opportunity to open up the plastic bag. He peered into it and saw two Mamee noodle packets inside. He felt one packet and, as the contents felt hard, believed that there were instant noodles inside. There was also something which felt soft inside the packet. Chan reckoned that the soft substance was the seasoning for the noodles.

59 When he arrived in Singapore, Tommy called to give him a contact number and then told him to go to Geylang Lorong 12 to collect money from that contact person and to hand over the packets of noodles to him. Chan was not told how much money to collect.

60 When Chan arrived in Geylang, he called the contact number. He was informed to drive to a coffeeshop to look for a man in orange T-shirt. When he arrived at the coffeeshop, a man in orange T-shirt boarded his car and handed him a plastic bag containing a stack of currency notes. Chan was told the money was for his friend. Chan did not count the money. He handed one packet of Mamee noodles to this man and was informed to hand over the other packet to a man standing further down the street. Chan did so accordingly and did not collect any money. When Chan returned to his home, he opened up the plastic bag containing the currency notes and counted a total of $8,500.

61 During the next few days, Chan spoke to Tommy over the telephone and was told to get a car. Chan went to rent the car in question (EP 702P). In the morning of 23 January 2008, Chan was told by Tommy to drive into Johor Baru again. Chan did so. Near the Holiday Inn there, an old Chinese man drove up to Chan's car. Assuming that the old man was his contact, Chan handed over the $8500 to the old man who then pulled out two stacks of money amounting to $2,000 and gave them to Chan, saying that the money was for him. The old man also handed him a white paper bag with the word 'Estebel' for him to bring back to Singapore. The said paper bag contained five Mamee noodle packets and two packets of Pagoda groundnuts. Chan did not ask the old man what was inside the packets. He was told to call Tommy in Singapore for further instructions. According to Chan, such noodle packets were "worthless" items.

62 Although Chan mentioned in his statements that he suspected that the noodle packets contained drugs because of the large amounts of money he was given to bring them into Singapore and to deliver them, he claimed in his testimony in court that his knowledge or suspicion came about only after he had been shown the drugs after his arrest. Although he did say whatever was recorded, he was unable to explain what went through his mind during the recording of the statements after the drugs were shown to him.

63 Chan spent a number of years living and working in the USA. There, he helped manage a few restaurants. He regarded himself as a very confident person who was bold and cautious in the restaurant business. He knew what was right and what was wrong. Collecting $8,500 in a plastic bag

was not a big amount as far as he was concerned because he used to collect larger sums of money while he was working in New York.

64 In his section 122(6) CPC statement (see [41] above), he used a common Chinese expression "wo zhen gai si" translated as "Should I be sentenced to death due to this, I will accept it". Although the expression literally means "I really deserve to die", he was not referring to the death penalty at all. The expression could also mean "damn it". His message in the statement was that now that he knew something was wrong, he felt sorry for himself. It was like an apologetic message, hating himself for having been used by others. When he saw the investigation officer the next day after that statement and voiced his concern, the investigation officer assured him that the statement was alright. He thought about it and decided that the officer was probably right as he was a "nice guy" who was not out to harm him.

65 Chan reiterated that he did not suspect that anything was wrong while driving back to Singapore on the two occasions in January 2008. After all, his car was thoroughly checked by officers from the Immigration and Checkpoints Authority when he drove into Singapore. If the Mamee packets were not sealed and he could see that they were "bad stuff", he would have flushed them down the toilet bowl and not bring them into Singapore. He had not seen drugs before his arrest and it never occurred to him that he was delivering such illegal things to people. He was actually thinking of asking Tommy why he was bringing in "worthless" food packets and distributing them in Singapore while he was driving to Geylang on 23 January 2008 but was arrested when he arrived there. In Malaysia, Tommy had told him not to worry as he was not doing anything bad.

The decision of the court

66 An accused can be shown to have had actual knowledge of the nature of the drug or can have such knowledge imputed in the form of wilful blindness. Section 18(2) of the MDA provides that 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 the drug. Suspicion, which is firmly grounded on specific facts, is sufficient to support a finding of wilful blindness provided the factual matrix warrants such a finding and the accused has deliberately turned a blind eye to the facts (*Tan Kiam Peng v PP* [2008] SLR(R) 1. Under section 2 of the MDA, "traffic" includes the act of delivering. What is required is merely the transfer of possession from one party to another (see *PP v Goh Hock Huat* [1994] 3 SLR(R) 375).

67 Where the charge against Sng is concerned, section 12 of the MDA provides that anyone who abets the commission of any offence under the MDA shall be guilty of that offence and be liable to the punishment provided for that offence. Abetment by instigation can be made out by showing active suggestion, support, stimulation or encouragement of the criminal act in question (*PP v Ng Ai Tiong* [2001] 1 SLR(R) 1).

68 On the issue whether the drugs recovered from the taxi were somehow mixed up with the drugs found in the other places, I was satisfied that the relevant CNB officers involved in the custody of the different lots of drugs had kept them separate and distinct meticulously. The photography and weighing sessions at CNB were conducted carefully and done in full view of all the arrested persons. There was no mix-up of any drugs

69 Although Sng claimed in court that he ordered 20 sachets of heroin and not 30, his contemporaneous statement showed otherwise. He informed the recording officer that there were 30 sachets inside the red plastic bag even before the exhibit was opened up for the photography session. The wrapper on the Mamee packet was opaque and no one would have known for certain

that there were 30 sachets inside. Similarly, in the various long statements given by Sng, "30" was the number of sachets mentioned time and again and not "20".

70 Sng claimed that he borrowed $5,000 as a friendly loan to help him purchase the drugs. He put in $500 of his own money. If he had only ten sachets of heroin to sell, as he alleged, he would made only $3,700 as he sold the heroin at $370 per sachet. This would have been insufficient income for him to repay the loan. Further, Sng had mentioned in his statements that the minimum number of sachets of heroin per delivery was 30. It was certainly no coincidence that each of the Mamee packets from Chan's vehicle was found to contain 30 sachets of heroin too.

71 Sng claimed in court that he consumed some five straws of heroin per day. Firstly, the charge against Sng relates to instigation and the trafficking of heroin alleged concerns Choong Peng. There was no doubt that Choong Peng was collecting the heroin on Sng's behalf and would pass it on to him. That amounted to delivery of, or at least an offer to deliver, the heroin (see the definition of "traffic" in section 2 MDA). Sng's intention concerning the heroin and his alleged addiction and consumption habit would therefore be irrelevant to the charge. As the prosecution observed, even if all 30 sachets in question were meant for Sng's consumption, the charge would have been made out. In any event, there was no credible evidence of a discernible consumption pattern. The medical examination of Sng revealed only mild drug withdrawal symptoms. In his statements, he started with a claim of one straw over two days and moved upwards to four to five straws per day or one 8-gram sachet of heroin per day. Sng's assertion that he set aside ten sachets for his own consumption only crystallized in his statement of 19 February 2008, almost a month after his arrest. Initially, he merely said that the 30 sachets were for sale and for consumption without specifying the proportions. In the later statement, he stated that ten sachets out of 30 ordered were for consumption. The evidence changed to ten sachets out of 20 ordered when he gave his testimony in court. I found his self-serving estimate of his consumption pattern hard to believe in view of the constant changes in his evidence. Further, his alleged consumption habit would not be sustainable considering his income. According to him, he had to borrow between $3,500 and $5,000 for each purchase of heroin.

72 Sng's claim that he did not instigate Choong Peng to take delivery of the heroin ran contrary to his own evidence. If his only purpose in handing over $5,500 to Choong Peng was for his younger brother to keep the money safely in the drawer, there would have been no need at all to tell Choong Peng about having purchased a packet of things which would be delivered the next day by someone who would telephone Sng first. By his own admission, Sng had asked Choong Peng on a previous occasion to help him collect a packet of things for which $5,500 was also paid and which he informed Choong Peng later was a packet containing heroin. Sng's conduct on 23 January 2008 also demonstrated that Choong Peng did not go to collect the packet of drugs from Chan on his own accord. In one statement, Sng said that he went downstairs (at Kampong Arang Road) to wait for his brother. He also called and asked Ang whether he would like to go to Chai Chee Avenue before he called Choong Peng. His intention was to keep the heroin there. It followed that Sng must have been aware that Choong Peng had collected the drugs or was in the process of doing so.

73 It was unbelievable that Choong Peng would pick up the call from Chan earlier that morning and know whom to hand the substantial amount of money to without Sng's instructions or information. It was equally incredible that Choong Peng would, without any instruction or direction, then immediately bring the plastic bag with the heroin to join Sng and Ang who were already headed for the main road to hail a taxi. What was even more telling was the fact that Sng chose not to call Choong Peng, his younger brother, as his witness to support what he had said in court. It was the prosecution's burden to prove that Sng instigated his brother to be in possession of the 30 sachets of heroin for the purpose of trafficking and the prosecution could have called Choong Peng as its witness for this purpose. However, the prosecution has succeeded in proving its case without calling Choong Peng

and it therefore behoved Sng to call his brother to rebut the prosecution's evidence.

74 It was quite clear from his statements and the other evidence adduced in court that Sng intended and instructed Choong Peng to collect and pay for the heroin on his behalf and that he had thereby instigated Choong Peng as stated in the charge.

75 Chan was not a naïve young man stepping out into the working world. He had been in business in the USA and was an experienced 47 year old adult at the material time. Any person of average intelligence and honesty would have realized immediately that the task given to Chan was not merely one of collecting money. No reason was given to Chan as to why he had to drive to Malaysia, have some cheap common foodstuff placed in his car and to deliver the packets to Singapore. The fact that relatively large amounts of cash were handed over to Chan each time he passed those seemingly worthless and lightweight foodstuff to its intended recipient would have awakened him to the reality that he was delivering illegal goods and very likely drugs, judging by the light weight and the small size of the items.

76 It was also obvious that Chan was given no instructions on how much money to collect and the person(s) to collect it from. In fact, strangers met him in Malaysia each time in suspicious circumstances. Further, the payment Chan received for merely driving across borders to pass small and light packages was surely totally disproportionate to the efforts and time involved. The manner of delivery on 23 January 2008 was also highly suspicious as a plastic bag containing foodstuff was to be left near a rubbish bin unattended. Further, after Choong Peng handed over the cash, Chan drove his car away without counting the money. He could not have been in such a hurry to meet his friends for lunch, as he claimed. It was more likely that he was anxious to leave the location knowing that he had delivered illegal substances. As he said in one of his statements to the CNB, "I was simply concerned about making the money and not get arrested".

77 Clearly, Chan ought to have been highly suspicious about the nature of his work and the things that were placed in his car in Malaysia. However, he did not bother to enquire because the reward was good and he needed the money. His conduct amounted to wilful blindness and he must therefore be taken to have known the nature of the drugs that he was in possession of and which he delivered. Although he did not hand the package physically to Choong Peng, what he did that day at Kampong Arang Road was sufficient delivery in law as possession was transferred and in the manner arranged between the two men.

78 I was satisfied beyond reasonable doubt that both Sng and Chan were guilty as charged. I therefore convicted them and passed the mandatory death sentence on them.

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