

Public Prosecutor v Lee Lye Hoe
[2000] SGHC 90

Case Number : CC 56/1999
Decision Date : 22 May 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Jaswant Singh with Toh Yun Cheong for the prosecution; Surian Sidambaram, Tan Lye Huat (Surian & Partners) and Zero Nalpon (Nalpon & Partners) for the accused
Parties : Public Prosecutor — Lee Lye Hoe

JUDGMENT:

GROUND OF DECISION

1. The accused Lee Lye Hoe was the subject of investigations by officers of the Central Narcotics Bureau before her arrest. On 11 April 1999 at about 4.45 am ASP Paul Ang Choe Seng and SSgt Yeoh Seng Hock arrived at Dover Road and kept a lookout for her at Block 31, Dover Road #03-111 ("the flat"). Other officers joined in the operation later.
2. At about 6.30 am the accused was observed to come out of the flat onto the common corridor. At about the same time, a car drove into the driveway below the flats. The car stopped and a man came out. He took a blue travelling bag and a large red plastic bag from the car boot and went up the stairs of the block.
3. The accused and that man were together briefly at the third floor corridor near to the stairwell. Then the man left the way he came, and the accused appeared to be carrying something as she returned to her flat.
4. The officers moved in on the flat at about 6.45 am. After a brief delay, the accused let them in. Besides the accused, her two sons, the son's parents-in-law, wife and son and a maid were also in the flat. In the master bedroom occupied by the accused, eight packets were found under the bed when the bedcover was lifted. Woman Inspector Jenny Tan Yen Yen questioned her about them and recorded the exchange -

Q: What are those?

A: Opium.

Q: How many?

A: 8 slabs.

Q: Belong to who?

A: Not mine.

Q: Why in your room?

A: I brought in from outside my home.

Q: Why you bring them into your home?

A: (She refuses to answer the question)

5. After the contents of the packets were analysed they formed the subject matter of the charge that the accused faced that she

On or about the 11th day of April 1999, at or about 6:45 am, at Blk 31 Dover Road #03-111, 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 (her) possession for the purpose of trafficking 8 slabs of substance containing 12,722 grams of opium containing not less than 248.64 grams of morphine at the aforesaid place without any authorisation under the said Act or the regulations made thereunder, and (she has) thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

6. The investigations were then taken over by ASP Paschal Rebeira, who recorded a series of statements from the accused. These statements were admitted in evidence without objection from her.

The cautioned statement

7. In the afternoon of 11 April the investigation officer recorded her cautioned statement in which she stated

A Chinese man asked me to keep some packets for him. He told me that he would collect the packets from me one or two days later. When I took the packets to my master bedroom, I then discovered that the packets were opium. I immediately went out of my flat to look for the Chinese man but he had already gone. I was thinking whether to call the police or to wait for the Chinese man to collect the packets back from me. When the police came, I opened the door and led the policemen to my bedroom where the packets were. I do not know the name of this Chinese man. I can only recognise him by sight. I do not know why this Chinese man handed these packages to me to keep for him.

The investigation statements

8. On 13 April, the recording of her investigation statements commenced which was completed over several days. I will paraphrase the contents of the statements.

Statement of 13 April

9. On the night of 10 April she received a page on her pager. When she called back, a man answered in Hokkien who said his name was Ah Tan and that he was a friend of her husband and asked her to

keep something for him. She asked him what they were but he only said that there were only a few packets, without saying what they were. Nevertheless she agreed to keep them for him. On the next morning, which was Sunday 11 April she received a telephone call from another Chinese man. This man told her that he had the things with him on the ground floor and was coming up to the third storey but he did not know her flat. She told him that she would be standing at the door of her flat. She went outside her door and saw a Chinese man came up the staircase carrying a blue bag and a red plastic bag. He placed them on the floor and went back down the stairs without speaking to her.

10. She took the two bags to her flat and into her bedroom. When she detected a strong odour of opium she looked into the bags and saw packets wrapped in brown masking tape. She wrapped the packets in newspapers and put each packet separately in a plastic bag, and then placed all eight packets under her bed. At that time she was deciding whether to call the police or wait for Ah Tan to collect the packets.

Statement of 15 April

11. She wrapped the packets because the odour of opium was becoming unbearable. After placing the packets under the bed she waited to see if Ah Tan would call her. If he did not call, she would tell her sons about the opium when they woke up. A short while later, there was a knock on the door, and she let the officers in.

12. Ah Tan had never called her at home or at her stall, and she had only contacted him once, when she returned his page. He did not offer her any payment for her help, but promised to collect the packets after a day or two.

13. When she was shown a photograph of Tan Kok Hwa, she recognised him as a friend of her late husband, but she added that "I did not know his name as my husband never introduced him to me and I have never spoken to him. After the death of my husband he never came by again. I do not know if he was the person who called me."

Statement of 21 April

14. Ah Tan had spoken to her about a week before 10 April. Except that he told her that he was a friend of her husband, she cannot remember the conversation they had.

15. On the night of 10 April she was at a wedding dinner. When she returned home she found an unfamiliar number on her pager. She called the number and Ah Tan answered. He told her again he was her husband's friend and asked her to keep a few packets for him for a day or two which would be delivered to her flat in one or two days' time. Although she asked him what the packets were, he did not tell her.

Statement of 29 April

16. When the man brought the bags she did not tell him to leave them on the staircase landing. After she discovered that those packets were opium, she was waiting for Ah Tan to call her. If he did not

call her before her sons woke up, she would call the police. She did not think of calling Ah Tan although she could retrieve his telephone number from her pager.

17. Referring to a photograph of Tan Kok Hwa, she said "... I do not know if this is the same "Ah Tan" who told me to keep the packages of opium for him. It could have possibly been some other person by the name of "Ah Tan" who told me to do this, claiming to be my late husband's friend."

18. Some care was taken in recording these statements. Every one of them was signed by her, and that before each statement was recorded, all the previous statements were read to her.

19. From the admissions in these statements, I found that there was a case for her to enter her defence.

The defence

20. The accused is a widow. She stayed with two of her children at the flat, and was running a seafood stall with her eldest son. She met Tan Kok Hwa whom she know as Ah Tan when he visited her late husband at the seafood stall. Her husband told her Ah Tan had a kelong in Changi and was engaged in road construction.

21. Ah Tan was a good friend of her husband, who had been kind to her family. He had lent her husband \$40,000 to pay off his gambling debts, given another loan of \$25,000 for them to renovate their flat and provided the funds for her son's education in Australia. Her husband had quantified the total debt to Ah Tan at \$82,000. Ah Tan had also proposed going into the restaurant business with her eldest son, although that was not taken up. He was also instrumental in getting her and her husband to reconcile after they were divorced.

22. When her husband (technically her former husband as they did not remarry after the reconciliation) was alive, he had kept things for Ah Tan in the flat. Her husband told her that Ah Tan brought the things from Pasir Panjang and had kept them in their flat because it was closer to Pasir Panjang than his own home.

23. During that time, the things were brought to the flat in boxes by Ah Tan or other persons on his behalf, and this would take place weekly or fortnightly. Her husband told her that they were dry foodstuff, but she did not open the boxes to examine them.

24. Ah Tan continued to keep things with her after her husband's death. In February 1999 he telephoned her and asked to keep a few packets in her flat to be collected in two days. She agreed and a box was sent to the flat of another son where she was staying at that time. Ah Tan's worker collected the box from her two days later.

25. About one week before her arrest on 11 April Ah Tan spoke to her again and asked to keep a few packets in the flat again. She asked him how many packets there would be and what they were, but he only told her that there would be a few packets.

26. Ah Tan paged her again on the night of 10 April when she was at a wedding dinner. When she returned home she returned the call, and found that it was from Ah Tan. He asked if he could keep a few packets in her flat the following morning, and she agreed. It was arranged that the person delivering them would call her when he arrived.

27. On the morning of 11 April she received a telephone call. The caller told her that he had some things for her. She instructed him to bring them up to the third floor lift landing, and then she went out of her flat to meet him.

28. She saw a Chinese man coming up the stairs with a travelling bag and a red plastic bag. She asked him if he was sent by Ah Tan to deliver the things, and he confirmed that. She instructed him to leave them on the floor, and she carried them back to her bedroom.

29. The travelling bag had a tear and there was a smell of opium. She recognised the smell because her husband consumed opium. She was shocked by the smell and ran out of her flat to look for the man who delivered the bags. Her intention was to ascertain if he had delivered the wrong things from Ah Tan and to tell him to take them back. She failed to locate the man, and returned to her room. By that time the opium smell was becoming unbearably strong and she was frightened. She realised that Ah Tan wanted to keep the packets in her flat. She wrapped the packets in newspaper and placed them in plastic bags to reduce the odour. She tried to wake up her eldest son to talk to him, but before they could talk, the officers came.

30. She was frightened when she was questioned by them. She did not answer when she was asked why she brought the opium into the flat because

It did occur to me that this was Ah Tan's things but the person who delivered the things was a worker. To make it clear Ah Tan put his things in my place but the person who delivered the things was a worker. If I were to say these things belong to Ah Tan, what happens if it did not belong to him? This is drug. If this drug did not belong to Ah Tan, if I say this belongs to Ah Tan, what happens if Ah Tan was not the owner of these things? I was frightened then and I did not know how should I reply. So I dare not say anything.

31. She was referred by her counsel to her cautioned statement. She said she was frightened when she made it and had mentioned one man when there were two men, Ah Tan and the man who made the delivery.

32. When she made the statement, she was certain in her mind that Ah Tan was involved with the opium. Nevertheless she did not mention Ah Tan in the statement because she could not bring herself to mention his name and wanted Ah Tan to admit his own involvement because he was a good friend of her husband.

33. She was next referred to the statement of 13 April. She said that the statement was wrong where it stated that in the telephone conversation of the night of 10 April Ah Tan identified himself as Ah Tan, a friend of her husband.. She also corrected that part of the statement where she said that she did not talk to the man who delivered the packets. She also explained that she did not mention going outside the flat to look for the man because she had forgotten that when she made the statement.

34. With regard to the statement of 15 April she admitted she was wrong in saying that Ah Tan had never called her at home or at her stall but she could not explain why she made this misstatement.

35. She also admitted that she was not telling the truth when she stated that she did not know Tan Kok Hwa's name and had never spoken to him because her husband did not introduce them, and when she that she did not know if he was the person who called her on 10 April. She also could not explain why she made those misstatements.

36. Next her counsel referred her to her statement of 21 April. She corrected the account of her conversations with Ah Tan the week before 10 April and on 10 April. Ah Tan did not say that he was a good friend of her husband. Again, she could not explain why she made the misstatement.

37. She went on to say that the statement was also wrong where she said that she did not tell the man delivering the bags to place them on the staircase landing because she had told him to leave them there, but again she was not able to explain why she said that in the statement. She was also unable to explain why she did not disclose the conversation she had with that man.

38. She was then referred to her statement that after she discovered that the bags contained opium, she waited for Ah Tan's call and if Ah Tan did not call before her sons woke up, she would call the police. She confirmed to her counsel that she had that intention, and she would have told the police there was opium in her house that Ah Tan had left them for her to keep, and she would tell them about Ah Tan and what she knew about him so that they can find and arrest him. She explained that she did not do that in the investigation statement of 21 April because she knew Ah Tan was arrested by that time and she was hoping that he would admit his connection to the drugs on his own.

39. Her attention was drawn to the fact that when Inspector Jenny Tan questioned her before she knew of Ah Tan's arrest, she did not say anything about Ah Tan. Her counsel asked why she did not, her answer was "I cannot recall. I can't think of it."

40. When she was cross-examined by the prosecutor the next day, the accused did a complete turn around and said that she had not thought of calling the police and that her previous evidence was untrue.

41. The matter became more confused during re-examination. She changed her position again; she affirmed that she had intended to call the police, and that her evidence in cross-examination that she had no intention of calling the police was not the truth. Her explanation for the confusion was "I had intention to call for police and I cannot understand why I gave a different answer to the prosecutor when the question was asked."

42. Her two sons who were in the flat during the raid gave evidence which did not relate to the main issues of the trial. Tan Kok Hwa and Lim Beng Soon, who delivered the two bags were not called as witnesses by the prosecution or the defence although both of them were available.

Evaluation of the evidence

43. The accused was in possession of the packets in her bedroom. By her evidence she also knew they were opium when she became aware of the opium odour. Apart from bringing them into her bedroom, she wrapped them with newspapers and placed them in plastic bags. She did not call Ah Tan to complain about the opium, or insist that he took them away.

44. On these facts, a presumption arose under section 17 of the Misuse of Drugs Act that she had the drugs in her possession for the purpose of trafficking. The critical issue was whether she had rebutted it.

45. Her defence was that the drugs did not belong to her and that she had only agreed to store some packets for Ah Tan, that she only knew they were opium after she took possession of them and that she was not willing to keep opium for Ah Tan.

46. There was no reason to disbelieve her disclaimer of ownership. Her evidence that Ah Tan had stored things in her flat was not disputed. However, that was not sufficient to exonerate her from culpability. Ownership is not a necessary element of trafficking. Persons who transport drugs for others as well as those who hold drugs as bailees for their owners are also culpable – see *Sze Siew Luan v PP* [1997] 2 SLR 522.

47. The crucial question was whether the accused was a knowing bailee of the opium. She said that Ah Tan did not tell her that the bags contained opium. She also said that she was surprised to find the opium, and intended to call the police just before her flat was raided.

48. If she was an unwilling bailee, one would expect her to take every opportunity to protest her innocence and disclose how Ah Tan had induced her into keeping the packets for him. Her behaviour in the bedroom, and during the raid and the investigations did not bear that out.

49. She said that when she realised that the bags contained opium, she went out of the flat to look for the man who had delivered them. This was reflected in her cautioned statement, but not in her investigation statements where she gave a detailed account of the events of that morning. She said that they did not speak when he made the delivery, but her evidence in court was that after he confirmed that Ah Tan sent him and she told him to leave the bags at the staircase landing.

50. The opium was in her room for about 15 minutes before the raid. There was time for her to call Ah Tan, or to take the drugs back to the staircase landing where the man had left them. Instead, she took them out of the bags, wrapped them and put them under the bed and bedcover.

51. If she had intended to report her discovery to the police, Inspector Jenny Tan gave her the opportunity for her to mention Ah Tan and his request to store his things in her flat, but she remained silent when asked how the opium came to be in the room.

52. Even after she was charged with trafficking she still failed to mention Ah Tan in her cautioned statement. When she eventually mentioned Ah Tan in her investigation statements, she was still not telling all that she knew. She refused to identify Tan Kok Hwa as Ah Tan and she did not reveal that he was a good friend of her family, but described him as someone who had to identify himself to her as a friend of her late husband.

53. What she said in the flat, during the investigations and in court was marked with inconsistencies, contradictions and unanswered questions. It did not present a picture of a person who had unwittingly stored drugs in her house and was anxious to explain her innocence by telling the plain truth.

54. Her counsel took considerable pains to get her to explain and resolve the inconsistencies and I gave him and her all the leeway to do that. Despite the effort and the indulgence, she did not present a consistent account of the events. Instead she contradicted and retracted her own evidence, and failed to explain the misstatements she made. After reviewing her evidence, I found she had not given credible evidence that supported her innocence and that she had not rebutted the presumption on a balance of probabilities.

55. In those circumstances, I found her guilty and convicted her on the charge and imposed the mandatory sentence on her.

Kan Ting Chiu

Judge

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