

Public Prosecutor v Lim Bee Hoon and another
[2015] SGHC 45

Case Number : Criminal Case No 5 of 2015
Decision Date : 10 February 2015
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Ma Hanfeng (Attorney General's Chambers) for the Public Prosecutor; Edmond Avethas Pereira and Vickie Tan (Edmond Pereira Law Corporation) for the first accused; Cheong Aik Chye (AC Cheong & Co) for the second accused.
Parties : Public Prosecutor — Lim Bee Hoon and another

Criminal Law – Statutory offences – Misuse of Drugs Act

10 February 2015

Lee Seiu Kin J:

Introduction

1 The first accused is Lim Bee Hoon, a 41 year old female Singaporean, and the second accused is Lim Boon Cheh, a 56 year old male Singaporean. At the material time, the accused persons were in a relationship and living together.

The charges faced by the first accused

2 The first accused faced five charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) of which the prosecution proceeded with three. She pleaded guilty to the three charges *ie*, two trafficking charges and an enhanced consumption charge. The particulars of the proceeded charges read as follows:

That you, LIM BEE HOON,

(1st Charge)

are charged that you, on the 6th of May 2011, at or about 9.10 pm, at 21 Lorong Tahar #05-01 Room 3, Singapore, together with one Lim Boon Cheh, in furtherance of the common intention of both of you, did traffic in a controlled drug specified in Class ‘A’ of the First Schedule to the Misuse of Drugs Act, Chapter 185 (“Misuse of Drugs Act”), to wit, by having in your possession for the purpose of trafficking, two (02) packets of granular/powdery substances which contained not less than 14.99 grams of diamorphine, without any authorisation under the said Act or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) of the Misuse of Drugs Act and Section 34 of the Penal Code, Chapter 224 and punishable under Section 33 of the Misuse of Drugs Act; and

(2nd Charge)

are charged that you, on the 6th of May 2011, at or about 9.10 pm, at 21 Lorong Tahar #05-01 Room 3, Singapore, together with one Lim Boon Cheh, in furtherance of the common intention of both of you, did traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185 ("Misuse of Drugs Act"), to wit, by having in your possession for the purpose of trafficking 18 packets of crystalline substances weighing 87.74 grams which was analysed and found to contain 68.51 grams of methamphetamine, without any authorisation under the said Act or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) of the Misuse of Drugs Act and Section 34 of the Penal Code, Chapter 224 and punishable under Section 33 of the Misuse of Drugs Act; and

(3rd Charge)

are charged that you, on the 6th of May 2011, at or about 9.10 pm, at 21 Lorong Tahar #05-01 Room 3, Singapore, did consume a Specified Drug listed in The Fourth Schedule to the Misuse of Drugs Act Chapter 185 ("Misuse of Drugs Act"), to wit, Methamphetamine, without any authorisation under the said Act or the Regulations made thereunder and you have thereby committed an offence under Section 8(b) of the Misuse of Drugs Act and punishable under Section 33 of the Misuse of Drugs Act.

And further,

that you before the commission of the said offence, that is to say, on 7th of March 2003, you had been convicted and sentenced to 1 year and 6 months imprisonment in Court 4 of the Subordinate Courts, Singapore (DAC 54486/2002), for an offence of consumption of a controlled drug, methamphetamine, under Section 8(b) of the Misuse of Drugs Act, which is deemed as a previous conviction for consumption of a specified drug by virtue of Section 33A(5)(a) of the Misuse of Drugs Act, which conviction has not been set aside, and thus you shall be punished with enhanced punishment under Section 33(4) of the Misuse of Drugs Act.

The charges faced by the second accused

3 The second accused faced 16 charges of which the prosecution proceeded with four. He pleaded guilty to the proceeded charges *ie*, three trafficking charges and one enhanced consumption charge. The particulars of the four charges read as follows:

That you, LIM BOON CHEH,

(1st Charge)

are charged that you, on the 6th of May 2011, at or about 9.10 pm, at 21 Lorong Tahar #05-01 Room 3, Singapore, together with one Lim Bee Hoon, in furtherance of the common intention of both of you, did traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185 ("Misuse of Drugs Act"), to wit, by having in your possession for the purpose of trafficking, two (02) packets of granular/powdery substances which contained not less than 14.99 grams of diamorphine, without any authorisation under the said Act or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) of the Misuse of Drugs Act and Section 34 of the Penal Code, Chapter 224 and punishable under Section 33 of the Misuse of Drugs Act; and

(2nd Charge)

are charged that you, on the 6th of May 2011, at or about 9.10pm, at 21 Lorong Tahar #05-01 Room 3, Singapore, together with one Lim Bee Hoon, in furtherance of the common intention of both of you, did traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185 ("Misuse of Drugs Act"), to wit, by having in your possession for the purpose of trafficking 18 packets of crystalline substances weighing 87.74 grams which was analysed and found to contain 68.51 grams of methamphetamine, without any authorisation under the said Act or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) of the Misuse of Drugs Act and Section 34 of the Penal Code, Chapter 224 and punishable under Section 33 of the Misuse of Drugs Act; and

(7th Charge)

are charged that you, on the 6th of May 2011 at about 7.52 pm, at the grass patch behind Block 44, Sims Drive, Singapore, did traffic in a controlled drug listed in Class 'A' of The First Schedule to the Misuse of Drugs Act (Cap 185), to wit, by having in your possession for the purpose of trafficking, two (02) packets containing 800.2 grams of crystalline substance which were analysed and found to contain not less than 690.3 grams of Ketamine, without any authorization under the said Act or the Regulations made thereunder, you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) of the Misuse of Drugs Act (Cap 185) and punishable under Section 33 of the Misuse of Drugs Act (Cap 185); and

(15th Charge)

are charged that you, on or about the 6th day of May 2011, in Singapore, did consume a Specified Drug listed in The Fourth Schedule to the Misuse of Drugs Act, Chapter 185, to wit Morphine, without authorization under the said Act or Regulations made thereunder and you have thereby committed an offence under Section 8(b)(ii) of the Misuse of Drugs Act, Chapter 185.

And further,

that you before the commission of the said offence, that is to say on 30 April 1996 had been convicted in the Subordinate Court 26 (DAC 7696/1996) for consumption of morphine, a controlled drug under Section 8(b) of The Misuse of Drugs Act, which is deemed as a previous conviction for consumption of a specified drug by virtue of Section 33A(5)(a) of the Misuse of Drugs Act, which you were sentenced to 3 years and 6 months imprisonment, which conviction has not been set aside, and had also been admitted to an approved institution, namely, Sembawang Prison/Drug Rehabilitation Centre (DRC) on 30.1.1999, for consumption of Morphine, a Specified Drug, pursuant to the orders made by the Director of the Central Narcotics Bureau in Singapore under Sec 37(2)(b) of the Misuse of Drugs Act and you are now liable to be punished under Section 33A(1) of the Misuse of Drugs Act.

Facts

4 On 6 May 2011, at about 7.52pm, the second accused was arrested by Central Narcotics Bureau ("CNB") officers at the grass patch behind Blk 44 Sims Drive. During the arrest, a white and blue plastic bag belonging to the accused was recovered. The said plastic bag was found to contain two packets of powdery substance which were later found to contain not less than 690.3g of

ketamine ("the ketamine exhibits"), one packet containing four smaller packets of crystalline substance, one black coloured plastic bag containing one big packet of white powdery substance and five ecstasy tablets. Also found on him were, *inter alia*, two packets of granular substance, one straw of powdery substance and one Marlboro box containing one straw of brown substance. The second accused was then escorted to his registered address where a search yielded various substances and drug paraphernalia which were unrelated to the proceeded charges.

5 On 6 May 2011, at about 9.10pm, the first accused was arrested outside the main gate of 21 Lorong Tahar. A search was conducted on the first accused and four keys were recovered. One of the keys was used to enter Room 3 in #05-01 ("the Lorong Tahar room"). The first accused was then escorted into the Lorong Tahar room where more substances and drug paraphernalia were recovered. Among the items recovered, there were two packets of brown granular substances that were later found to contain not less than 15.77 grams of diamorphine ("the diamorphine exhibits") and 18 packets of crystalline substances that were later found to contain not less than 68.51g of methamphetamine ("the methamphetamine exhibits").

Facts relating to the first and second charges against both accused

6 The diamorphine exhibits and methamphetamine exhibits formed the subject of the first charge and second charge against each accused person respectively. At the time of their arrests, the accused persons had in their possession the keys to access the Lorong Tahar room where the diamorphine exhibits and methamphetamine exhibits were found. They were in a relationship since early 2011 and were staying together in the Lorong Tahar room since a few days before their arrests on 6 May 2011.

7 The accused persons knew that the diamorphine exhibits and methamphetamine exhibits were present in the Lorong Tahar room and they further admitted that these substances belonged to them. They also admitted that the abovementioned substances were in their possession for the purposes of sale to other persons.

Facts relating to the third charge against the first accused

8 The first accused's urine samples were found to contain methamphetamine and this formed the subject of the third charge against her. She admitted that she had consumed methamphetamine prior to her arrest on 6 May 2011. She would consume methamphetamine about three to four times a week. She would heat up the methamphetamine, let the smoke pass through a glass container containing some water and inhale the smoke thereafter. The first accused was previously convicted of the same offence in 2003.

Facts relating to the seventh and fifteenth charges against the second accused

9 The ketamine exhibits formed the subject of the seventh charge against the second accused. At the time of his arrest, the second accused knew that the ketamine exhibits were inside the white and blue plastic bag and further admitted to the possession of the said plastic bag as well as the ketamine exhibits in it. He had received the ketamine exhibits from one "Ah Boy" and he intended to sell them to other people.

10 The second accused's urine samples were found to contain morphine and this formed the subject of the fifteenth charge against him. He admitted that he had consumed morphine a few hours prior to his arrest on 6 May 2011. The second accused obtained his morphine from one "Ah Boy" and would consume morphine on a daily basis. He would put the morphine on a foil, burn the bottom of the

foil and inhale the fumes using a rolled-up paper. The second accused was previously convicted of the same offence in 1996 and was admitted to DRC in 1999 for morphine consumption.

11 After ensuring that the accused persons understood the nature and consequences of their plea of guilt and the sentences prescribed for the offences, I found them guilty as charged and convicted them accordingly.

Antecedents

12 The accused persons had numerous antecedents including drug related offences. Their antecedents are set out in the following tables.

Antecedents of the first accused

S/N	Date of conviction/antecedent	Offence	Sentence/Outcome
1	8 April 1992	Attempt to commit theft – s 379 read with s 511, Cap 224	Fine only \$500 (paid)
2	5 February 1999	Theft in dwelling – s 380, Cap 224	Imprisonment only 6 months
3	7 March 2003	Trafficking of methamphetamine – s 5(1)(a), Cap 185	Imprisonment only 5 years
4		Consumption of methamphetamine – s 8(b)(i), Cap 185	Imprisonment only 1 year 6 months (consecutive with (3))
5		Possession of methamphetamine – s 8(a), Cap 185	Imprisonment only 1 year 6 months (concurrent with (3))

Antecedents of the second accused

S/N	Date of conviction/antecedent	Offence	Sentence/Outcome
1	20 August 1975	Attempt to commit robbery with common intention – s 393 Cap 103 read with s 34 Cap 224	Probation 2 years
2	31 August 1977	Breach of probation, s 9 Cap 117	Imprisonment with caning 12 months with 4 strokes

3	8 July 1977	Putting person in fear of injury in order to commit extortion – s 385, Cap 103	Imprisonment only 3 months
4	8 February 1982	Unlawful possession of an I.C. other than his own or possession of a forged I.C. – s 13(1)(e), Cap 45	Fine only \$2,000 in default 3 months (not paid)
5	21 April 1982	Consumption of a controlled drug – s 6(b), MDA 1973	Fine only \$1,000 in default 2 months (not paid)
6	17 March 1986	House-breaking and theft by night – s 457, Cap 103	Imprisonment only 3 years
7		Consumption of a controlled drug – s 6(b) read with s 29(3), MDA 1973	Imprisonment only 3 years (consecutive with (6))
8		House-breaking and theft by night – s 457, Cap 103	Imprisonment only 3 years (concurrent with (6))
9		Unlawful possession of an I.C. other than his own or possession of a forged I.C. – s 13(1)(3), Cap 45	Imprisonment only 6 months (concurrent with (6))
10	30 April 1996	Consumption of morphine – s 8(b) read with s 33(3), Cap. 185	Imprisonment only 3 years 6 months
11		Vandalism – s 3, Cap 341	Imprisonment with caning 3 months with 3 strokes (consecutive with (10))
12	12 January 2004	Possession of diamorphine for the purpose of trafficking with common intention – s 5(1)(a) read with s 5(2), Cap 185, read with s 34, Cap 224	Imprisonment with caning 7 years with 5 strokes
13		Possession of diamorphine – s 8(a), Cap 185	Imprisonment only 15 months (consecutive with (12))

Mitigation

The first accused

13 In his written mitigation plea, defence counsel for the first accused urged the Court to be lenient on the following grounds – that the first accused had a troubled past which drove her to substance abuse; that she played a relatively minor role in the trafficking offences; and that she pleaded guilty and cooperated with the authorities.

The second accused

14 The defence counsel for the second accused similarly urged the Court to be lenient on the basis that the second accused was remorseful and had fully cooperated with the CNB officers. He further submitted that the second accused was unlikely to reoffend given his age and the long imprisonment term he faced.

Sentence

15 In sentencing the accused persons, I took into account their antecedents, the charges taken into consideration as well as their respective mitigation pleas.

The first accused

16 The first accused was a female offender and therefore was not liable to be caned (see s 325(1) (a) Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC")). As such, the first accused faced imprisonment for a term of not less than 20 years, five years and three years for the first to third charges respectively. On top of these charges, the first accused consented for the remaining two charges to be taken into consideration for the purposes of sentencing ("the TIC charges"). The TIC charges pertained to the following offences:

(a) Fourth charge: Possession of utensils intended to be used for consuming a controlled drug – s 9 of the MDA.

(b) Fifth charge: Possession of methamphetamine – s 8(a) of the MDA.

17 I noted that the first accused had pleaded guilty to the proceeded charges and that she had played a minor role in the trafficking offences. I was also mindful of her difficult life circumstances that had led her to make bad choices along the way. However, I also took into account the TIC charges and the fact that this was not her first brush with the law, particularly in relation to drug offences.

18 Having regard to all of the above, I sentenced her to 20 years' imprisonment for the first charge of trafficking 14.99 grams of diamorphine, 6 years' imprisonment for the second charge of trafficking 68.51 grams of methamphetamine and 3 years' imprisonment for the third charge of enhanced consumption. I ordered the sentences for the third charge to run consecutively with that for the first charge and the sentence for the second charge to run concurrently with that for the first charge. The total sentence would therefore be 23 years' imprisonment. The sentences were also backdated to 6 May 2011, the date of her arrest.

The second accused

19 Pursuant to s 325(1)(b) of the CPC, the second accused was not liable to be caned since he was above the age of 50. As such, the prescribed punishment of the charges against the second

accused were imprisonment of not less than 20 years for the first charge, and five years for each of the second charge, seventh charge and fifteenth charge. The second accused consented for the remaining 12 charges against him to be taken into consideration for the purposes of sentencing. These 12 charges pertained to the following offences:

- (a) Third charge: Possession of 5.77g of diamorphine for the purpose of trafficking – s 5(1)(a) read with s 5(2) of the MDA.
- (b) Fourth charge: Possession of Nimetazepam (enhanced) – s 8(a) of the MDA.
- (c) Fifth charge: Possession of 0.35g of diamorphine (enhanced) – s 8(a) punishable under s 33(1) of the MDA.
- (d) Sixth charge: Possession of drug utensils – s 9 of the MDA.
- (e) Eighth charge: Possession of 17.29g of methamphetamine for the purpose of trafficking – s 5(1)(a) read with s 5(2) of the MDA.
- (f) Ninth charge: Possession of 0.40g of N,α-dimethyl-3,4-(methylenedioxy)-phenethylamine (enhanced) – s 8(a) punishable under s 33(1) of the MDA.
- (g) Tenth charge: Possession of 0.40g of ketamine (enhanced) – s 8(a) punishable under s 33(1) of the MDA.
- (h) Eleventh charge: Possession of 0.83g of diamorphine (enhanced) – s 8(a) punishable under s 33(1) of the MDA.
- (i) Twelfth charge: Possession of 0.29g of methamphetamine (enhanced) – s 8(a) punishable under s 33(1) of the MDA.
- (j) Thirteenth charge: Possession of methamphetamine (enhanced) – s 8(a) punishable under s 33(1) of the MDA.
- (k) Fourteenth charge: Possession of drug utensils – s 9 of the MDA.
- (l) Sixteenth charge: Consumption of methamphetamine (enhanced) – s 8(b)(ii) punishable under s 33A(1) of the MDA.

20 I noted the second accused's remorse as reflected in his personal mitigation plea and his low likelihood of reoffending given his age and long term of imprisonment he faced. However, in view of his lengthy antecedents and the large number of charges taken into consideration for the purposes of sentencing, I sentenced him to 22 years' imprisonment for trafficking in 14.99g of diamorphine, 7 years' imprisonment for trafficking in 68.51g of methamphetamine, 7 years' imprisonment for trafficking in not less than 690.3g of ketamine, and 6 years' imprisonment for the enhanced consumption charge. I ordered the sentence for the second charge to run consecutively with that for the first charge, and sentence for the seventh charge and the fifteenth charge to run concurrently with that for the first charge. This would make a total imprisonment term of 29 years. The sentences were also backdated to 6 May 2011, the date of his arrest.