

Public Prosecutor v Khor Soon Lee
[2009] SGHC 291

Case Number : CC 38/2009
Decision Date : 31 December 2009
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Aedit Abdullah, Ravneet Kaur and Peggy Pao, DPPs for the prosecution; P O Ram (Vijay & Co) and Pratap Kishan (Kishan & V Suria Partnership) for the accused
Parties : Public Prosecutor — Khor Soon Lee
Criminal Law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 21 of 2009 was allowed by the Court of Appeal on 15 April 2011. See [2011] SGCA 17.]

31 December 2009

Tay Yong Kwang J:

Introduction

1 The accused, born on 25 March 1975, was tried and convicted on the following capital charge:

That you, Khor Soon Lee, on the 9th day of August 2008, at about 2.00pm, at the Woodlands Immigration Checkpoint, Singapore, did import into Singapore on motorcycle JGF 9461, a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act (Cap 185), to wit, one packet of granular/powdery substance containing not less than 27.86 grams of diamorphine, without any authorization under the Misuse of Drugs Act or the regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the said Act.

The prosecution's case

2 The trial was shortened as the prosecution and the defence counsel helpfully agreed on most matters relating to the arrest of the accused, the recovery of the drugs in question and the investigation work (including the taking of the accused's statements) by way of a 21-page statement of agreed facts (marked "C"). The accused arrived at the Woodlands Checkpoint from Johor Baru at close to 2pm on 9 August 2008. He was riding a motorcycle bearing Malaysian registration number JGF 9461. As his name was on the Central Narcotics Bureau ("CNB")'s list of persons under suspicion, his passport and the motorcycle's ignition key were seized by the immigration officer on duty. An officer from the Auxiliary Police Force then arrived to meet the accused. The officer took the accused's passport and the ignition key and escorted him to the office of the Immigration and Checkpoints Authority ("ICA") a short distance away, with the accused pushing his motorcycle along the way.

3 When they arrived at the office, the accused parked his motorcycle in one of the motorcycle lots outside and went into the office with the officer. The accused, his passport and the ignition key were handed over to the duty officer there.

4 A while later, ICA officers conducted a search of the accused's motorcycle. They found a black sling bag in the front carrier basket of the motorcycle. The accused was asked to unzip the sling bag. It was found to contain a black shirt, a blue face towel and several bundles wrapped with black masking tape. As the bundles were suspected to contain controlled drugs, the CNB was contacted.

5 The ICA officers brought the accused and the sling bag into the ICA office. Inside a room, they took out the contents of the sling bag. They found a white carrier plastic bag inside. Inside this white plastic bag were a smaller white plastic bag imprinted with purple flowers ("the purple plastic bag") and a smaller black plastic bag ("the black plastic bag"). These two smaller plastic bags were not sealed up. The purple plastic bag had three bundles wrapped with black masking tape while the black plastic bag had one bundle wrapped with such tape.

6 A CNB officer arrived at the ICA office and asked the accused in Malay what the bundles were. The accused replied in Malay, "Dadah" (meaning drugs). The bundles were unwrapped in the presence of the accused. The three bundles in the purple plastic bag contained 30 slabs each having 10 tablets, two sachets of white crystalline substance and 50 green tablets respectively. When asked what these were, the accused replied that they were "E5" (Erimin), "K" (Ketamine) and "Ecstasy" respectively. The bundle found in the black plastic bag contained a packet of white granular substance. The accused denied knowing what this was. The contents of this last bundle were subsequently analysed and found to contain diamorphine.

7 The accused was placed under arrest and was later escorted to the CNB CNB Headquarters ("CNB HQ") in the Police Cantonment Complex. His motorcycle was also brought there. At the basement car park of the CNB HQ, the accused's motorcycle was searched in his presence. Nothing further was found thereon. The accused was then brought up to the office where the seized drug exhibits were photographed and weighed in his presence. The exhibits were then kept in a safe. As stated above (in [\[6\]](#)), the contents of the bundle of white granular substance were subsequently analysed by the Health Sciences Authority laboratory and certified to contain not less than 27.86 grams of diamorphine. This formed the subject of the charge against the accused.

8 A total of seven statements were recorded from the accused. All these were admitted as evidence without challenge. In the first statement recorded several hours after his arrest, the accused acknowledged that all the seized exhibits were found in his sling bag. He claimed that they belonged to a friend named Tony (later identified as Ong Heng Hor, a Malaysian) who had handed them to him at a Mobil petrol kiosk in Johor Baru at about noon that day, just before the accused left for Singapore. He was told by Tony that they were "K", "5" and "Yao Toh Wan". He knew that they were drugs and he (the accused) had consumed such before. However, he did not know that there was heroin as he did not see any heroin while at the said petrol kiosk. He was to hand the drugs back to Tony at the Kranji Mass Rapid Transit station ("Kranji MRT") in Singapore. Tony would then pay him some money, the amount of which he did not know. This was the sixth time that he was assisting Tony to bring drugs into Singapore.

9 In his cautioned statement made pursuant to s 122(6) of the Criminal Procedure Code (Cap 68), the accused stated that he was helping people to bring these drugs in and he only knew that they were "Yao Tou Wan", "Five-Zai" and "K-fen". He did not know that there was heroin.

10 In a further statement, the accused recounted that he had a criminal record for consumption of Ecstasy in Malaysia but not for trafficking of drugs. He was unemployed and had been borrowing money from his friends for his daily needs. He owed them more than RM3,000. He got to know Tony in a hair salon about a year ago and found out that Tony had contacts for supply of drugs such as Ice. Tony consumed Erimin-5 in his presence and gave him some for free. In early April 2008, the accused

decided to take a supply of Ice from Tony to sell to his friends. He bought RM1,600 worth of Ice on credit and handed it to a friend who did not pay him for the drug. As a result, the accused owed Tony this amount of money to date.

11 As he was unable to repay Tony the amount owed, he avoided him. However, he met Tony again and was scolded for avoiding him. Subsequently, Tony asked him whether he was working. The accused said he was unemployed and asked Tony to introduce him to some work. One or two weeks later, Tony telephoned him and told him to meet at the said hair salon. There, Tony informed the accused that he wanted him to bring Erimin-5, Ketamine, Ice and Ecstasy into Singapore for which he would be paid RM200 to RM300 per trip. The accused agreed to do so as he still owed Tony money.

12 In early July 2008, the accused made his first delivery of controlled drugs into Singapore. He went to Tony's house and was given a few black bundles. Sometimes, he was told that they were "5" and "K". At other times, he was not told what drugs were in the bundles. He was instructed by Tony not to open the bundles to check on the contents but he knew they contained drugs. Tony did not instruct him on how he was to conceal the bundles. He would bring the drugs into Singapore in a taxi or on a borrowed motorcycle. Once he arrived in Singapore, he would pass the bundles to Tony, usually at the Kranji MRT or at a bus stop in Hougang. The accused would then return to Johor Baru where he would be paid RM200 to RM300 for the delivery. He had lost count of the number of such deliveries but he remembered having been paid a total of some RM2,000.

13 On 8 August 2008, Tony called the accused on his mobile phone and told him to look for a motorcycle to make a delivery. The next day, the accused managed to borrow a motorcycle (the one mentioned in the charge) from a friend. Arrangements were then made for him to meet Tony at a Mobil petrol station in Johor Baru. Tony was already at the petrol station waiting for him when he arrived. Tony was seated on his own motorcycle.

14 Tony handed him a white plastic bag. The accused did not check the contents but knew that there would be a few bundles of drugs in there, like all his previous deliveries. The weight of the plastic bag felt similar to previous packages. The accused kept the plastic bag in his sling bag. The two men then rode their motorcycles towards the Johor Baru Check Point separately, aware that they were to meet at the Kranji MRT in Singapore.

15 When the accused was stopped at Woodlands Check Point and asked by the officer what the four bundles found in the sling bag were, he replied that they were "barang" (meaning "things"). When asked further, he said they were "Ubat" (meaning medicine). Upon further questioning, the accused told the officer that the medicine was "5", "K" and "Busing Kapala" (meaning "Yao Tou Wan" or Ecstasy). When the bundles were unwrapped, the accused managed to identify the contents of three of them but did not know what the bundle of white substance was. He ventured to say that it could be Ice because of the colour. On this occasion, Tony did not tell him what exactly he was delivering to Singapore.

16 The accused acknowledged that he had delivered drugs into Singapore more than six times. He last consumed one tablet of Ecstasy on 8 August 2008 while in Johor Baru. It had been purchased from Tony. His urine tested positive for Amphetamine. He admitted that he had "played" with drugs such as Ice, "5", "K", "ganja" and "Ecstasy" before. However, he had never consumed heroin and "yaba". He did not know what heroin looked like.

17 In another statement, the accused said that after his arrest, his mobile phone kept ringing because Tony was calling him. He told the CNB officers that the caller was the intended recipient of the drugs. The officer asked him to cooperate by luring Tony out. He agreed to do so. His mobile

phone was then used to send out text messages to Tony. Later, the officers asked the accused to call Tony. The accused spoke to Tony and told him that he had cleared his urine test and had already passed the Woodlands Check Point. In a later call, Tony told him to proceed to somewhere further away from the Kranji MRT. The accused lied to Tony that the owner of the motorcycle needed to use it soon and asked Tony to meet at the said MRT instead so that he could return to Johor Baru quickly to return the motorcycle.

18 The accused was brought to the said MRT in a car. He spotted Tony under a pedestrian bridge and identified him to the CNB officers. Tony was then arrested. The accused added that he managed to pay Tony only RM200 so far, leaving an outstanding debt of RM1,400, and that he did all the deliveries willingly as he needed money.

19 The accused also stated that he knew that trafficking in heroin and Ice carried the death penalty in Singapore.

20 In his final two statements, the accused added that Tony and he always travelled together in a taxi or on a motorcycle on their previous deliveries to Singapore. The accused would always be the one carrying the bundles of drugs. The incident on 9 August 2008 was the first time that they travelled on separate vehicles. That made the accused suspect "something" but he did not question Tony about it as Tony appeared to be in a rush and the accused "just wanted to get the job done". The previous drugs were usually roundish in shape, unlike the white substance in question which turned out to be squarish (the substance was cube-like). He did not have time to look at the bundles that Tony handed him that day as they were in a rush. If he had seen the square-shaped drugs, he would have asked Tony about them. He did not know much about Tony's friends but Tony had mentioned that he was involved in illegal betting on soccer matches.

21 The prosecution informed the court that due to lack of evidence against Tony, he was granted a discharge not amounting to an acquittal. As Tony is a Malaysian, he was permitted to leave Singapore in May 2009. Attempts by the investigating officer to locate him as a witness for the defence were unsuccessful.

The case for the accused

22 The accused's evidence was essentially the same as that set out in the statements recorded from him. He did not check the contents of the white plastic bag during the half-hour trip from the petrol station to the Woodlands Check Point as the bundles were wrapped in masking tape and Tony had told him not to open them. On 9 August 2008, he did not ask Tony about the contents as the things that he was asked to carry were more or less the same all along. Earlier, in July 2008, he had asked Tony whether heroin would be involved in the deliveries as he was afraid of the death penalty. Tony said he did not deal in heroin. The accused was not concerned about the Ice that he carried because it was not of a large quantity.

23 The accused said that he trusted Tony and had never opened any of the previous bundles delivered by him. He also did not see them opened during the deliveries to the customers in Singapore.

24 His suspicions on 9 August 2008 pertained only to how Tony managed to get hold of the motorcycle he was riding on as Tony was not known to own one. Tony told him to hurry that day because the customer in Singapore was waiting for them.

25 The accused also adduced through an ICA officer the records of his and Tony's frequent travels

in and out of Singapore between 2007 and 9 August 2008.

The decision of the court

26 Section 7 of the Misuse of Drugs Act ("MDA") states:

Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

Section 2 of the Interpretation Act (Cap 1), which defines "import" as "to bring or cause to be brought into Singapore by land, sea or air", applies to the MDA (*Tse Po Chung Nathan & Anor v PP* [1993] 1 SLR 961). Under s 18(2) of the MDA, the accused is presumed, until the contrary is proved, to know the nature of the controlled drug (ie diamorphine) as he was in possession of the same at the material time. The accused bears the burden of proving the contrary on a balance of probabilities.

27 The accused did not dispute the element of importing the drug in question. The only contention concerned his knowledge that he was importing a substance containing diamorphine.

28 Mere assertions by the accused that he was not aware of the contents of what he was carrying are not sufficient to rebut the presumption in s 18(2) of the MDA. Similarly, where the accused did not check the said contents and took the risk that the goods could turn out to be controlled drugs or those attracting the death penalty, the said presumption is not rebutted. Ignorance is only a defence when there is no reason for suspicion and no right and opportunity for examination (see *Iwuchukwu Amora Toshi & anor v PP* [2006] 2 SLR 503). The Court of Appeal in *Tan Kiam Peng v PP* [2008] 1SLR 1 has given a clear exposition on wilful blindness in the context of the MDA and its presumptions.

29 The accused here was conscious of the fact that he was in possession of controlled drugs. There was ample opportunity for him to take a look inside the unsealed white plastic bag at the four bundles. He claimed that he thought they were the usual stuff that he had been carrying into Singapore for Tony and thus did not even look at the contents of the white plastic bag that Tony handed to him at the petrol station. This in itself could not rebut the presumption of knowledge. It was a risk that he took each time he delivered drugs for Tony that they could include something that attracted the death penalty in law. If he chose to trust Tony in what was in essence an illegal commercial transaction, then he has to bear the risk that Tony could one day play him out. In any event, since he had not opened previous bundles delivered by him (see [23] above), how sure could he be that previous deliveries never included heroin or some other drugs involving the death penalty?

30 It might be argued that even if he did open the bundle containing diamorphine that day, he would not have recognized the drug as he claimed that he had not consumed such drug before and did not know what it looked like (see [16] above). Let us assume further that he asked Tony about it and was given a false answer. That would still not rebut the presumption of knowledge because it would rest basically on him trusting Tony's word. In an illegal transaction such as this, the courier bears the risk that any answer given to him might turn out to be false or wrong. This is quite unlike a legitimate situation which calls for no reason to be suspicious whatsoever. It would tantamount to being wilfully blind (see *Tan Kiam Peng v PP* at [130]).

31 Indeed, on 9 August 2008, the situation, besides being another illegal transaction, was peculiar in itself as Tony suddenly decided to travel on his own instead of travelling with the accused as had always been the case on numerous previous occasions. Again, if the accused decided to comply with Tony's wishes to speed up (and not check the contents) as the customer was waiting, then he has

to bear the consequences. The fact of the matter was that the accused was not interested at all in the contents of what he was carrying – he simply wanted “to get the job done” quickly (see [\[20\]](#) above) and collect his dues. As submitted by the prosecution, the accused was not a gullible and naïve courier who was tricked into carrying the heroin, even though he had only primary school education. He was a self-confessed user of various drugs (see [\[16\]](#) above).

32 No adverse inference could be drawn against the prosecution in the situation here for not producing Tony at the trial. Tony is not a Singaporean. Since the prosecution had decided not to proceed with any charge against him, there was no reason to keep him further in remand here. Even if the defence had been informed about Tony’s release before he left the jurisdiction, he could not be remanded or compelled to remain in Singapore on the ground that he would be required as a defence witness. Further, even if Tony had testified in court to the same effect as the accused’s testimony, it would not have altered my findings on the accused’s knowledge and culpability.

33 The accused has not adduced any evidence capable of rebutting the presumption of knowledge in s 18(2) MDA against him. The prosecution has proved the charge beyond reasonable doubt and I convicted the accused. The mandatory death sentence provided for the charge was pronounced accordingly.

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