

Public Prosecutor v Yong Vui Kong
[2009] SGHC 4

Case Number : CC 26/2008
Decision Date : 07 January 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Peter Koy and Stella Tan (Deputy Public Prosecutors) for the prosecution; Kelvin Lim (Kelvin Lim & Partners) and Jason Dendroff (J P Dendroff & Co) for the accused
Parties : Public Prosecutor — Yong Vui Kong
Criminal Law – Statutory offences – Misuse of Drugs Act

7 January 2009

Choo Han Teck J:

1 The accused was a 19-year old Malaysian from Sabah. On 13 June 2007 he was arrested near the Meritus Mandarin Hotel at Orchard Road at about midnight by officers from the Central Narcotics Bureau ("CNB"). He was subsequently charged with trafficking in 47.27g of a controlled drug, namely diamorphine, an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185). The drugs were in two packets found in a Malaysian registered car MBK 5317 at the time the accused was arrested.

2 The accused did not challenge the prosecution's evidence that he had taken the car from a man in a condominium in Johor, Malaysia on 12 June 2007. The accused then drove the car to Taman Sentosa in Johor. He had also taken a paper bag from the man who handed him the car. The accused placed the paper bag under the driver's seat. This paper bag contained the drugs. After placing the paper bag under the driver's seat, the accused went to look for his friend, one Chai Chor Hsiang ("Chai") and asked him to drive the car into Singapore. The duo first stopped at Yishun Street 22 at about 10.40pm and there the accused handed a white plastic bag with a brown envelope containing white granular substance, to one Lim Foo Seng ("Lim"). Lim in return gave the accused cash amounting to \$5,000. Thereafter, the accused and Chai drove off and were followed by CNB officers along various roads until they reached a bus-stop along Toh Guan Road, opposite the IMM Building. It was now about 11.20pm. Here the accused got out of the car and got into a taxi. He had asked Chai to follow the taxi and they eventually reached the Meritus Mandarin Hotel. It was about 11.50pm. The accused got out of the taxi and got back into the car driven by Chai. The car was parked in front of a black Mitsubishi Lancer SCV 2739M. Five minutes later, the accused got out of his car with a brown coloured envelope and got into the back seat of SCV 2739M. He alighted shortly, empty handed, and was then arrested.

3 The accused elected to testify when his defence was called. There was no dispute that the drugs in question were in the possession of the accused. The accused made it clear that his friend who helped him drive the car at various points had no knowledge of the packages in which the drugs were found. That being the case, the only question to be determined by this court was whether the accused had rebutted the presumption that he had knowledge that the articles in his possession contained the drugs as charged. The accused testified that he agreed to deliver the packages for his boss ("Ah Hiang") as part of his basic job of collecting debts from his boss's debtors. However, he was told that the articles he would be delivering (and had delivered in the past) were gifts. He had

asked the boss what the gifts were but the boss did not give him the answer. Instead, he made the accused promise not to open the packages, and the accused promised as asked. He admitted that although he was suspicious of the packages he did not think that they contained drugs.

4 I did not find the evidence of the accused credible. I was not satisfied that he had discharged the presumption of knowledge, and further, I was satisfied that he was aware that the packages he was carrying contained drugs. The elaborate process involved from the point of collection to the meeting at the car park, the evidence, which I find reliable, that the packages were opened at the ends revealing the contents and the evidence of PW-18 "Reggie", also known as "Qiu Ni", indicated that the accused must have known what it was that he was delivering. Reggie testified that he had collected drugs from the accused previously. He appeared surprised when told that the accused had testified that he did not see the contents and had no knowledge that he was carrying drugs. I did not think that Reggie was untruthful. He did not appear eager to incriminate the accused, but his reaction to the evidence of the accused was damning. Reggie's testimony was consistent with the totality of evidence and the prosecution's case.

5 Accordingly, I found that the accused had failed to rebut the presumption against him. I am of the view that the prosecution had proved its case against the accused beyond reasonable doubt, and I therefore found the accused guilty as charged and sentenced him to suffer death.

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