Public Prosecutor v Jingga bin Md Selamat alias Kwan Ah Chiam
[2001] SGHC 10

Case Number : CC 63/2000

Decision Date : 11 January 2001

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : David Khoo / Thong Chee Kun for the prosecution; Spencer Gwee (Spencer Gwee & Co) / Sadari Musari (Sadari Musari & Partners) for the accused

Parties : Public Prosecutor — Jingga bin Md Selamat alias Kwan Ah Chiam

JUDGMENT:

Grounds of Decision

1. The accused was charged that he

> on or about the 20th day of March 2000, at about 12.55 p.m., at Blk 39, Chai Chee Ave, #03-265, 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 (his) possession for the purpose of trafficking, not less than 78.04 grams of diamorphine at the said place without any authorisation under the said Act or the regulations made thereunder, and (he had) 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.

A further charge for possessing another 0.05g of diamorphine was stood down.

2. The accused was arrested when a party of officers from the Central Narcotics Bureau made up of Station Inspector K Jeyathasan, Cpl Mohd Khairy Yusoff, Cpl Shahrulnizam Abdullah and W/Cpl Palan Hemmamalani raided the premises at about 12.55 pm. They were let into the flat by the tenant, Syed Omar bin Syed Kassim. The accused and his wife Rosminah bte Ali and a boy were also in the flat.

3. Syed Omar was a stranger to the accused and his wife. He found them sleeping on the corridor outside his flat, and let them share his flat without payment. They moved in with the boy and were using the flat for about three weeks until the raid.

4. The officers carried out a search of the flat, a small one-room unit. They recovered a grey plastic box found under the bed. Inside this grey box was three plastic bags containing a total of 175 sachets of granular substance, a plastic bag of empty sachets and a box containing a digital weighing scale. The contents of the 175 sachet forms the subject matter of the charge.

5. From other parts of the flat, a white carrier bag holding seven packets of brown envelopes was recovered from the top of a cupboard and another packet of similar envelopes was found on the dining table.

6. The officers recovered from below the flat a small black plastic case containing a straw of powdery substance, two syringes and a piece of silver foil. The accused admitted that he had thrown it out from the flat.

7. The accused was questioned about the contents of the grey box. The exchange which was in Malay and recorded in English by Cpl Khairy was admitted in evidence without objection. It reads

> Q What is it?
>
> A Ubat

Q: What is ubat?

A Ubat is heroin

Q How much inside?

A Approximately 58 packets in each of the 3 plastic bags.

8. Mr Spencer Gwee, counsel for the accused, put to the officers that the accused had attempted to speak to them to inform them that he was not the owner of the drugs, and that the owner was coming to the flat to collect them. Station Inspector Jeyathasan recalled that the accused wanted to bargain with him and to give him the name of his supplier, but he did not go into that with the accused. Cpl Shahrulnizam agreed that the accused said the things did not belong to him, then he stopped him from going further. Both officers explained that they did not want to hear more from the accused because they wanted him to speak to the investigating officer directly.

9. It was put to the investigating officer Inspector Saherly bin Limat that when he went to the flat after the drugs were recovered the accused told him that the things were not his, and that the owner, his friend known as M, whose telephone number was 98754115, was coming to collect the drugs soon. The inspector disagreed and added that if that was said to him, he would have recorded it and mounted an operation to ambush the person. He explained that he first became aware of M when he recorded the accused's first investigation statement and he established he is Emran bin Tahir on 28 March through the handphone number 98754115 which was disclosed in that statement

The disputed statements

10. After his arrest the accused made a cautioned statement and five investigation statements to the investigating officer. The prosecution sought to admit the cautioned statement which was recorded on 24 March, and the first investigation statement recorded on 27 March. As the accused disputed the voluntariness of these statements, a trial-within-a-trial was conducted.

11. The cautioned statement was recorded on 24 March after the accused was discharged from the Changi Prison Hospital where he was warded between 20-23 March for mild heroin withdrawal. He was discharged on 23 March when his condition improved.

12. The cautioned statement was not recorded till the following day because of a lack of personnel to bring the accused for a medical checkup preceding the statement.

13. The cautioned statement was recorded on 24 March between 4.15 pm and 4.45 pm by the inspector with the assistance of Malay interpreter Ms Sofia bte Sufri at the former's office at the Major Investigation Branch premises.

14. Counsel established through the inspector that within the Major Investigation Branch premises there was a "coffee corner", a waiting and refreshment area, a distance from his office. Counsel put to the inspector that he met the accused at the coffee corner on 24 March and that he told the accused in Malay words to the effect

> You better admit. If not, I shall charge your wife. This case is liable to be is a capital case. I want you to admit that the drugs belong to you. From whom did you get the drugs? Where did you receive such a huge amount of drugs? I want you to admit.

15. Counsel put to the inspector that while recording the investigation statement of 27 March, he had omitted to record several answers the accused had given and that some of the accused's answers were not correctly interpreted into English.

16. The inspector agreed that during the recording when the accused gave an answer in Malay which he understood, on which he needed elaboration, he would ask the accused for the elaboration directly in Malay, bypassing the interpreter, but he would have the answers interpreted to him by the interpreter before he recorded them. The interpreter Ms Sofia appeared to corroborate that, except that she added that some answers were recorded by the inspector without her interpretation. Ms Sofia also remembered that when the completed statement

was read back to the accused in Malay he had nothing to add to it.

17. The prosecutor applied to call the three officers who escorted the accused to the inspector's office on 27 March for his investigation statement to be recorded. I allowed the application, and the officers, namely Cpl Khairy, Sgt Chua Swee Keng and Cpl Tan Chin Heng gave evidence on the handing over of the accused to the inspector.

18. None of these witnesses had made records of the event, and their evidence was based on their individual recollections. Cpl Khairy recalled that the accused was handed to the inspector just outside of the latter's office. Sgt Chua said that the accused was handed over to the inspector inside the office, and Cpl Tan's evidence was that it took place near the coffee corner from where the inspector's office was not visible. Their evidence did not help to establish the place where the accused was handed over to the inspector.

19. The accused's evidence was that on 24 March, he was taken to the coffee corner where he met Inspector Saherly. The inspector said to him words to the effect

> You better admit or I will charge your wife as well. This is a very serious case. It's better that you and you can be hanged for it. It's better that you admit.

20. He felt threatened and scared, and decided to co-operate to protect his wife. He claimed that he had not recovered fully from drug withdrawal and was still feeling weak, and could not think rationally.

21. The accused alleged that on 27 March before his investigation statement was recorded, Inspector Saherly told him again to co-operate and admit the drugs were his and to disclose where and from whom he obtained them.

22. During the recording of the statement, the inspector put questions in English which the interpreter Ms Sofia interpreted to Malay. The inspector also questioned him in Malay. Some of these questions were interpreted to him in Malay by the interpreter Ms Sofia, but others were not, and not all his answers in Malay were interpreted into English to the inspector.

23. Under cross-examination by the prosecutor, he repeated that on 24 March the inspector had warned him to admit that the drugs were his, or he will charge his wife with joint trafficking. However, he agreed with the prosecutor that in the statement recorded he did not admit that the drugs were his. He also agreed that he knew he and his wife were charged jointly for trafficking when he was in Changi Prison Hospital on 21 March.

24. When the prosecutor moved to the investigation statement of 27 March, the accused repeated his allegation that the inspector wanted him to say that the drugs were his, and confirmed that he did not admit in the investigation statement that the drugs were his.

25. In re-examination, counsel went further into the accused's admissions and co-operation -

> Q Did he tell you how you were to admit or did he leave it to you to admit it the way you thought amounted to an admission?
>
> A The second method.
>
> Q Mr Jingga, did you co-operate with him on the two occasions?
>
> A Yes, I did.
>
> Q Why did you co-operate with him?
>
> A To save my wife.

and the threat to charge his wife -

> Q the DPP asked you and you confirmed that you were aware that your wife was

charged with you with joint trafficking, isn't it?

A Yes.

Q So in what way did you expect or anticipate that by co-operating you can help your wife, although she was charged for joint trafficking?

A Simply co-operating.

Q What were you hoping for by co-operating?

A So that my wife be released.

26. At the end of the *voir dire* I reviewed the evidence. I found it hard to accept that the inspector had threatened to charge the accused's wife if he did not co-operate. The accused and counsel alleged that the inspector said that he **will** or **shall** charge the wife. It did not make sense for the inspector to issue such a threat to the accused when the accused knew that his wife had already been charged.

27. I also did not accept the accused's assertion that he yielded to the threat. His evidence was that the inspector wanted him to admit the drugs were his. However he agreed with the prosecutor that he did not admit ownership of the drugs in either statement.

28. I did not believe that the inspector had made the threats alleged, or that the accused had offered his co-operation and made the statements because of any threats. The accused had not raised a reasonable doubt on the voluntariness of the two statements. I therefore ruled that the two statements were voluntary and admissible.

29. I should add that I did not disregard the issue of the inspector's departure from standard recording practice in questioning to the accused directly in Malay and recording the answers without interpretation. In my assessment this is a matter which weighs on the reliability of the contents of the statements rather than their admissibility. The accused did not say that he made these statements involuntarily because of these irregularities. I will deal with this issue again when I consider the weight to be attached to the statements.

The cautioned statement

30. In the cautioned statement, the accused stated

I do not intend to traffic the drugs. I only helped my friend to keep the drug. He would call me the next day to collect the drugs and pay me some commission. My wife has no knowledge of the drugs. I plead for leniency.

The investigation statement

31. In the investigation statement of 27 March he stated -

I am known as 'Louis', to my family and friends. I work as and when there are jobs for me to do and when my boss call me. I have been working like this for about one year. I am currently staying at a rented flat at Blk 39, Chai Chee Ave, #03-265 with my wife and my adopted son, Juhainy Bin Jailani. There are no adoption documents as we are looking after him for my wife's sister. The owner, Syed Omar stays together with us.

2 On 20.3.2000 at about 12.55 pm, I was arrested in my house. At that time, I was having a meal with the owner, my wife and son. There was a knock on the door and the owner, opened the door. A group of men identifying themselves as CNB officers then entered the house. I then threw out a black plastic container out of the kitchen window. Inside the container, are two syringes and a straw of heroin. The straw of heroin is for consumption together with my wife. The group of men then handcuffed us and made a search in the house and us. They found a syringe in my pouch. The syringe is also used by me. They then found heroin under the bed, in a grey plastic container.

3 There are a total of 175 sachet of heroin in the grey container in three different plastic bags. The first two plastic contains 58 sachet while the third one contains 59 sachets. There is also one weighing machine in the container. In the grey container, there is also some empty plastic sachets. The officers also found some empty brown envelopes in a plastic bag on top of the cupboard. The things recovered were given to me by a friend called M. His contact number is 98754115.

4 On the 19.03.2000, at about 9.00 pm, M came to the house. Nobody was around at that time. He brought along with him a white plastic bag saying that it contains heroin. I did not know how much heroin is there. He had asked me to keep it for him for the night. He told me to wait for his call the next day to arrange for the heroin to be either collected by him or sent by me. He then took out another plastic bag from the white one to show me the heroin. I then took the white plastic bag with some brown envelopes inside it and placed it on top of the cupboard. From the plastic bag, he took out three different plastic bags. He told me that two of them contained 58 sachet of heroin each and the third contains 59 sachet. I then took the three plastic bags and placed them in the grey plastic container. He then took out the weighing machine and some empty plastic sachet and I also kept them in the grey plastic container. After we had kept the drugs, we sat down and talked for a while. M said that he would collect the drugs tomorrow and give me a commission. He did not state how much commission I would get. After a while my wife and son came home. The owner also came home soon after. M then left.

32. After the statements were admitted, the interpreter was recalled and was asked about the inspector's interpretation in the recording of the investigation statement without her assistance. She did not find his efforts deficient. That was consistent with the signed confirmation by the accused at the end of the statement that it was read back in Malay by the interpreter and affirmed to be true and correct. Nevertheless I had expressed my reservations over the procedure the inspector adopted, and the prosecutor shared my view that it should not be repeated.

The accused's wife's evidence

33. The accused's wife Rosminah was the person who took the grey box into the flat. She had found it along the corridor three to four days before 20 March and had intended to use it to store her son's clothings she took it to the flat, washed it, and then kept it under the bed.

34. On 19 March, she saw Emran bin Tahir (who is also known as M and Mario) with the accused at the kitchen of the flat. She heard Emran offer the accused a job. The two men then left the flat to buy a handphone. When they returned, the accused was carrying a carrier bag. This was the bag that was subsequently recovered by the CNB officers from the top of the cupboard.

35. That night she had trouble sleeping. She woke up at about 2 to 3 am and opened the grey box to store her son's clothings. When she

opened it, she saw two red plastic bags and two white plastic bag, and inside one of the red plastic bags she saw yellow substances which she recognised to be drugs.

36. She woke the accused, asked him about the contents of the box and the owner, and suggested that he returned them to the owner. The accused assured her that he knew what to do, and used his handphone to call someone. When Mr Gwee suggested to her that when she spoke with the accused about the drugs in the box, he appeared to be in fear and did not know what to do, she agreed.

37. In the morning, there were incoming calls to the accused's handphone. She said that the calls were from Emran, who promised to come to collect the drugs although she did not say when she became aware of that, or who she learnt that from.

38. When Mr Gwee put to her that the accused had told the investigating officer that the things were not his but belonged to a friend called M whose handphone was 98754115, and that the friend would be coming to collect the things soon, and she confirmed all that.

The defence

39. He and his wife were not working at the time of his arrest. He had his own rented flat at Toa Payoh but had sub-let that to a Myanmar national. He may have needed the rental income because he and his wife were heroin addicts. Between them they could consume a sachet of heroin a day.

40. On 17 March he met Emran whom he knew as M at the Bedok Interchange. They had known one another when they were at the Selarang Drug Rehabilitation Centre in 1989. When they met that day Emran sold him heroin at $180 a sachet, with payment to be made on the following day.

41. On 18 March he met Emran again, when he paid for the sachet he bought on the day before, and took another sachet on credit.

42. On 19 March they met and repeated the process of paying and purchasing. When Emran learnt he was unemployed, he offered him a job. Emran did not tell him about the nature of the job, and they did not talk about it when they parted. Nevertheless, he accepted the offer. He knew that Emran was a contract worker at that time and assumed the job was a cleaning job.

43. That afternoon Emran visited him at the flat. Emran talked about the job again, and suggested that he should have a handphone so that it would be easier to contact him. Emran offered him money to buy a handphone, but he preferred that they went and bought it together. They went to Bedok Interchange where a handphone was purchased in his name with payment provided by Emran.

44. After buying the handphone they went to another shop where Emran bought something else, then they returned to the flat After they tested the handphone outside the flat, Emran left without entering the flat.

45. At about 8.00-8.30 pm, Emran telephoned him to say he wanted to come to the flat and he told Emran to come. At about 10 pm Emran called again to say he was on the way. Emran arrived at the flat with a big plastic bag and told him that he wanted to leave the bag with him while he attended to an urgent matter, and he would return to collect the bag.

46. About 10 minutes after leaving the bag at the flat, Emran telephoned and told him that the bag contained three bundles of 58, 58 and 59 sachets of drugs and a weighing machine, and asked him to check and confirm that. He did as instructed and confirmed the contents. When he saw the contents of the bag he was frightened and told Emran to ask him to take them back. Emran agreed, but he did not do that.

47. When Emran failed to collect the drugs by midnight, he thought of hiding them, throwing them away and calling the police but he could not do it,

> so I put them in the grey plastic box and then place it under the bed I poured out the contents of the big plastic bag into the grey plastic box.

48. He could not recall what he did with the plastic bag. He may have thrown it away or kept it in a cabinet at the rear of the flat.

49. When the prosecutor suggested that he could just put the bag and its contents under the bed, his reply was

> I could not think properly. I wanted to throw but I could not do it. So I just poured out the contents into the grey plastic box.

50. After putting the drugs into the grey box he went to sleep until his wife woke him and asked him who owned the drugs. When he told her Emran did, she insisted that he returned the drugs to Emran. He tried to call Emran, but Emran's handphone was switched off. On 20 March at 11.00 am - 12 noon Emran called him, and promised to collect the drugs and pay him a commission.

51. He was questioned by the prosecutor on his involvement with the two sets of envelopes recovered in the flat. Cpl Khairy's evidence that seven packets of envelopes in the carrier bag were recovered from the top of the cupboard and another packet from the dining table was not disputed when he gave evidence.

52. The accused said that Emran bought them after they bought the handphone and that he himself did not own such envelopes and had not seen them in the flat before. Emran had put them in the bag with the handphone. When Emran handed him the bag on their return to the flat, Emran told him to keep them for him for a while, and he put the bag and the envelopes on the top of the cupboard.

53. The prosecutor drew his attention to the packet of envelopes on the dining table and asked him about it. He said that a Chinese officer had taken it from the others and placed it on the table. Neither he nor his counsel identified the officer he was referring to, or raised this with any of the officers who gave evidence at the trial.

54. Mr Gwee took the accused through his cautioned statement. He claimed that when he said "I help my friend to keep the drugs", he meant that he helped the friend keep a plastic bag before knowing of the contents and that he had said that he only helped to keep a plastic bag for his friend. (This was not put to the interpreter by his counsel.) When he said "He would call me the next day to collect the drugs", he meant that Emran called him that morning to tell him that he wanted to collect the drugs.

55. Mr Gwee also referred him to his investigation statement. He confirmed that he was threatened and induced to make the statement. He claimed that he was confused and upset and

> I just agreed to whatever questions the IO asked me.

56. However by his own account, he did not just agree with the inspector. He claimed that

> I did tell him that the drugs were not mine. When my friend brought the drugs to me, initially I do not know that they were drugs. I merely helped my friend to keep the plastic bag for him and I did not know the contents were drugs.

57. The prosecutor got him to go through the investigation statement. He confirmed paragraphs 1, 2 and 3 reflected what he told the inspector and the interpreter and that they were true.

58. With regard to paragraph 4, he acknowledged that he told the inspector that M had delivered a bag to him. However he claimed that M did not tell him it contained drugs, and that M just asked him to keep the bag, not to keep it overnight. He agreed that the sentence "He told me that two of them contained 58 sachets of heroin each and the third contained 59 sachets" was correct, that he had told the inspector that M said he would collect the things that morning and give me a commission. He disavowed all the other parts of the paragraph on the basis that they did not originate from him, but from questions put by the inspector which he agreed to.

59. Emran bin Tahir was called as a defence witness. He gave evidence because he was summoned to attend court as a witness, but he was a reluctant witness. He met the accused on 17 March at the Bedok Interchange and at the flat on 19 March on the accused's invitation. In the course of that visit the accused offered him a bird. On 20 March, they had a casual conversation over the telephone and talked about the bird. Emran denied that he offered the accused a job or that he brought him to buy a handphone. He denied that he took a bag to the flat on the night of 19 March and asked the accused to keep it for him, or that he subsequently informed the accused of the bag's contents and promised him a commission.

My findings

60. At the close of the defence case I reviewed the evidence. There was no dispute that the drugs were in the accused's possession when they were recovered.

61. The defence was that the drugs were not his, that he did not know that they were drugs when he took possession of them, and that he did not willingly retain possession of them after he became aware of their nature.

62. In his cautioned statement, he admitted knowledge of the drugs from the time he came in possession of them. In the investigation statement he elaborated on the circumstances of his possession. In the trial-within-a-trial, he claimed that he did not make the statements voluntarily. After the statements were admitted in evidence, he claimed that they did not reflect what he had said. He alleged that parts of what he said were not recorded, but that was denied by the inspector and the interpreter. He also alleged that substantial portions were put by the inspector to which he acquiesced, but this was not put to the inspector or the interpreter.

63. The accused's account of the events in his defence raised many questions. He said Emran offered him a job, but he did not know what work he was required to do. He said he thought it was a cleaning job although he knew that Emran was a drug trafficker selling heroin in sachets.

64. I did not believe that the accused had wanted the drugs removed from the flat. If he had that intention, he would not separate the drugs from the bag they came in. There was no reason for him to take them out of the bag and hide them in the grey box under the bed. He would not throw the bag away, as he said he may have done.

65. He also claimed that the envelopes recovered from the flat were Emran's and that he had only kept them for him in the carrier bag on the top of the cupboard. He could not explain the presence of the envelopes on the dining table except to say that they were part of the main lot from the bag, contrary to the undisputed evidence of Cpl Khairy.

66. After reviewing all the evidence, I accepted the evidence of the officers on the recovery of the drugs and the envelopes and I found the accused's statements to be properly and accurately recorded.

67. I did not accept the accused's protestations that he did not know that the bag contained heroin when he took possession of it. It may be that he was not the owner of the drugs, but had kept them for the owner. However, it is clear law that culpability attaches in such a situation - see *Lee Yuan Kwang & Ors v PP* [1995] 2 SLR 349, *Sze Siew Luan v PP* [1997] 2 SLR 522 and *Lee Lye Hoe v PP*, CCA 5/2000 (not yet reported). In the last case, the Court of Appeal stated at paragraph 52 of its judgment that a bailee could be guilty of trafficking even if he knew of the drugs only after the receipt of the drugs and intended to return them to the owner, if he continued to be in possession of them.

68. In the end I found that the prosecution had proved its case beyond a reasonable doubt, and I convicted the accused and imposed the mandatory death sentence on him.

Kan Ting Chiu

Judge

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