

Public Prosecutor v Tan Tiew Guay (f) and Another
[2000] SGHC 256

Case Number : CC 69/2000
Decision Date : 29 November 2000
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Jaswant Singh and April Phang [Attorney-General's Chambers] for the prosecution; Peter Fernando [Leo Fernando] (assigned) with Peter Ong [Thomas Loh Partnership] (assigned) for the first accused; Sng Kheng Huat [Sng & Co] (assigned) with Teo Choo Kee [Lee & Tan] (assigned) for the second accused
Parties : Public Prosecutor — Tan Tiew Guay (f); Chow Mun Fai

JUDGMENT:

Grounds of Decision

1. The first accused, Tan Tiew Guay, is the wife of the second accused, Chow Mun Fai. She is a 38-year old housewife and he a 31 year old who said that he was an odd-job worker. They have three children, a son aged six, a daughter who is five, and a son aged three who was given away when he was seven months old. The accused couple owned a flat at Block 744, Woodlands (the "Woodlands flat") jointly with Chow Mun Khuen one of Chow Mun Fai's brothers. The couple were arrested by officers of the Central Narcotics Bureau ("CNB") at 11.35pm on 22 June 2000 in a lift at block 744, Woodlands. Their daughter was with them at that time. Tan Tiew Guay was holding a red paper bag in which ten sachets of heroin were recovered. The heroin in these ten sachets weighed 5.29g nett.

2. The two accused were brought back to their flat in which more heroin were found in the master bedroom. They were kept in two red plastic bags inside a portable chest of drawers used by the couple to store their daughter's clothing and other belongings. The entire lot of heroin seized including those from Tan Tiew Guay weighed a total of 23.21g nett. They were packed in separate plastic sachets of roughly the same size. The total number of sachets seized was 46 including the ten sachets carried by Tan Tiew Guay. The two accused were tried before me on a joint charge of possession of the 46 sachets of heroin for the purposes of trafficking.

3. The prosecution adduced unchallenged evidence that Ong Choon Hong, a sister-in-law of Chow Mun Fai was in the flat when the CNB officers entered and she too was arrested. She was found to have been smoking amphetamines but was otherwise not charged in connection with the two accused. The mother of Chow Mun Fai testified that in April this year Chow Mun Fai asked her to open a bank account at the Jurong Branch of the United Overseas Bank. She handed the passbook and the ATM card to Chow Mun Fai and thereafter had nothing to do with the account. On 22 June 2000 Tan Tiew Guay deposited \$1500 into this account at the bank's branch at Ang Mo Kio on Chow's instructions. The ATM card was never recovered. Tan Tiew Guay had never seen the card.

4. Chow Mun Fai's defence was simple. Ten sachets of heroin were found on his wife. He had no knowledge that she was carrying drugs. He testified that although he was a co-owner of the flat he never lived there and never had the keys to the flat. Tan Tiew Guay supported this evidence when she testified that he would spend the night in the woodlands flat about once a week only and did not have the keys to the flat. Chow Mun Fai claimed that he had no knowledge that there were drugs in the master bedroom. Indeed, his case was an outright denial of every bit of evidence which incriminated him. The inference he wished to create was that unknown to him his wife was a secret heroin trafficker. Tan Tiew Guay, on the other hand, admitted that she knew that her husband was selling heroin from the Woodlands flat as well as his sister's flat at Ang Mo Kio. She also admitted that she knew that the bag she was carrying at the time of her arrest contained heroin. However, she said that she had nothing to do with Chow Mun Fai's trafficking activities although she confessed that she had been the one who purchased envelopes and plastic sachets for him from the market. Her full story was as follows.

5. She married Chow Mun Fai in 1994. Prior to her marriage she worked in a lounge. She became a housewife after marriage. Her husband gave her a daily allowance of \$50 for herself and their daughter. Chow Mun Fai's mother who stayed at her daughter's flat at Ang Mo Kio looked after their eldest child. Tan Tiew Guay took her daughter daily to the playschool at Ang Mo Kio where her elder son attended kindergarten. She would pick him up from her mother-in-law and return him to her after school. That was her routine. Her sister-in-law Ong Choon Hong stayed over at her Woodlands flat often but did not occupy any specific room. She would sometimes rest in the master bedroom when Tan Tiew Guay and Chow Mun Fai were not in because that was the only room with air-conditioning. They had no telephone in the flat, but she and her husband each had a handphone. She was the only one with keys to the flat. She admitted that neither Chow Mun Fai nor Ong Choon Hong had keys to the flat.

6. She did not know much of her husband's activities outside home. She did not know that he was the odd-job worker he claimed to be and thought that he was unemployed all along. She regarded their relationship as good, and that he treated her well. He, on the other hand, claimed that their relationship became bad ever since she gave their third child away. When questioned, Tan Tiew Guay said that at that time she had no choice as he did not give her money and was never home. She admitted that most nights prior to their arrest Chow Mun Fai would not be home. She did not know where he went.

7. On 22 June 2000 Tan Tiew Guay rose from bed about 9am. Her husband was awake but doing nothing in particular. Their daughter was asleep. She went out and bought breakfast for Chow Mun Fai and Ong Choon Hong. When she returned, she heard her husband talking with someone over the handphone. After the conversation he handed her \$1500 to her and asked her to deposit the money in the bank account opened by his mother. There was some discrepancy in her evidence here in that she remembered going to the Woodlands branch but the bank's evidence was that the money was credited at the Ang Mo Kio branch. I do not regard this as significant, nor do I think that she was untruthful. The difference was immaterial to either prosecution or defence. Tan Tiew Guay went window shopping with her daughter after going to the bank for Chow Mun Fai. They returned to the flat between 4 and 5pm. Nothing significant took place until after dinner. Tan Tiew Guay heard Chow Mun Fai talking to "Thomas", later ascertained to be Toh Phee Lam ("DW2"). Ong Choon Hong also testified in court that she heard Chow Mun Fai talking about being picked up by Thomas later that evening. She was adamant under cross-examination from Mr. Sng, counsel for Chow Mun Fai, that Chow Mun Fai said that Thomas was picking him and not "them", referring to Tan Tiew Guay and Chow Mun Fai. As it transpired, Thomas, originally a prosecution witness, was offered by the DPP Mr. Jaswant Singh to the defence and Mr. Fernando called him on behalf of Tan Tiew Guay. Thomas proved to be a witness who had no regard whatsoever to the oath that he took to tell the truth. In his conditioned statement given to the CNB he admitted buying heroin from Chow Mun Fai on 21 June 2000 at Ang Mo Kio. He also stated that he had been to the Woodlands flat several times to buy and smoke heroin. He stated that he only dealt with Chow Mun Fai. When he turned hostile I granted Mr. Fernando leave to cross-examine him. He then divulged that he was arrested in the evening of 22 June 2000. The CNB then asked him to telephone Chow Mun Fai and say that he wanted to buy some more heroin. He did as instructed. He also testified that late that evening he telephoned Chow Mun Fai again to tell him to meet him downstairs with the heroin. Shortly after that Chow Mun Fai left his flat with Tan Tiew Guay and were both arrested. Thomas made a complete about turn when Mr. Sng cross-examined him and virtually denied all drug related association with Chow Mun Fai. His evidence that he telephoned Chow Mun Fai and arranged to meet him at the time of Chow Mun Fai's arrest was important. It corroborated the evidence of Tan Tiew Guay and Ong Choon Hong, and was not challenged by the prosecution. I have no doubt that that was what occurred and that the meeting was arranged between Thomas and Chow Mun Fai, contrary to Chow Mun Fai's denial.

8. I revert to Tan Tiew Guay's testimony. She said that late in the evening of 22 June she saw Chow Mun Fai pack ten sachets of heroin into the red paper bag and left it on the bed. She was then playing with her daughter. She tucked in a small packet of tissue paper into the bag for him to use because he never carried handkerchiefs. He asserted the converse – that he only used handkerchiefs. The investigating officer produced the effects seized from Chow Mun Fai. A handkerchief was not one of the items, but I do not regard this as significant as the case might be if one was found. I move on. As he was leaving the flat about 11.30pm she told him that she was going downstairs to buy "Milo" for their daughter. She replied under cross-examination that this was the nightly packet of "Milo" her daughter takes. The couple and their daughter then left the flat together. Tan Tiew Guay had the keys and was locking up while Chow Mun Fai waited at the lift with their daughter. When she joined them at the lift Chow asked her to carry the paper bag with the heroin. That was how she came to be arrested with the drugs in her possession.

9. Ong Choon Hong and Tan Tiew Guay had both testified that they had seen people coming to the Woodlands flat to buy heroin from Chow Mun Fai. Tan Tiew Guay had seen Chow Mun Fai bring home the heroin which he packed and then kept in the two red plastic bags in the portable chest of drawers. I am satisfied beyond any reasonable doubt that all the heroin found in the flat and on Tan Tiew Guay belonged to Chow Mun Fai who was trafficking in heroin. Possession is a state of affairs encompassing time, space, knowledge and control. A man who has 10g of heroin in his left pocket and 10g in his right pocket has possession of 20g. Viewed individually, of course, he has 10g in each pocket but he cannot be heard to say that he is entitled to be charged with two separate charges of possession of 10g each. That is a matter of the prosecutor's discretion. If the discretion is exercised for the sake of sparing the accused from facing a capital charge then that will be to his good fortune. But if it is to compel the accused to defend two charges at a single trial then the prosecution will assume the practical and legal difficulties, if any, from this course. In such a case, the court may also amalgamate the two charges into one. It follows that the same will be true if the two lots of heroin are found, not in the two pockets of the accused, but in two places of occupation, say one in his workplace and one in his home, or as in this case, one in his bag and one in his room. They are all in his possession at the same time frame within the meaning of the Misuse of Drugs Act.

10. In the present case, I accept Tan Tiew Guay's evidence, notwithstanding inconsistencies in her testimony. Although two of the arresting officers, Insp. Neo and Cpl. Rajkumar have signed conditioned statements with the identical line, "Upon questioning, Tan Tiew Guay acknowledged ownership of the exhibits seized", they were unable to recall the exact answer given by Tan Tiew Guay. Acknowledgment of ownership is a conclusion that is for the court to find. In some circumstances, the court may take the officers' opinion into account, but in the present case, It appears that that statement was cited to correspond with Tan Tiew Guay's own written statement that she had stated that the bag "was mine" when asked by the officers at the lift, but she added that she did not know why she said it. In court she stated that she had said "My husband asked me to hold it". Her young daughter was with her at the time of the arrest and was crying. She might not have recalled what she had said or why she said it. I would give the benefit of the doubt to her. The question is, on her own evidence, what offence, if any did she commit? She had acknowledged that her husband was selling heroin and she knew that she was carrying heroin at the time of her arrest. I can imagine how difficult it may be for wives of men like Chow Mun Fai to resist the dictates of their husbands and yet hope to maintain a peaceful, if not happy, existence with them, but that offers no legal excuse to any transgression of law on their part. The indisputable fact was that Tan Tiew Guay was in possession of ten sachets of heroin. I accept her evidence, however, that she was only going out to buy "Milo" with her daughter whereas Chow Mun Fai was going to deliver the heroin. I accept Tan Tiew Guay's evidence that her husband asked her to hold the paper bag with the heroin in it. The evidence suggests that she was only holding it for a brief moment and clearly intended to hand them back to him. I am satisfied that in the circumstances she had rebutted the presumption of trafficking as indeed she did not have any intention other than to hold the bag until they reach the ground floor. There was no evidence, for example, that she was to make the delivery to Thomas. I have no doubt that all the drugs belong to Chow Mun Fai. I do not think that Tan Tiew Guay was co-owner of those drugs. Neither do I think that she was a participant in trafficking drugs with him in the "Bonnie and Clyde" fashion, or any like manner, such as to make her equally guilty of the joint charge. There was no evidence that she helped him pack the drugs or deliver the drugs in question, or generally. She might have purchased the plastic sachets for him which he subsequently used to pack his drugs, but I find no intention on her part in this particular case of buying the sachets as a partner in crime, and I would give her the benefit of the possibility that she bought those sachets as a dutiful partner in marriage. The impression I had formed of her in the course of the trial is that she was a wife who knew of her husband's nefarious deeds but had regarded them as his business. She regards her role as looking after the child and tending to the meals of those who live with her. I find that she was not in possession of the heroin in the flat and was not trafficking in drugs. The offence she committed was the offence of possession of the 5.29g of heroin that she was carrying at the time of her arrest.

11. Chow Mun Fai was an entirely different matter. Mr. Fernando described him as a wicked man - a description that was not difficult to agree with, but adjectives are unnecessary. Chow Mun Fai's conduct spoke for itself. He was prepared to send his wife to the gallows for his sins, and the possibility of condemning his young children to the orphanage by that same act (should his own defence fail as well) also could not have been far from his mind. He made use of his family to shield him from his crime. The financial transactions from the sale of heroin were effected through a bank account opened in the name of his mother. He used his wife and sister-in-law to deposit money in that account for him. He used his mother's flat at Ang Mo Kio and his Woodlands flat as drug markets; all the while deliberately, in my view, refusing to hold the keys to his home flat. He even stayed

elsewhere most of the time. He made his brother deliver money to his drug supplier "Ah Xiao" in Malaysia. He laid the groundwork for what seemed to him a perfect defence to possession - he was never home; he never had the key to the flat; the flat was used by various people including his sister-in-law Ong Choon Hong. I accept Ong as a credible witness and I believe her evidence that she had warned Chow Mun Fai not to have people over to buy heroin at the flat.

12. It was also Chow Mun Fai's callousness which exposed one disadvantage of s 124 of the Evidence Act in a situation such as the present. S 124 reads as follows:

"No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or was married; nor shall he be permitted to disclose any such communication unless the person who made it or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other".

This provision was intended to protect a spouse from being condemned by the testimony of the other in respect of words exchanged between them in the sanctity and sanctuary of marriage. It was clearly not envisaged by the legislature that this provision would be used by someone like Chow Mun Fai in the way he did. His wife stood jointly with him facing a capital charge. She needed to explain what he had said to her in order to exculpate herself and prove her innocence; but he refused to give his consent for that evidence to be adduced. It was no different from refusing to throw the life-buoy in his hands to his drowning wife. Learned counsel Mr. Jaswant and Mr. Fernando accepted the effect of s 124 as interpreted by the Court of Appeal in *Lim Lye Hock v PP [1995] 1 SLR 238*, and withdrew from further inquiry thus we do not have the benefit of evidence which may (or may not) have further enhanced Tan Tiew Guay's defence. In this case, the exclusion of evidence, if any, was not critical (so far as the capital charge was concerned) because I have found that she was not guilty as charged, but on a lesser charge on other evidence. In the unusual circumstances of this case, I am doubtful whether the court is entitled to consider Chow Mun Fai's refusal to consent to his wife's divulging evidence of their conversations, and take that refusal into account as one of the adverse factors against him when deciding whether or not he had rebutted the presumption. Therefore, to his undeserved benefit, the conclusion in law that I will draw from his refusal is that there was nothing in the conversations that could assist him in his defence. However, I would have preferred the broader interpretation that the court may at its discretion draw inferences including adverse inferences when a spouse refuses to give his consent in such cases, but this was not put in issue before me as counsel withdrew after Chow Mun Fai's refusal.

13. In coming to the findings as I did, I was aware of my duty to consider whether Chow Mun Fai's case could reasonably be true, for it would be as great a travesty of justice to send him to the gallows in place of Tan Tiew Guay if he was telling the truth. The evidence, however, failed him, and his own testimony after cross-examination by counsel revealed him to be a thoroughly untruthful witness. His assertion that he did not have the UOB bank book after the account was opened by his mother for him was refuted by evidence not only from his mother, but also his wife and sister-in-law who testified that they deposited money for him on 22 June 2000. Mr. Fernando and Mr. Jaswant pointed out to Chow Mun Fai that in June alone, some \$27,000 were deposited into his UOB account, and the record showed that whenever a sum was deposited, it was withdrawn by means of the ATM card on the very same day. Chow Mun Fai's only response was that he knew nothing about all these transactions, and made a feeble attempt to suggest that the money came from his consistent good fortune at the lottery. He denied making his statement recorded on 29 June 2000 and admitted as P45 because it contradicted many of his denials made in court. He did so by first denying that he signed at two of the three places which his signature appeared. When the interpreter Mr. Wu Nan Yong was called to corroborate the recording officer's evidence, Chow Mun Fai instructed his counsel to challenge Mr. Wu's evidence by alleging that he was not conversant with Mr. Wu's form of the Cantonese dialect. He also alleged that Mr. Wu scolded him and verbally abused his mother. I do not find any of these allegations to be credible at all.

14. Finally, I considered Mr. Jaswant's submission that Tan Tiew Guay was an accomplice to Chow Mun Fai. In my view, evidence does not justify a finding that she was in possession of all the heroin seized from the flat - only those that she was carrying at the time of her arrest, and had done so only as a bailee for the briefest of moment. Accordingly, I found Tan Tiew Guay guilty of possession of 5.29g of heroin. In the circumstances of the case, I think that a sentence of 8 months imprisonment

to be adequate. I found Chow Mun Fai guilty of possession of all the 23.21g of heroin for the purposes of trafficking and sentenced him to suffer death.

Choo Han Teck

Judicial Commissioner

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