

Public Prosecutor v Mohamad Fadzly bin Din
[2010] SGHC 117

Case Number : Criminal Case No 30 of 2009
Decision Date : 20 April 2010
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Kan Shuk Weng, Luke Tan and Luke Tang, DPPs (Attorney-General's Chambers) for the prosecution; M Rengarajoo s/o Rengasamy Balasamy (B Rengarajoo & Associates) and Rajan Supramaniam (Hilborne & Co) for the accused
Parties : Public Prosecutor — Mohamad Fadzly bin Din

Criminal law – Statutory offences – Misuse of Drugs Act

20 April 2010

Tay Yong Kwang J:

Introduction

1 The accused was born on 30 May 1977. He was tried and convicted on the following capital charge under the Misuse of Drugs Act ("MDA") (Cap 185):

That you, Mohamad Fadzly bin Din,

on 16th day of July 2008, at about 6.00pm, at Block 34 Marsiling Drive #11-393, 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 your possession not less than 31.37 grams of diamorphine for the purpose of trafficking 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, Chapter 185.

Three other related non-capital charges under the MDA were stood down at the commencement of the trial. These were withdrawn at the conclusion of the trial and the accused was granted a discharge amounting to an acquittal on these stood down charges.

The prosecution's case

2 On 16 July 2008, at about 6pm, W/ASP Tan Siew Fong ("W/ASP Tan"), SI Rosli bin Mustaffa ("SI Rosli") and SSSG Henry Chong ("SSSG Henry") of the Central Narcotics Bureau ("CNB") visited Block 34 Marsiling Drive #11-393 ("the flat") and arrested the accused on suspicion that he was trafficking in a controlled drug. The accused was handcuffed with his hands behind his body. When they entered the accused's bedroom (one of three bedrooms in the flat), there was a white envelope containing nine packets of brownish granular substance on the sofa. When SI Rosli asked the accused whether he had any more drugs with him, the accused used his chin to gesticulate that there were and showed a bundle wrapped in transparent masking tape behind the sofa. When probed further, the accused said that there was another bundle behind the sofa. SI Rosli then moved the sofa away from the wall and saw a bundle wrapped with black tape on the floor behind the sofa. He informed W/ASP

Tan and was instructed to stop the search in the bedroom.

3 At around 7.10pm, W/ASP Tan instructed SI Rosli to continue with the search of the bedroom in the presence of the accused. Besides the exhibits mentioned in [2] above, the CNB officers also found drugs in various places in the bedroom, improvised pipes, lighters, a digital weighing scale, empty plastic sachets and cash in \$100, \$50 and \$10 notes totalling \$12,125.

4 Subsequently, each of the two bundles mentioned in [2] above was found to contain 30 packets of granular/ powdery substance. The contents of these 60 packets, together with those in the nine packets on the sofa, three packets in one cigarette box, one packet in another cigarette box and one straw in the cupboard, were analysed by the Health Sciences Authority ("HSA") and certified to contain not less than 31.37 grams of diamorphine, the subject of the charge.

5 At about 8.23pm, W/ASP Tan informed SI Rosli that she wanted to record an oral statement from the accused. As the admissibility of this statement was disputed by the accused on the ground of involuntariness, a trial within a trial was conducted. This oral statement was admitted after the trial within a trial. I shall deal with this later.

6 At about 9.40pm, officers from the Forensic Management Branch arrived to take photographs of the flat. Later in the evening, the accused was brought to the CNB headquarters where the exhibits seized were photographed and the drug exhibits weighed, both in his presence. His instant urine test showed a positive result for methamphetamine. The witness from HSA confirmed in court that the presence of methamphetamine in a sample of urine would not interfere with the detection of diamorphine if diamorphine was present in that sample.

The Trial within a Trial

7 The oral statement in dispute was recorded in the flat on 16 July 2008 between 8.23pm and 8.45pm. Three witnesses each testified for the prosecution and the defence.

8 The prosecution's evidence was that the oral statement was recorded in the accused's bedroom by W/ASP Tan, with only the accused and SI Rosli present. The bedroom door was shut during the recording of the statement. SI Rosli asked the accused what language he would like to speak in. The accused elected to speak in English. Thereafter, the conversation was only between W/ASP Tan and the accused. SI Rosli merely stood nearby to watch over the accused. The statement was recorded in question and answer format in W/ASP Tan's pocket book. The accused answered each of the nine questions promptly. The questions and answers were then read back to him and he was invited to make additions or amendments to his answers. The accused wanted to add something and that was recorded by W/ASP Tan accordingly. The accused then signed each page of the pocket book entries. The accused looked normal to the two CNB officers who stated that they did not make any threat, inducement or promise before or during the recording.

9 Under cross-examination, W/ASP Tan said that a female Malay lady (the accused's grandmother) opened the door of the flat for the CNB officers. She spoke to that lady in the living room while SI Rosli and SSSG Henry went into the accused's bedroom. After a while, SI Rosli reported that there might be drugs in the accused's bedroom. W/ASP Tan then went into that bedroom and saw some drugs there. She told SI Rosli to stop the search and then went out of the bedroom.

10 There was also a Thai lady in the flat. After checking her passport, her luggage and her handbag, which were in another bedroom, W/ASP Tan ascertained that she was not an immigration offender and had no incriminating substance on her. She could not remember whether the Thai lady

was handcuffed by any of the CNB officers. She learnt that the Thai lady was a family friend. W/ASP Tan denied that an officer told her that the Thai lady was the accused's girl friend. She also denied that the Thai lady was crying or that she told the accused that the Thai lady had brought in the drugs. The Thai lady appeared normal to her. W/ASP Tan further denied coercing the accused to admit that the drugs belonged to him by telling him that if he did not do so, the Thai lady would be brought back by the CNB officers for investigations.

11 The Thai lady was not arrested nor brought back to the CNB headquarters. W/ASP Tan had sought the concurrence of her superior officer for this after having ascertained her status.

12 SI Rosli testified that when the elderly Malay lady answered the knocking on the main door, the CNB officers identified themselves and told her that they were looking for the accused. She told them that he was in his bedroom. SI Rosli and SSSG Henry then went into the accused's bedroom. SI Rosli only asked the accused about the location of the drugs. He did not ask him whom the drugs belonged to. SI Rosli did not see W/ASP Tan checking the Thai lady as he remained in the accused's bedroom. Later, during the recording of the oral statement, W/ASP Tan and the accused sat on the sofa in that bedroom. Both were speaking normally. The accused was forthcoming in his answers. He spoke in English only.

13 SI Rosli denied having spoken to the Thai lady, telling the accused that she was the accused's girl friend and that the drugs in the flat were brought in by her and that she would be brought back for investigations if he did not admit that the drugs were his. He could not remember if she was crying. He did not show her the drugs or question her about them.

14 The accused spoke in English and in Malay during his testimony in the trial within a trial. He said that he was in his bedroom that day surfing the internet and smoking "ice" when SI Rosli and SSSG Henry went in. They said that he was suspected of trafficking in drugs. He showed the CNB officers where the drugs were. They had to pull the sofa away from the wall to retrieve the two bundles of drugs.

15 SI Rosli told him in Malay to admit that the drugs belonged to him or they would take the Thai lady away. He asked the accused many questions about the drugs. While he was doing so, the Thai lady was brought into the bedroom by W/ASP Tan. SI Rosli asked him whether the Thai lady was his girl friend and whether she was the one who brought in the drugs. The accused replied that she was a family friend and had arrived on Sunday to attend a wedding. When W/ASP Tan asked the Thai lady what the bundles of drugs were, she merely shook her head and cried. She was handcuffed with her hands in front of her body. She was in the accused's bedroom for about ten minutes. The CNB officers told the accused that if he did not want to admit, they would bring her away. This was said in front of the Thai lady and before the recording of the oral statement.

16 The accused testified that he then lied in the oral statement that the drugs were his as SI Rosli was quite persistent in telling him to admit to it. He had seen the Thai lady handcuffed and crying and therefore felt like he was forced to admit that the drugs were his.

17 In cross-examination, the accused said that he was not related to the Thai lady at all and was not close to her. He addressed her as Aunt Anna. She has two children and knew the accused's father. She was staying in the flat while in Singapore. She did not understand English or Malay. She did not say anything while in the accused's bedroom other than "No, no, no" in English when asked whether she knew anything about the drugs. She merely shook her head and cried. She was standing near the bedroom door which was ajar. The accused claimed that his mother was also in the flat at that time.

18 The accused agreed that only W/ASP Tan and SI Rosli were in the bedroom during the recording of the oral statement and that he was prompt in his answers to W/ASP Tan's questions. While he accepted that no threat, inducement or promise was made by W/ASP Tan, he insisted that SI Rosli had repeated to him many times in Malay that they would take the Thai lady to CNB headquarters if he did not admit that the drugs were his. SI Rosli did not use a threatening voice while doing so. He was not sure whether SSSG Henry was around when SI Rosli said all this. He did not know what would happen to the Thai lady if she was taken away. However, he pitied her and did not want that to happen and so made the admission as the drugs were found in his bedroom. He agreed that he had given additional information to W/ASP Tan.

19 Fatimah binte Samat ("Fatimah"), aged 79, is the accused's grandmother. She lived in the flat with the accused and his parents. The accused's mother was ill and had just returned home in the evening of 16 July 2008. The accused's father was out working. The Thai lady ("Anna"), who was like a daughter to her, was in Singapore to attend someone's wedding.

20 When the CNB officers went to the flat that day, Fatimah was in the living room while the accused's mother was in her own bedroom and Anna was in Fatimah's bedroom. When Anna went out to the living room, W/ASP Tan asked for her passport. As it was kept by the accused's father, Fatimah telephoned him to ask where he had kept it.

21 Fatimah saw W/ASP Tan pull Anna to the accused's bedroom. Fatimah held on to one of Anna's hands and told W/ASP Tan that Anna had nothing to do with the accused. W/ASP Tan held on to Anna's other hand. Fatimah showed W/ASP Tan the gift brought by Anna for the wedding. Fatimah and W/ASP Tan were pulling Anna in different directions but not in an angry manner. Fatimah did not see Anna being handcuffed because Anna was brought inside the accused's bedroom and the door was shut. Fatimah brought Anna's passport to the bedroom door and the door was then opened slightly for her to hand over the passport. After that, Anna emerged from the room, crying and looking sad as she was handcuffed. Fatimah hugged and kissed Anna and cried, feeling sad and ashamed as Anna was a visitor. She did not speak to Anna about what went on in the accused's bedroom as there was nothing to talk about. The accused's father returned home at about that time. Anna's luggage was searched. The handcuffs on Anna were removed subsequently.

22 Fatimah said that she loves the accused very, very much as he is her only grandson. She was naturally very sad that he was facing such a serious charge. She confirmed that the CNB officers did identify themselves and that they spoke politely. According to her, Anna could speak English although Fatimah spoke to her in Malay. Anna was not taken away by the CNB officers that day. She returned to Thailand two days later.

23 After Fatimah testified, the prosecution called SSSG Henry as a rebuttal witness. SSSG Henry said that he did not quite understand what SI Rosli asked the accused in Malay in the bedroom. SSSG Henry was helping to guard the accused but he was not involved in the recording of the oral statement by W/ASP Tan in any way. He only noticed the presence of Anna when W/ASP Tan brought Anna to another bedroom to ascertain her identity. He then assisted W/ASP Tan in escorting Anna. Anna took out her passport and handed it to W/ASP Tan. He confirmed that Anna was not handcuffed and that she was not crying. He did not see W/ASP Tan pulling Anna towards the accused's bedroom. Anna was not brought inside that bedroom. At no time were the three CNB officers together in that bedroom with the accused and Anna with the door shut. He did not see SI Rosli speaking to Anna and none of them told the accused that Anna had brought in the drugs or that she would be brought away for investigations if the accused did not admit that the drugs were his.

24 In cross-examination, SSSG Henry said that he left the flat at about 9pm for about 40 minutes

to assist in some arrest at the ground level of the block of flats. At the time of the recording of the oral statement, he was standing outside the flat.

25 The trial within a trial was held in abeyance at that stage and the trial proper resumed as defence counsel indicated that they were arranging for Anna to come to Singapore from Thailand to testify at the trial within a trial.

26 Anna was in Singapore a couple of days later and the trial within a trial resumed. Her full name is Thanittha Hadu. She is 46 years old. She testified in the Thai language. Anna said that she sold shirts in Hatyai in Songkhla Province. She could speak some English. She was not able to speak Malay but could understand some words.

27 Anna testified that she was in the bedroom directly opposite the accused's when the CNB officers went to the flat that day. When she heard the word "police", she went out to the living room to see what was happening. However, the CNB officers alleged that she had emerged from the accused's bedroom. W/ASP Tan handcuffed her with her hands in front of her body. She was then brought inside the accused's bedroom. Five persons were in that bedroom at that time - Anna, the accused and the three CNB officers. She stood at one corner while the officers searched the bedroom. She was told not to say anything and that if she spoke too much, she would be taken to a police station. She was kept inside that bedroom for five to six hours. She felt angry and sad and cried as she was handcuffed although she had not done anything wrong. When she was brought out of the bedroom, she was still in handcuffs. She was released only after a high-ranking male Malay officer arrived at the flat. Her belongings were searched by W/ASP Tan who took away a nose ornament.

28 In cross-examination, Anna said that she met the accused's father in Thailand some six or seven years ago. She was familiar with his mother, his wife and her relatives. She would visit the accused's family every year during the Hari Raya festivities and sometimes to attend weddings. Whenever she was in Singapore, she would stay in the flat. She communicated with the family in English and with Fatimah in Malay but hardly spoke to the accused.

29 Anna alleged that the CNB officers spoke in an impolite tone of voice. W/ASP Tan refused to listen to her and told her to keep quiet or she would be brought to a police station. Fatimah was in the living room and was not involved much as she could not speak English. W/ASP Tan and SSSG Henry asked the accused in English where he hid the drugs. They searched the bedroom. The accused went to get the drugs and showed them to the officers. She was not paying attention and therefore did not know where the drugs were found. The bedroom door was kept open. She could see that Fatimah was sitting in the living room. While Anna stood at one corner during the search, the accused was standing in the centre of the bedroom. The CNB officers were also standing and searching the bedroom. The accused did not speak to Anna during the five to six hours.

30 Anna testified further that she told W/ASP Tan that her passport was kept by the accused's father. The accused's father telephoned home and told the officers that he was returning home. He returned home to the flat subsequently and showed Anna's passport to W/ASP Tan. He also spoke later to the high-ranking male Malay officer about why Anna had been handcuffed.

The decision of the court in the trial within a trial

31 The burden is on the prosecution to prove that statements recorded from an accused person were made by him voluntarily, free from any inducement, threat or promise.

32 The evidence from the accused and his witnesses was inconsistent on many fronts. Among the more glaring contradictions was the length of time that Anna was kept inside the accused's bedroom. While the accused said she was there for about ten minutes, her estimate was vastly different. Fatimah and Anna also contradicted each other's evidence on whether the room door was shut or kept ajar while Anna was inside the accused's bedroom. Anna did not say anything about being in the centre of a tug-of-war of sorts between Fatimah and W/ASP Tan and neither did she say that SI Rosli asked her questions about the drugs while she was in the accused's bedroom.

33 The accused had already volunteered information to SI Rosli about the location of the two bundles of drugs behind the sofa and did not allege at any time that they did not belong to him. It was therefore unnecessary for SI Rosli to goad him into admitting that the drugs belonged to him. If indeed Anna was the one who brought the drugs to Singapore or was suspected of having done so, why should the CNB officers be so keen to pin the blame on the accused and so willing to exonerate Anna? They could have just as well arrested both of them.

34 The accused was not close to Anna although Fatimah and perhaps his parents were. It was obvious from his testimony about her that he did not know very much about her. Anna also said that she hardly spoke to the accused and they merely exchanged greetings. It was thus quite unbelievable that the accused would sacrifice himself for the sake of merely saving Anna from being brought back to CNB headquarters for investigations and perhaps being detained for a few days. It was not even a case of the CNB officers threatening to make Anna the scapegoat for the drugs. Further, it was uncontested evidence that the accused even volunteered more information to W/ASP Tan after she had finished questioning him.

35 I was therefore of the view that the oral statement in question, if it amounted to a confession admitting to ownership of the drugs found in the flat, was not one that had to be disregarded under s 24 of the Evidence Act as the facts showed clearly that no inducement, threat or promise was made to him by any of the three CNB officers. I therefore ruled that the oral statement had been given voluntarily and was admissible.

The trial proper resumes

36 In the said oral statement recorded by W/ASP Tan, the accused admitted that the contents of the white envelope found on the sofa and of the two bundles behind the sofa were heroin and that they belonged to him. When asked what he intended to do with the said heroin, his reply was "To sell, for paying for my mother's medical bills." He also stated that he charged "\$2100 - \$2200 for one set" and explained that he obtained the heroin from one Roy who would telephone him. Roy had the accused's telephone number but the accused did not have Roy's. After the nine questions and answers had been recorded, the accused was invited to make amendments or additions to his statement. He added that:

This Roy will call and ask when to send the 'thing' and I will tell him when. Someone else will send the 'thing'. That is all. And I only deal with him twice.

37 Inspector Lim Wee Beng ("INSP Lim") recorded several statements from the accused. The prosecution tendered 3 statements recorded respectively on 18 July 2008 at 3.27pm, 19 July 2008 at 11.14am and 20 July 2008 at 10.51am. The accused did not challenge the admissibility of any of these three statements and elected not to cross-examine INSP Lim on his evidence.

38 In the statements, the accused said that when the CNB officers asked him inside his bedroom if he had anything to declare, he said "yes" and pointed to the sofa. After the officers found the white

envelope with the nine packets of heroin, they asked him whether he had anything else to declare. He then retrieved one bundle of heroin from behind the sofa and told them that there was another bundle there. The accused explained that he had obtained the heroin from Roy whom he got to know in 2004. Roy had asked him whether he wished to have additional income by keeping some heroin for him. All the accused had to do was to keep the heroin and deliver it to Roy's buyers whenever Roy called to inform him. The accused wanted a bit of time to think about the proposal as he knew that keeping heroin was illegal. He gave his telephone number to Roy.

39 Shortly after that, the accused, a driver, was retrenched by his employers. When Roy called him, he told Roy that he would help him until he found a new job. He accepted the task as he needed money for his family's household expenses and for some vocational courses that he wanted to take. Roy then told him that someone would deliver 60 packets of heroin to him and he would have to separate them into packs of five or ten.

40 A few days later, a man went to the ground floor of the accused's block of flats. Roy told the accused to meet that man there. That man handed the accused a plastic bag containing a tissue box with some tissue paper sticking out of it. When the accused brought the tissue box home, he opened it and found two bundles inside wrapped in transparent tape. Each bundle had 30 packets of heroin. The accused then separated them into packs of ten each and placed each pack into one envelope. He had only ten envelopes. He then threw the tissue box away.

41 Later that day, Roy called the accused and informed him that he would pay him \$1,200 for each bundle. Roy told him to be on standby to deliver 30 packets of heroin. About an hour later, Roy called again and told the accused to go to the ground level. The accused then took three envelopes (of ten packets each) and went to meet the contact. Roy told him there was no need to collect any money.

42 The next day, Roy called the accused and told him to separate the remaining heroin into 15 packets each and to pass them to a male Malay on the ground level. The accused did as he was instructed. Again, there was no collection of money involved.

43 As the accused had no more stocks of heroin, three more bundles of the drug were delivered to him a few days later in the same way. He asked Roy about the money promised to him and was told that he would get his money after helping with these three bundles. The accused repacked one bundle and left the other two behind the sofa in his bedroom. One pack of ten packets was sold to one Casper for \$2,700. Another pack of ten packets was sold by the accused that night for an unknown amount.

44 The next day, the accused discovered that one packet of heroin was broken. He placed the heroin inside a cigarette box, scooped up the spillage and put it in a green straw. He could not recall where the other three packets found inside a cigarette box on the sofa came from. The accused also stated that he had a weighing scale in his bedroom. That was used to weigh the heroin which weighed about 7.9 to 8 grammes per packet.

45 Roy has not paid the accused any part of the \$6,000 (i.e. \$1,200 x 5 bundles) promised. The accused admitted that he consumed "Ice" (methamphetamine) just before his arrest. That was the only drug that he used to consume.

The case for the accused

46 No submissions were made by the defence at the conclusion of the prosecution's case. As there was obviously a case for the accused to answer, he was asked to enter upon his defence to the

charge. This was done on a Friday afternoon. The accused wanted to consult his defence counsel before deciding whether to testify or not and was permitted to do so. After conferring with the accused, defence counsel applied for time for the accused to decide on his course of action. The trial was then adjourned to the following Monday morning.

47 The following Monday, I was informed that the accused chose not to testify and would call no witness in his defence. However, the accused instructed his defence counsel to place a psychiatrist's report dated 17 August 2009 from Tommy Tan Psychiatric Clinic before the court. However, he did not wish to call Dr Tommy Tan as a witness. He also instructed his counsel not to make any closing submissions.

48 In the said psychiatric report, Dr Tommy Tan reported that the accused had dependence syndrome on crystal methamphetamine, characterised by the need to take the substance every day. This syndrome was secondary to a prolonged depressive reaction to his mother's illness (cancer). The accused was not of unsound mind and knew what he was doing. He was aware that possession of heroin could be a capital offence but thought the amount of heroin had to be many kilograms in weight before it became a capital offence. When he lost his job, he became desperate for money. He admitted that he was very stupid for agreeing to help Roy. The "Ice" caused him to think that he was invincible. Grandiosity is a known effect of "Ice". The accused was remorseful for what he had done.

49 After the prosecution had made its closing submissions, the accused told the court that he was most remorseful for what he had done and for having caused so much hardship to his relatives. He admitted that he committed the offence and asked that he be given a second chance.

The decision of the court

50 The prosecution has proved that the accused was in possession of more than 2 grams of diamorphine. Under s 17(c) of the MDA, the accused is presumed to have had the drug in possession for the purpose of trafficking unless it is proved otherwise. As the accused has adduced no evidence relating to this, the presumption stands.

51 In any event, the disputed oral statement admitted after the trial within a trial showed that the heroin found in bedroom belonged to the accused and that it was meant to be sold. The three undisputed long statements proved beyond reasonable doubt that the accused had sold heroin before and that the heroin seized from his bedroom was also meant for sale to others. Selling is one of the meanings included in the definition of "traffic" (s 2 MDA).

52 While the psychiatric report explained why the accused resorted to selling heroin, it provided no defence at all to the charge. As explained to the accused, while I noted the points raised in that report and his expression of remorse in court, the sentence provided by law is a mandatory one and there is therefore no scope for mitigation of sentence.

53 I therefore convicted the accused as charged and passed the mandatory death sentence on him.