

Public Prosecutor v Lee Chin Seah
[2000] SGHC 19

Case Number : CC 1/2000
Decision Date : 08 February 2000
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Toh Yung Cheong, Wong Li Tien and Hwong Meng Jet (Deputy Public Prosecutors) for the prosecution; Lawrence Wong (Lawrence Wong & Co) and Lee Teck Leng (Tan Peng Chin & Partners) (AC) (both assigned) for the accused
Parties : Public Prosecutor — Lee Chin Seah

JUDGMENT:

GROUNDS OF DECISION

1 Lim Chin Seah, a 42-year-old Singaporean was charged and tried before me on the charge that he:

on or about 25th day of June 1999, at about between 5.55pm and 6.06pm did traffic in a controlled drug specified in Class A of the First Schedule of the Misuse of Drugs Act (Cap 185) by having in your possession, to wit, on your person 2 packets and 6 sachets containing not less than 15.56g of diamorphine and at Blk 325 Ang Mo Kio Ave 3, #12-1898, Singapore, five (5) packets, 32 sachets and four (4) straws of a substance containing not less than 22.44g of diamorphine amounting to a total of not less than 38.0g 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 s 5(1)(a) read with s 5(2) and punishable under s 33 of the Misuse of Drugs Act (Cap 185).

2 Four other charges preferred against him were stood down pending the trial of the foregoing charge.

3 At the commencement of the trial, when the plea of the accused was taken, the accused informed the court that he did not intend to contest the charge. Such a plea notwithstanding, the court required the prosecution to prove its case, as had been the practice of the High Court over a long period of time whenever accused persons for some reason chose not to claim trial, since the prescribed mandatory punishment for the offence was the supreme penalty of death.

4 In the result, the evidence adduced by the prosecution which was by and large undisputed can be summarised as follows.

5 Following intelligence leads, officers from the Central Narcotics Bureau (CNB) were keeping watch on the movements of the accused from about 4.25pm on 25 June 1999 in the vicinity of Block 325 Ang Mo Kio Avenue 3, Singapore. The accused was eventually sighted and arrested at about 5.55pm that day after a brief struggle. The accused was then in possession of a 'Milo' tin housed in a 'Shop N Save' plastic bag. An immediate check done by the officers established that the said 'Milo' tin the accused had with him contained two large packets of heroin. A black waist bag also seized from the accused at that time was also found to contain six sachets of heroin.

6 The accused was shortly taken to his rented Housing and Development Board flat at Block 325 Ang

Mo Kio Avenue 3, #12-1898 Singapore, where he had been staying with his girlfriend, Ivy Chen Li Yin. The CNB officers' knocks on the door of the flat did not receive any positive response. As a result, the CNB operatives forced their way into the flat and found Ivy Chen standing inside. In the ensuing search of the flat, the CNB officers recovered the following exhibits:

(a) Two packets of heroin from the room next to the master bedroom;

(b) From the master bedroom:

- one red plastic bag containing one plastic packet and 19 sachets of heroin;
- two sachets and three straws of heroin found on the floor;
- one straw of heroin found in a square 'Hello Kitty Box';
- one sachet of heroin found on top a mini-compo set;
- two packets of heroin found in a blue cash box;
- one aluminium foil containing one sachet of heroin;
- one blue cash box containing two packets of heroin; and
- one pink heart-shaped container containing nine sachets of heroin.

7 Several drug-related paraphernalia were also retrieved from the flat. They included:

- One electric sealing equipment;
- One *Tanita* digital weighing scale;
- A large number of empty plastic sachets;
- A box of straws; and
- One roll of aluminium foil.

8 Scientific analysis carried out by Dr Angeline Yap Tiong Whei (PW-4) of the Department of Scientific Services (DSS) established that the drugs found both in the Milo tin as well as the six sachets in the waist bag of the accused amounted to not less than 15.56g of diamorphine and the drugs seized from his flat amounted to not less than 22.44g of diamorphine, the total being 38.0g of diamorphine. The prosecution underscored the aspect that the gross weight of the drugs seized from the accused in person that evening was about 946.12g and the drugs seized from his flat a little later was about 1,531.76g making a total of 2,477.88g.

9 The results of the DSS analysis along with a description of the drugs seized are set out in the following two tables:

(a)

Drugs seized when the accused was apprehended

| Lab No. | Exhibit Marking | Gross Weight (g) | Net Weight (g) | Location found/ Description |
|-------------------|------------------------|-------------------------|-----------------------|---|
| 99042275 (P53) | AA P73 | 901.2 | 14.89 | Milo Tin containing two bundles of granular substance |
| 99042283 (P61) | GG2 | 44.92 | 0.67 | Found on body – black waist pouch Total of 6 sachets |
| Total Weight | | 946.12 | 15.56 | |

(b)

Drugs seized from the rented flat of the accused

| Lab No. | Exhibit Marking | Gross Weight (g) | Net Weight (g) | Location found/ Description |
|-------------------|------------------------|-------------------------|-----------------------|--|
| 99042276 (P54) | BB P74 | 898.3 | 14.55 | OG bag from bedroom beside the master bedroom containing 2 packets of granular substance |
| | | | | |

| | | | | |
|-------------------|------------|----------------|---------------------------|--|
| 99042277 (P55) | CC P75 | 401.1 | 7.32 | Red plastic bag recovered from floor in front of bed in master bedroom containing 1 plastic packet and 19 sachets of granular substances |
| 99042278 (P56) | D1 P76 | 9.13 | 0.14 | Floor beside bed in master bedroom 2 sachets and 3 straws |
| 99042280 (P58) | E2 P78 | 3.20 | 0.04 | Recovered from top of mini-compo set in master bedroom 1 sachet |
| 99042281 (P59) | FF1 P79 | 62.25 92.05 | 0.13 F1-a1 0.18 F1-a2a | Blue cash box from underneath side bed dressing table in master bedroom 2 packets |

| | | | | |
|-------------------|-----|----------|------------|--|
| 99042282 (P60) | FF2 | 22.69 | 0.04 F2-a1 | Pink heart-shaped container underneath side bed dressing table in master bedroom 3 sachets 6 sachets |
| | P80 | 43.04 | 0.04 F2-b1 | |
| Total Weight | | 1,531.76 | 22.44 | |

10 On 26 June 1999, the accused was sent to Changi Prison Hospital for observation. He was observed, apparently treated and discharged from the Changi Prison Hospital on 29 June 1999. Dr Leow Kee Fong who attended to him at the hospital said in his certificate that the accused was suffering only from mild withdrawal symptoms and his situation had indeed improved. However Dr Yap Lim Keat of Alexandra Hospital who attended to the accused soon after his discharge from Changi Prison Hospital found the accused requiring stabilization and further treatment. He found him to be suffering from dehydration and hypoglycemia and directed that he be sent this time not back to Changi Prison Hospital but to New Changi General Hospital for immediate admission.

11 The evidence adduced by the prosecution seemed to suggest that the accused was indeed a drug addict and according to Dr Lau Ching Ong (PW-3/PS-5) of the Department of Scientific Services, the accused's urine sample analysed by him contained a high level of morphine and codeine (150.5 micrograms of morphine per 5 ml of urine and 92.77 micrograms of codeine per 5 ml of urine).

12 Four statements including a cautioned statement recorded from the accused were admitted in evidence as being made voluntarily without any objection from the defence. Insofar as is material, the accused in his 122(6) statement recorded on 29 June 1999 had said that the drugs (*peh hoon*) seized that day had nothing to do with his girlfriend, Ivy Chen. He exonerated her by saying that she came to the flat merely to smoke *peh hoon*.

13 The relevant segment of his statement (exh P-69) made on 5 July 1999 at about 11.10am reads as follows:

3 At about 4.30pm [25 June 1999] I received a call on my handphone. I think my hand phone number is 97788873. I cannot remember the exact phone number. The caller spoke in Mandarin and identify (sic) himself as "Si Tu". "Si Tu" is our code for indicating that the heroin has arrived. He told me to proceed to the car park of my Block about 15 minutes later. We then hanged (sic) up the phone. About 15 minutes later, the caller called again and said that he has reached the car park. I walked to the car park and saw a grey colour car with Malaysian registration plate. I did not pay attention to the car number. I then walked to the driver (sic) seat, the male Chinese driver opened his car door and handed over to me a colourful paper bag. I have ordered for 5 "liap" of heroin, however, the driver told me to "lend" 2 "liap" to "Ah Teck" first. He said "Ah Teck" will

contact me later for the 2 "liap". The driver said he will return me another 2 "liap" next time. I took the paper bag and returned to my flat. I do not know the male driver personally, but this is the third time I had collected heroin from him.

4 When I returned to the flat, I went to the master bedroom, "Ah Girl" was watching television programmes. I told her to leave the room to do some cooking as I wanted to re-pack the heroin. I did not tell her what I wanted to do in the room. After she left, I closed the door of the master bedroom and started taking out one "liap" of the heroin out from the paper bag. There were five "liap" of heroin altogether. I then re-packed the one "liap" of heroin into sachets. I packed about twenty over sachets and stopped. There was some more heroin left over from the one "liap". I placed the sachets with heroin and the remaining half "liap" together in a red plastic bag. I then took out two "liap" of heroin and placed them in a paper bag and placed the paper bag in another room next to the master bedroom. This is the same paper bag that I later surrendered to CNB officers after my arrest.

5 While I was packing, "Ah Teck" called me on my hand phone and arranged to meet me at a football field at Ang Mo Kio Ave 6 about 20 minutes later. For the last two "liap" of heroin, I placed them in a "Milo" tin that I took from the store-room. I then put the "Milo" tin in 2 yellow "Shop and Save" plastic bags. I intend to pass these 2 "liap" to Ah Teck. About 20 minutes later, I took the yellow plastic bag containing the "Milo" tin and took a lift to the ground floor. When the lift reached the ground floor and the door opened, as I was about to walk out of the lift, a group of persons came into the lift and arrested me and told me that they are CNB officers.

...

14 In his next statement (exh P-70) recorded also on 5 July 1999 at about 2.30pm, he said in para 17:

The heroin that I got from the Malaysia is for selling. I usually sell in sachets.

15 The last statement (exh P-71) recorded on 8 July 1999 contained three questions posed by the investigating officer, W/Insp Cindy Goh and the answers to them by the accused. They read as follows:

23 Q: How often do you consume heroin?

A: I smoke heroin 4 times a day. Everyday, I consume about half a sachet of heroin. Its about 3 to 4 grams of heroin.

Q: How do you smoke heroin?

A: Using the "Chasing dragon" method.

Q: Can you differentiate which heroin that was found in the flat is for your own consumption and which is for you (sic) selling?

A: Those heroin that were re-packed into the sachets are for selling. Usually, I

smoked the remaining heroin that was not repacked. I used straws to scoop from the loose heroin and smoked them.

...

16 At the close of the prosecution's case, defence counsel did not make any submission. The learned DPP after narrating the circumstances of the arrest of the accused, submitted that a case had been made out by the prosecution, which if unrebutted, would warrant his conviction. Having considered all the evidence adduced by the prosecution including the seizure of the drugs both in the immediate possession of the accused as well as those found in his rented flat, the scientific evidence in relation thereto and above all the admissions contained in his statements, I administered the standard allocution and called upon the accused to enter his defence.

17 The accused, however, elected not to give evidence from the witness box nor did he call any evidence on his behalf.

Closing submissions

18 Despite the stand taken by the accused, defence counsel made a brief closing submission. His submission contained two main aspects – the first pertained to the analysis of the drugs by the DSS and the second concerned the issue whether the drugs seized from the accused were meant for trafficking.

19 In regard to the aspect concerning the analysis of drugs, defence counsel invited the attention of the court that out of the eight DSS Lab Certificates (see exhs P-53, P-54, P-55, P-56, P-58, P-59, P-60 and P-60 at pages 35 to 38 and 40 to 43 of the PI notes) only the first three ie, exhs P-53, P-54 and P-55 (pages 35 to 37 of the PI notes) had the endorsement 'confidence level of 99.9999%', and the rest did not bear such an endorsement. He said that the absence of the said endorsement on the remaining certificates rendered them suspect and consequently the court should not act on them.

20 As regards the second issue whether the drugs seized were meant for trafficking, counsel's submission was as follows:

1.2 Amount of drugs meant for trafficking

1.2.1 It is the evidence of the Accused from his statements (P69 & P71) which were admitted by the Prosecution, that he is a consumer of heroin and that he consumes a substantial amount of heroin (about half a sachet a day). His addiction was supported by the medical report of Dr Leow Kee Fong (D3/P48) that the Accused was treated for drug withdrawal syndrome from 26 to 29 June 1999. Accused was not merely in Changi Prison Hospital for observation. While there is no direct evidence that the Accused was admitted to New Changi Hospital on 29 June 1999 as a result of drug withdrawal, it is submitted that the probable cause would be due to drug withdrawal. It is the evidence of Dr Lau Ching Ong (PW3) that the Morphine (a by-product of Diamorphine) level in Accused's urine is

considered to be on the high side.

1.2.2 It is also the evidence of the girlfriend of the Accused, Ivy Cheng (PW14) that she consumed heroin at the said flat at Block 325 together with the Accused. This evidence tally with the Accused evidence as contained in his statement (P69 and P70) that he gives heroin to PW14 to smoke free of charge.

1.2.3 It is the evidence of the Accused from his statement (P71) that he would consume the heroin from the big plastic bags after packing some heroin into sachets for selling. Accordingly C1 (one packet) was meant for the Accused's and PW14's joint consumption. The 19 sachets (C2a) packed separately in a ziplock bag C2 (P102) were meant for selling. However as stated by PW4, we are now unable to determine the nett amount of Diamorphine in C1 as it was mixed together with C2a before analysis. It is noted that drugs exhibits are normally pulverised and homogenised before analysis to ensure consistency of the contents before samples are extracted. Accordingly there is no consistency before pulverising and homogenising the drugs. It is submitted that no weight should be given to the evidence of PW4 who attempted to repair the damage by saying that C1 and C2a looks similar. Her evidence runs contrary to the need for scientific analysis of drugs in drug offences. There is a big question mark as to the amount of Diamorphine in C1 and C2a which could not be answered by simple calculations based on the fraction of their relative gross weight to each other.

1.2.4 Similarly, it is further submitted that part of the heroin in BB (P74) was also for the joint consumption of the Accused and PW14.

1.3 In view of the above, it is the humble submission of the Defence that the presumption of trafficking had been rebutted on some of the drugs and that there is a real doubt as to the exact weight of the drugs which was meant and intended for trafficking.

21 The remainder of his submission was as follows:

2. Other inconsistencies in the Prosecution's Case

2.1 Collection of drugs

2.1.1 It is Cpl Cynthia Lim's (PW7), Cpl Uma's (PW12) and Cpl Jory Lim's (PW9) evidence that from 4.25 pm to 5.55 pm on 26 June 1999, the Accused only came downstairs from his flat at Block 325 on two occasions i.e. once at 4.35 pm when he turned around and went upstairs again and

another time at about 5.55 pm when he was arrested. On the other hand it is also the Prosecution's case through the Accused's statements that the Accused had collected the drugs that was allegedly meant for trafficking from one Malaysian at the carpark next to Block 325 on that material day at about 4.45pm.

3. Adverse inference

3.1 It is submitted that no adverse inference should be drawn against the Accused for his decision to remain silent as the Accused had by admitting the contents and voluntariness of his statement adopted the contents of the said statements as his evidence before the court.

4. Conclusion

4.1 In view of the above, it is the submission of the Defence that it is unsafe to convict the Accused on the charge (A1) based on the evidence before the court.

Conclusion

22 Although the accused elected not to contest the charge and despite his decision to remain silent at the close of the prosecution case, I reviewed all the evidence adduced at the trial and considered all the submissions made, as was obligatory of me.

23 There was undisputed evidence that at the time the accused was apprehended, he was found in possession of two large packets of drugs housed in a *Milo* tin and another six sachets of drugs in his waist bag. Subsequent search of his flat yielded not only drugs but also a large quantity of empty sachets, a weighing scale and a sealing equipment – all implements of drug trafficking. The diamorphine content of the drugs in the *Milo* tin as well as the six sachets was certified to be not less than 15.56g (exhs P-53 and P-61). The drugs seized from his rented apartment included two large packets of drugs (exh P-54). They were found to contain not less than 14.55g of diamorphine and the remainder constituted the balance ie, 7.89g of diamorphine (see exh P-55, P-56, P-58, P-59 and P-60). The total gross weight of the drugs seized amounted to 2,477.88g (946.12g found on him and 1,531.76g in his flat). Such a large quantity of drugs taken together with the paraphernalia mentioned earlier warranted the inference that all of them could not be for his own consumption and was intended for sale and distribution to others.

24 The court was indeed conscious that he was a drug addict and that his urine contained a high dose of morphine and codeine. Though Dr Leow's certificate did not adequately explain his condition, the court concluded, having regard to the certificate issued by Dr Yap of Alexandra Hospital, that he was indeed a hardcore addict. However, an addict could still traffic in the drugs which he was found to be in possession of. True, he might well use part of the drugs in his possession for his own consumption. In the present case, even if I were to disregard those amounts found in the sachets (see exhs P-55, P-56, P-58, P-59, P-60 and P-61) the diamorphine content of the four large packets (exhs P-53 and P-54) still amounted to 29.44g. The two DSS certificates pertaining to those exhibits

P-53 and P-54 also included the endorsement of 'confidence level'. In the circumstances any allowance for his personal consumption was profitless and any amendment to the charge would only be cosmetic. Furthermore, the statements admitted in evidence clearly indicated that the accused was going to traffic in the drugs found in the large packets.

25 Let me now deal with the criticism of counsel concerning the drug analysis and absence of the endorsement 'confidence level' in some of the certificates.

26 In my view, the criticism of counsel seemed to ignore the explanation given by the DSS expert, Dr Angeline Yap who said that the protocol employed by the DSS was that whenever they had to carry out tests on smaller exhibits it would not be feasible for them to take more than six samples and in such cases, the said endorsement would not be included. She added that the quantity found in exhibits P-56, P-58, P-59, P-60 and P-61 (pages 38, 40, 41, 42 and 43 of the PI notes) were not sizeable to take more than six samples; nonetheless the absence of the endorsement did not make their analyses or conclusions any less certain.

27 The court having reviewed all the evidence, accepted the evidence of Dr Angeline Yap on the diamorphine content as being valid. At any rate, even if the court were to act only on two of the three DSS Certificates which had the endorsement 'confidence level' (exhs P-53 and P55 – pages 35 and 36 of the PI notes), the amount of diamorphine certified therein amounted to 29.44g, (14.89 + 14.55) a great deal more than the critical 15g level. In the result, I found the arguments by counsel on this aspect to be of little merit.

28 Upon review of all the evidence, I was satisfied that the prosecution had indeed discharged its ultimate burden in proving its case against the accused beyond a reasonable doubt. In my finding, the presumptive provisions of s 17 of the MDA had not been rebutted. In the circumstances, the prosecution's submission to draw an adverse inference against the accused pursuant to s 196(2) of the CPC because of his election to remain silent was purely superfluous since the accused had at the outset categorically maintained that he did not propose to contest the charge against him.

29 In the premises, based on all the evidence, I found the accused guilty as charged. He was convicted accordingly and was sentenced to the only punishment prescribed under the law. The other charges stood down pending the outcome of the trial were withdrawn by the prosecution and pursuant to s 177 of the CPC the accused was given a discharge amounting to an acquittal in respect of those charges.

Dated this 8th day of February 2000.

MPH RUBIN

Judge

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