

Public Prosecutor v Ali bin Serti
[2000] SGHC 251

Case Number : CC 70/2000
Decision Date : 27 November 2000
Tribunal/Court : High Court
Coram : Amarjeet Singh JC
Counsel Name(s) : Christina Koh assisted by James Lee (Attorney-General's Chambers) for the prosecution; Sheik Mustafa assisted by Ramli Salekhon (AC) (Both Assigned) for the accused
Parties : Public Prosecutor — Ali bin Serti

JUDGMENT:

Grounds of Decision

Charges

1. The Accused was charged and tried on the following charges:-

1st Charge

You, ALI BIN SERTI

on the 11th day of April 2000, at about 6.05 p.m., in a lorry bearing registration number YD 8173P along Kallang Bahru, 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 for the purpose of trafficking, 81 sachets of substance containing not less than 24.47 grams of diamorphine 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 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

2nd Charge

You, ALI BIN SERTI,

on the 11th day of April 2000, at about 8.00 p.m., in the bedroom of Blk 6 Jalan Minyak #12-362, 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 for the purpose of trafficking, 2 packets and 12 sachets of substance containing not less than 77.40 grams of diamorphine 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 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

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Prosecution Case

2. The facts adduced in evidence by the prosecution which were not disputed were that on or about 11 April 2000 the Accused was residing alone in Blk 6 Jalan Minyak #12-362 (flat #12-362). At about 5.45 p.m. a surveillance party from Central Narcotic Bureau (CNB) kept watch over the flat and its vicinity. At 5.40 p.m. the Accused and one Abdul Rahman Bin Mohd Noor ('Abdul Rahman') were seen by CNB officers emerging from the lift landing of Blk 6. The Accused was seen carrying a brown paper bag by Senior Staff Sergeant Henry Tan Yian Chye ('SSSgt Henry Tan'). He identified the brown bag with the wording 'CAPTIONS' across it as **Exh. P63**. The Accused and Abdul Rahman met up with one Zamri Bin Mohd Ali ('Zamri') who was at the void deck. Moments later Zamri and the Accused boarded the motor-lorry YD 8173P parked in front of Blk 6. The driver of the lorry was Rumli Bin Sarib. Zamri sat in the front cabin of the lorry next to the driver and the Accused sat on his right next to the left door of the lorry. There were already two other passenger seated in the rear carriage of the lorry namely, Ng Sick Yong ('Ng') and Jaseni Bin Latip ('Jaseni'). The lorry then drove off travelling down York Hill and turning into Chin Swee Road followed by CNB officers. Shortly after that one Abdul Rahman Bin Mohamad Noor who had been left behind inadvertently was seen boarding the lorry along Chin Swee Road.

3. At about 6.05 p.m. the lorry was intercepted by CNB officers along Kallang Bahru near a JTC flatted factory. Insp Herman Bin Mohamed Hamli ('Insp Herman') from the Special Task Force of the CNB and other CNB officers arrested all the six persons travelling in the lorry including the driver. SSSgt Henry Tan on inspecting the front cabin of the lorry saw the brown paper bag which he had earlier seen being carried by the Accused. It was resting in the floor board in front of the seat which had been occupied by the Accused. At 6.40 p.m. the lorry was driven to the JTC flatted factory car park. SSSgt Ang Onn Tho ('Jimmy Ang') on the instructions of Insp Herman opened the brown paper bag. In it were found:

- (i) 4 white envelopes believed to contain heroin
- (ii) a red plastic bag containing one sachet of heroin
- (iii) a wrapped newspaper containing 4 white envelopes believed to similar heroin

4. Subsequently the Investigating officer Soh Thiam Loon examined the said exhibits and found that each of the 4 envelopes lying in the brown bag had 10 sachets. There were another 10 sachets of the same kind of substance in each of the 4 envelopes found in the newspaper making a total of 81 sachets.

4.1 A bunch of 3 keys including the key to the Accused's flat were seized among other belongings of the Accused such as, handphone and cash of \$1702 at the scene. Cash of \$2758.60 belonging to the Accused was also recovered from the Accused's sisters house making the total cash recovered S\$4460.60 at (**Exh. P89**).

5. At 7.55 p.m., Insp Herman and a team of CNB officers arrived at flat #12-362 belonging to the Accused. The front door of the Accused's flat was padlocked and also key locked. The door was opened with the keys (**Exh. P88**) seized from the Accused by Insp Herman. In the bedroom of the flat the Accused indicated to Insp Herman to the area between the dressing table and the wardrobe. Insp Herman recovered a white plastic bag with the word 'Maxim Cakes' (**Exh. P85**) from the said area. The said plastic bag was found to contain

- (i) 2 transparent plastic packets of substance believed to be heroin;
- (ii) 2 envelopes one containing 10 sachets and the other containing 2 sachets of substance also believed to be heroin;
- (iii) a 'TANITA' digital weighing scale;
- (iv) two candles;
- (v) two metal spoons;

- (vi) two used envelopes;
- (vii) a stack of 9 envelopes and
- (viii) envelopes and a stack of 346 empty satchets.

5.1 In a carton in the cupboard near to the bed a white plastic bag (exhibit P85) was recovered with five stacks of empty sachets totalling 2320 such sachets. The Investigating officer testifying said that the empty sachets were used for trafficking the drugs by repacking small quantity of heroin in them of about 8 grams from the big packets and the candles were used for heat sealing the sachets after repacking. The spoons were used to scoop up heroin from the big packets and put into the sachets. The digital weighing scale was to measure the amount of heroin put in each sachet.

6. Dr Lee Tong Kooi (Dr Lee) a Scientific Officer attached to the Department of Scientific Services (DSS) examined and qualitatively and quantitatively analyzed the 81 sachets of granular/powdery substance found in the brown bag on the floor board of the lorry opposite the seat where the Accused was sitting (the subject matter of the 1st Charge). He determined the substance to contain heroin and the total weight of the heroin was not less than 24.4 grams as per his Certificates (**Exhs. P40 to P48**) issued under S16 of the Misuse of Drugs Act, Chapter 185 ('MDA').

6.1 Dr Lee similarly analyzed the granular/powdery substance in the two transparent plastic packets with gross weight of 425.0 grams and 425.1 grams each and the 12 sachets with a gross weight of 88.23 grams all of which were found in the white plastic bag with the wording 'Maxim Cakes' in the Accused bedroom (the subject matter of the 2nd Charge). He determined the substance to contain heroin and the total weight of the heroin was not less than 77.40 grams (**Exhs. P49 to P52**).

6.2 Dr Lee also found the two spoons to be stained with heroin.

6.3 The Accused's urine was tested and found negative for morphine, a by-product of diamorphine.

7. The Accused gave a number of statements on various dates to the police. He did not challenge the admissibility of the statements. He conceded through his counsel that they were voluntarily made. Nevertheless, I satisfied myself of their voluntariness by requesting the prosecution to adduce *prima facie* evidence of the same. The Accused's Counsel did not question any witness nor did the Accused proffer to give evidence. I therefore admitted that the statement in evidence as I was satisfied for they were voluntarily made.

7.1 The statements admitted with a brief description of their content were:

P56

- Contemporaneous Statement recorded by Insp Herman on 11 April 2000 at 6.30 pm at JTC flatted factory carpark in Kallang Bahru.

The Accused admitted to Insp Herman after being questioned and that at the scene of his arrest the brown bag was his; that in the bag there were 80 sachets. When asked from whom he got the heroin the Accused answered that he got it from a male Chinese named 'Ah Mike' at Geylang Lorong 37. When asked what he was going to do with the heroin his answer was that he wanted to give it back to Ah Mike at Geylang Lorong 37. He also acknowledged that the 3 keys in his possession were to his flat #12-362.

P56A

- Contemporaneous Statement recorded by Insp Herman on 11 April 2000 at 8.00 pm in flat #12-362

The Accused admitted to questions by Insp Herman that the white plastic bag found next to the cupboard in the bedroom was his and it contained 'heroin, envelope, weighing machine and empty plastic bag'. When asked what he would do with the heroin his reply was 'I will repack into small plastic bag and sent to 'Ah Mike''.

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- Contemporaneous Statement recorded by the Investigating Officer on 11 April 2000 at 9.00 pm in flat #12-362

To questions by the Investigating Officer after his arrest at flat #12-362 the Accused again admitted that the brown paper bag seized from the lorry contained heroin; that it belonged to him and that he got it from 'Ah Mike' in the morning at Geylang Lorong 37. Further he admitted the white plastic bag with the word 'Maxims Cakes' had heroin in it, that it belonged to him and that he got it from 'Ah Mike', same place, that the empty plastic bags were to fill heroin in 'the big one to make small one' and thereafter to send the small plastic bags to 'Ah Mike' in return for money - 'Singapore dollars one thousand'.

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- Cautioned Statement concerning the 1st Charge recorded by the Investigating Officer on 12 April 2000 at 3.25 am in CNB

The Accused stated 'I have nothing to say'.

P59

- 2nd Cautioned Statement concerning the 2nd Charge recorded by the Investigating Officer on 12 April 2000 at 3.47 am in CNB

The Accused stated 'Nothing to say'.

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- Long Statement recorded by the Investigating Officer on 14 April 2000 at 9.55 am in CNB

The Accused's statement was that on 11 April 2000 at about 10.00 a.m. as a result of a phone call from Malaysia he understood that a person would bring heroin from Malaysia [Para 5]. At 11.00 a.m. two Chinese males came in a car. He opened the back door and took out a brown paper bag - the same bag was seized from the lorry later in the day [Para 6]. He said he took the brown paper bag home. At 4.00 p.m. the same person spoke to him to bring the 8 envelopes to the same place at about 6.00 p.m. meaning Geylang Lorong 37. He opened the brown bag and saw 8 envelopes containing small packets of heroin. He also saw a plastic bag containing 2 big packets. There were also one or two envelopes inside the plastic bag. He took out and put the plastic bag next to the wardrobe [Para 7]. At about 6.00 p.m. he left the house carrying the brown paper bag with another male Malay (Abdul Rahman) and at the void deck he asked for a lift in a lorry from a friend Zamri back from work as a lorry had come to pick them up [Para 9]. Thereafter he took a lift in the lorry. He sat in the passenger cabin and kept the brown paper bag between his legs [Para 10 and

11]. The lorry was intercepted by CNB officers and he and the others were arrested [Para 12 and 13].

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- Further Long Statement recorded by the Investigating Officer on 17 April 2000 at 9.25 am in CNB:

Extracts:

'15. In the brown paper bag, there were 81 small packets of heroin as well as a Red Bull, a Marlboro cigarette and a newspaper...

16. ... The caller from Malaysia who spoke in Malay with a Chinese accent is called Ah Mike... **...Ah Mike called me to bring the 8 envelopes to Geylang Lorong 37...**

17. So far I had dealings with Ah Mike twice... ... The last time I was paid Singapore dollars 1000. This time I expected about the same amount. I do not know what they intended to do with the heroin.

18. I refer to para 7. I took a plastic bag containing two big packets of heroin and put it on the floor next to the wardrobe. Inside were also 2 envelopes containing heroin but I did not know how much... ... I do not know what Ah Mike intends to do with all these things. I assume Ah Mike wanted me to repack the big packets into smaller plastic packets. In my oral statement to the recording officer on the night of my arrest, when I said the big packets would be packed into smaller packets, I meant this is what I thought would happen.

20. In the wardrobe of my room, the officers recovered a plastic bag inside which was a brown wrapper containing a lot of plastic bags. They were part of what was contained in the plastic bag of our previous deal. I put it in the wardrobe. In the previous deal, the plastic bag contained 2 plastic bag. One was this plastic bag that contained the many small plastic bags. The other one contained heroin. Ah Mike told me to give the one with the heroin to someone in Lorong 37 Geylang...'

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- Further Long Statement recorded by the Investigating Officer on 22 June 2000 at 11.35 am in Queenstown Remand Prison:

Extract:

'29. When I was re-packing the heroin, as instructed by Ah Mike, I did not wear gloves. I just packed with my bare hands.'

Prima Facie Case

8. On the witness' evidence adduced by the prosecution and on the admissions of the Accused as set out in his various police statements which I have set out earlier I was *prima facie* satisfied that the prosecution had proven that both the brown bag (**Exh. P63**) he carried in the motorlorry YD 8173P and the white plastic bag (**Exh. P85**) recovered in the Accused's bedroom in

flat #12-362 had not less than 24.47 and 77.40 grams of diamorphine as analyzed and deposed to by Dr Lee the Scientific Officer. Under Chapter S 17 (s) of the Misuse of Drugs Act possession of more than 2 grams of diamorphine raised the presumption that the possession of diamorphine was for the purpose of trafficking. I was further satisfied that the prosecution had *prima facie* proved that the above amounts of diamorphine in each case were in the possession of or control of the Accused. The Accused was seen bringing down the brown bag (**Exh. P63**) from his flat #12-362 in which 24.47 grams of diamorphine were found. On his own admission in his statement, **Exh. P60**, he said he brought down the brown bag (**Exh. P63**) and thereafter sat in the front passenger cabin and kept the said bag between his legs. After his arrest he also admitted that the said brown bag contained diamorphine and that he had obtained it from one Ah Mike and that he understood he was given the diamorphine to be repacked into the small sachets and thereafter he was to return the repacked heroin to the aforesaid Ah Mike for which work he would be paid S\$1000.

9. The Accused explanation in respect of the 77.40 grams of diamorphine found in his bedroom was the same. He explained that he had received the two amounts of diamorphine together in the morning of 11 April 2000 and he had separated them i.e. putting aside the 77.40 grams of diamorphine contained in the white plastic bag **Exh. P85** (2 transparent plastic packets and 2 envelopes) in between a wardrobe and the dressing table.

10. All these facts went to prove that the Accused had knowledge that the contents of the aforesaid two bags concerning each of the charges was diamorphine and that he was in control of such diamorphine. It was also *prima facie* proved by his admissions when read as a whole that the Accused had such possession for the purpose of trafficking as he intended to repackage the diamorphine and had partially repackaged the diamorphine and was on his way to deliver some of that diamorphine, the subject matter of the 1st Charge as requested by Ah Mike. Drug related paraphernalia was found in the flat for repacking of the diamorphine consisting of heat sealing and more than 2,500 empty sachets and a weighing scale including diamorphine stained spoon all indicating that the Accused had repackaged diamorphine. Complementing the proof were the presumptions under the MDA. Apart from the presumption of S.17 as stated above the presumption in S 5(2) of the MDA stipulated that a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

11. Therefore both on proof and presumption I was *prima facie* satisfied that the Accused was trafficking in the amount of heroin set out in each of the two charges. It was for the Accused to prove otherwise on a balance of probabilities. In the circumstances, I called upon him to enter his defence.

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Defence

12. On the Accused defence being called the Accused elected to remain silent.

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Decision

13. Counsel for the Defence submitted at the conclusion of the case that only a case of possession of drugs was established against the Accused and the Accused should only be found guilty of the lesser acts of possession in respect of each charge. He went on to submit that the actual purpose of possession was repackaging the diamorphine in question and for the repackaged diamorphine to be returned to Ah Mike or his agent. He submitted that when the MDA referred to the purpose of possession it must be the dominant purpose. The dominant purpose was repacking and the secondary purpose was the return of the repackaged drugs to its owner. The Accused would not know what the owner would want to do with the repackaged drugs. As such, there was no trafficking by the Accused.

13.1 I found the submission both novel and ingenious. I rejected the same. The law was plainly set out in s 5(2) of the MDA and enunciated in *Sze Siew Luan PP* [1997] 2SLR 522 at 525 in which Yong CJ stated as follows:

" It is settled law that possession of drugs for the purpose of returning them to the owner is possession for the purpose of trafficking, for the bailee would eventually have to transfer possession back to the bailor."

This was held by the Court of Appeal in **Lee Yuan Kwang & Ors v P P** [1995] 2SLR 349 at 368:

Adopting the court's interpretation of 'deliver' in Goh Hock Huat, he could not succeed in rebutting the presumption of possession of the drugs for the purpose of trafficking on the basis of the argument that 'returning' the drugs to Lee was not trafficking. By a future act which would transfer possession of the drugs to Lee, Yakoob would be admitting, in effect, that he would deliver the drugs to Lee, albeit at a subsequent time. The fact that this time had not yet arrived was immaterial because of s 5(2), the insertion of which was intended to clarify Parliament's intention that once the presumption of trafficking was invoked, 'there was no need to show the overt act of trafficking which he had intended to do."

14. It was clear from the Prosecution's evidence adduced that by a future act, the Accused would be transferring possession of the repackaged diamorphine to Ah Mike and the Accused was admitting as such that he had *offered to deliver* and *would deliver* such diamorphine in respect of each charge to Ah Mike - in respect of the 1st charge almost immediately and in respect of the other charge subsequently when asked to by Ah Mike. Such an intended delivery of the diamorphine on the part of the Accused evinced that the Accused's intention of having the diamorphine in his possession was for the purpose of trafficking and the repacking into retail sized sachets of about 8 grams each accentuated not diminished the purpose. The intended eventual delivery was not of secondary significance and inconsequential to trafficking as submitted by Defence Counsel but was in my opinion the culminating act of trafficking.

15. There was also no further evidence for me to consider that the Accused was not trafficking in the said amount of diamorphine, the Accused having remained silent. I also drew an adverse inference against the Accused upon his refusal to take the stand under s 196(2)(a) of the Criminal Procedure Code (Cap 68) which states:

"If the accused after being called upon by the court to give evidence or after he or the advocate representing him has informed the court that he will give evidence, refuses to be sworn or affirmed, the court, in determining whether the accused is guilty of the offence charged, may draw such inferences from the refusal as appear proper."

15.1 On a review of the whole evidence, I was satisfied that there was no contrary indication that the presumption under s 5(2) of the MDA should not apply. The evidence of the Prosecution not being controverted, I found the Accused had failed to prove on a balance of probabilities that he did not traffic in the diamorphine in respect of each of the charges upon which he was tried.

16. I therefore found him guilty in respect of each charge and convicted him accordingly and sentenced him according to law.

Judicial Commissioner

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