

Public Prosecutor v Lim Choo Song
[2001] SGHC 366

Case Number : CC No 62 of 2001
Decision Date : 07 December 2001
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : —
Parties : —

Judgment

GROUND OF DECISION

BACKGROUND

1. The accused Lim Choo Song NRIC No S1090758F was charged with the offence of importing into Singapore a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Cap 185, on or about 16 June 2001 at about 11.10pm by having two packets of granular substance containing not less than 23.43g of diamorphine, without any authorisation under the said Act or the regulations made thereunder.
2. The accused claimed trial.

THE PROSECUTIONS CASE

3. The prosecutions case was that on 16 June 2001 at about 2310 hours, the accuseds motor car bearing registration number SCV 7067K was stopped by a party of Central Narcotics Bureau (CNB) officers at the Car Arrival Inspection Bay, Woodlands Checkpoint, Singapore. The accused was the only occupant of the motor car and he had just driven the car into Singapore from Malaysia.
4. The motor car was brought to a car inspection pit and searched with the aid of drug-sniffing dogs. Resulting from this search, at about 0015 hours on 17 June 2001, CNB Sergeant Choo Thiam Hock discovered a plastic bag containing two packets of a granular substance suspected to be a controlled drug, inside the arm-rest compartment of the rear seat of the car. The two packets were then seized and the accused placed under arrest.
5. The two packets seized were sent to the Health Sciences Authority for analysis into the weight and composition of their contents. They were found to contain not less than 23.43g of diamorphine. The diamorphine was measured to a confidence level of 99.9999%.
6. The accused had full knowledge of the existence of the two packets of drugs found inside the motor car, and furthermore he knew that the two packets contained a controlled drug. The accused intended to import the drugs into Singapore.

EVIDENCE

7. Evidence on the existence and the weight of the diamorphine in the drugs seized was given by Dr Saw Chwee Guan (PW 5). It was not disputed that the drugs found in the car contained diamorphine

of not less than 23.43g.

8. The prosecution also relied, inter alia, on statements given by the accused. The defence did not challenge the admissibility of the statements, subject to challenge on the accuracy of the statements.

First statement

9. About an hour after his arrest, the accused was questioned by one Inspector Omer Ali Saifudeen (PW 7) who enlisted the help of Sgt Choo (PW 17) to interpret the questions to the accused in Hokkien. This was at an inspection pit at Woodlands Checkpoint at about 0120 hours on 17 June 2001.

10. The typed transcript of the Hokkien version of the questions and answers states:

Q1 Zhe ye Shi Shin mee mer kia?

A1 Eng Kai Shi Tok pin.

Q2 zhe ye kui liao Lar Bin ye mer kia Shi Shin mee.

A2 Eng Kai Shi Tok pin.

Q3 Chia Teng Kor Wu ji kuan ji pao ji pao ye mer kia Bo?

A3 Bo

Q4 Zhe ye Shi jok Shin mee ye. Ang juan li Aik koi Jeep Lai

A4 Ah Meng tok wai koi jeep Lai Heng Ah San ye.

Q5 Jeep ye Ji pao luar Juay Rui?

A5 yee lang heng wo Ji Chen kor Jui Hu lui toi wo koi jeep lai.

11. The typed transcript in English states:

Q1) What is this? (pointing at the bundle).

Ans). I think drugs.

The package was slightly opened in his presence to verify content and to show him.

Q2) Is there any more such packets in the car?

Ans). Should be drugs.

Q3) Is there any more such packets in the car?

Ans). No.

Q4) What is it for? Why did you bring it in?

Ans). "Ah Meng" asked me to bring in and give to "Ah San".

Q5) How much does a packet like this cost?

Ans). I dont know. They gave me 1000 ringgit to bring this in.

12. Mr Tan Teow Yeow, lead counsel for the Defence, suggested to Sgt Choo that when the accused said Tok Pin, he did not mean drugs but poisonous substance. Sgt Choo disagreed.

13. When PW 23 Mr Tan Chee Leong, an interpreter who had interpreted the accuseds statement on two other separate occasions, gave evidence, Mr Tan asked him if the phrase Tok Pin could mean poisonous matter or substance. PW 23 accepted that it could mean poisonous substance or drugs.

Second statement (this was pursuant to Section 122(6) CPC)

14. Subsequently, a charge was framed and read to the accused pursuant to s 122(6) of the Criminal Procedure Code. The charge was for the importation of diamorphine and was for an offence under s 7 of the Act (see exhibit P24). The consequence of the accused remaining silent was explained to him.

15. The consequence of a death penalty if he was convicted on the charge was also explained to him.

16. This was all done with the aid of an interpreter Mr Wu Nan Yong (PW 22).

17. The accuseds response was that he had nothing to say.

Third statement

18. The accused gave two more statements with the aid of the interpreter Mr Tan Chee Leong, whom I have mentioned above.

19. The third statement was recorded on 21 June 2001 at about 10.15am. It states:

On 16 June 2001, at about 11.10 p.m., I was arrested at the Woodlands Checkpoint. I was in my car, a white BMW SCV 7067K. At the rear seat, inside the armrest compartment was a plastic bag. I knew there was drug inside the plastic bag.

2 On 16 June 2001, at about 4 p.m., I drove my car, SCV 7067K, into Johore via Tuas Checkpoint. I knew Woodlands Checkpoint would be jammed. I arrived in Johore at 5-plus p.m. I went horse-betting at Merlin Tower. I finished at about 7-plus p.m. Then I proceeded for a haircut. At this point in time, I received a call on my handphone from a man known as Ah Meng. Ah Meng asked me to wait for him at the carpark in Jalan Ah Fook at 8-plus p.m. He also asked me to help him bring something into Woodlands, Singapore. He promised me ringgit one thousand for the effort. I then hang up the phone call.

3. At 8-plus p.m., I went to the carpark in Jalan Ah Fook after my haircut. I parked my car at the

carpark. I walked to another carpark located nearby to wait for Ah Meng. At 8.15 to 8.20 p.m., Ah Meng came in a black car. The number plate was 9580; I cannot remember the alphabet letters. He was alone. I went to his car and sat next to Ah Meng. Ah Meng drove the car to the carpark where I had earlier parked my car in. I alighted from his car, walked to my own car, and inserted the key to switch on the car engine. I sat on the drivers seat. I saw Ah Meng approaching towards my car with a plastic bag in his hands. He opened the back door of my car, his body bent forward, opened the armrest compartment at the rear seat, placed the plastic bag inside it. He asked me to bring the thing out. On my part, I knew it was drug, possibly "bae Hoon".

4. Ah Meng is a Chinese male, about 30-plus years old, small-built. I do not have his contact numbers. He was the one to contact me. I believed he stayed at Johore Jaya, but I do not know his exact address.

5. Ah Meng asked me to hand over the thing to a man known as Ah San. I was told to drive my car to Woodlands KFC carpark. I do not know Ah San or his contact number. Ah San would be the one to identify me. He knew my car number.

6. Ah Meng then returned to his car and drove off. I went pubbing until about 10-plus p.m. The plastic bag remained in the armrest compartment of my car. I did not remove it at any point of time. The car key was all along with me.

7. At 10-plus p.m., I drove my car to the Woodlands Checkpoint. At the Johore Checkpoint, I surrendered my embarkation card to the immigration officer and had my passport endorsed. After that, I drove my car into Singapore. I handed my passport to the immigration officer. The passport was returned to me.

8. I continued to drive in. Upon reaching the Arrival Inspection Bay, I was stopped by a Malay CNB officer .

9. .

10. When I had finished providing the urine samples, a Chinese officer returned my car key to me, together with other keys. But my passport was still being retained by the officer. A while later, I was brought back to the inspection bay where my car was parked. I was asked to stand beside the car while inspection was being carried out. I was asked to open the door. I opened the drivers door. I inserted the car key into the ignition hole. The officers then opened the remaining three doors.

11. I saw several policemen and one dog was used to sniff at my car. When this was done, they used another dog. The dogs sniffed nothing. The Chinese plaincloth officer then opened the armrest compartment and closed it back. The officers then continued to search everywhere; even dismantled the dash-board.

12. The Chinese officer then again opened the armrest compartment but did not raise the cover. Inside the cover was the plastic bag containing drug. The officer then came out of the car, handcuffed me. He asked me what are the two slabs inside?

13. The officers then forcefully broke-open the cover of the armrest compartment. They then found the plastic bag inside. They took out the plastic bag. They asked me if there were any more drugs. I said no. They further searched my car.

14. Later, an Indian officer asked me questions in English. A Chinese officer provided the interpretation in Hokkien. After the Indian officer had finished asking questions which I all replied, the questions and the answers were read back to me in Hokkien by the Chinese officer. I then signed on it to acknowledge that it was true and correct.

15. .

16. The next thing I remember was when a new officer came into my room. Only two of us were present. He told me he was in charge of my case. He then asked me about my health, my family. I told him about my medical condition. I told him I had operation before and I am suffering from diabetes. I requested the officer to retrieve my medication at my house. He told me he would do so.

17. This officer then left. He is now the person recording my statement. Later, the other officers gave me noodles to eat but I did not eat. Later I was give a piece of bread to eat. They then brought me to my house. My wife and son were at home. They searched my house in my presence. Nothing incriminating was found. I took with me the medication needed for my health.

18. I was then brought to CNB where I met the officer in charge of my case. He weighed two packets that were seized from the plastic bag in my presence. I was then brought to Alexandra Hospital for medical check-up. One doctor examined me. When this was done, I was brought back to see the officer-in-charge. I was shown to his room. A Chinese man also came into the room at the same time. The officer then read a charge to me which the Chinese man interpreted in Hokkien. Before that, the officer had introduced the Chinese man to me as my Hokkien interpreter. He asked me any objection. I said no. Later I was invited to make a statement. I said I had nothing to say which was interpreted to me in Hokkien by the Chinese man. I was then asked to sign on my statement.

19. .

20. The above statement was read to the accused person in Hokkien by Mr Tan Chee Leong. He affirms it to be true and accurate.

[Emphasis added.]

20. Mr Tan questioned Mr Tan Chee Leong (PW 23) and said that he was instructed that the accused had never told the interpreter that he knew that there were drugs in the plastic bag. PW 23 disagreed.

21. Mr Tan also said that he was instructed that the accused never told the interpreter that possibly it was Bae Hoon. The interpreter disagreed and said that if the accused had not uttered that phrase it would not have appeared in the statement.

Fourth statement

22. The fourth statement from the accused was recorded on 22 June 2001 at about 2.10pm through the interpretation again of Mr Tan Chee Leong (PW 23).

23. The statement reads:

21. My previous statement of 21/6/2001 was read back to me in Hokkien by a Chinese interpreter. I affirm the statement to be true and accurate. I do not wish to add or change anything.

22. I have only one car under my name. It was the one I drove when I was arrested. The white BMW, SCV 7067K. Sometime in January, 2001, I bought this car. I bought it from Swee Seng Auto Trading at Bukit Timah. I dealt with the boss, Ah York. This car was a second-hand car. I traded in my old Toyota Crown, SBX 7044C .

23. I have another car which is registered under my name. But I am not the owner. The number is EN 3446U. The car belonged to Pui Kia or Ah Tuck. It was mine in the past. But when I couldn't repay the debts owed to Pui Kia, I allowed him to possess my car. My debt was about \$5000-\$6000. That year was about 1993. Pui Kia bear the responsibility of paying the hire-purchase instalment.

24. My family. My wife, myself and a son. My son is 26 years old. He is a car mechanic. My wife is a housewife. She has cancer all over her body. The house we are staying now is bought by my wife. I am one of the registered owners. The housing loans are fully paid up.

25. My previous job was a newspaper vendor. Around 1994, I stopped work. Then I started my own business of transporting passengers from Singapore to Genting at a fee of \$200 per passenger. That was why I bought the BMW. But this is not a registered business.

26. I have previous records of house-breaking, theft of car, robbery, possession of heroin.

27. At Genting, I frequently gambled there. At good time, I could win as much as \$30,000 or more. My business of ferrying passengers to Genting and Penang were quite lucrative. During bad time, I could earn \$5000-\$6000 at least. During good time, more than \$10,000.

28. My handphone 98631612 is registered under a person called Ah Cheow. He can be contacted at 97832826. He is a rag-and-bone man. As I owed telecom company telephone bills, I was not allowed to apply for a handphone. I need a handphone for horse-betting.

29. When I was arrested, the Indian officer asked me what are these things, pointing at the two packets of wrapping. I said drug. He then took a knife and cut open one of the wrappers. He again asked me what are these. I said drug. I told him Ah Meng asked me to give to Ah San. I told him Ah Meng promised to give me ringgit one thousand.

30. I have poor eyesight, owing to some defects. I visited Eye Centre a few times .

31. The bunch of 4 keys seized from me. One key was for my car. One for entry into a carpark at Johore Bahru. Two for the house.

32. Recently, I borrowed a total of more than \$100,000 from several loansharks. It started when I lost heavily in horse-betting. Then I borrowed from one loanshark to pay off the other. Hence the amount started to accumulate.

33. The statement of the accused person was read to him in Hokkien by the interpreter. He affirms it to be true and accurate.

[Emphasis added.]

24. The investigating officer who was present when the second, third and fourth statements of the accused were taken was ASP Soh Thiam Loon (PW 24).

25. He identified the accused as the person whom he had spoken to.

SUBMISSION OF NO CASE TO ANSWER

26. At the close of the prosecutions case, Mr Chia Boon Teck for the defence submitted that there was no case to answer.

27. The crux of the submission was that no one, other than ASP Soh, had identified the accused as the person called Lim Choo Song or as the person mentioned in their (the witnesses) statements.

28. Secondly, as for ASP Soh, he was not present when the accused was arrested. He had arrived a few hours later. There was no evidence as to who had identified the accused to him.

29. Thirdly, the accuracy of the statements on 21 and 22 June 2001, a few days after the arrest on 17 June 2001, was disputed.

30. Fourthly, the accuseds passport and identity card were not identified by the person who seized them. Although SSSgt Ng Beng Chin (PW 16) had seized the passport and identity card of the accused and handed them to ASP Soh, it was submitted that he did not identify the exhibits as the ones he handed over to ASP Soh. Only ASP Soh had identified the exhibits but not who had handed them to him.

31. Accordingly, it was submitted that no one had identified the person in the dock as the person who was intercepted at Woodlands Checkpoint.

32. The prosecutions response by Mr Chan Wang Ho was that when the charge was read to the accused, there was no dispute as to his identity.

33. Secondly, the identity of the accused as the person arrested was never challenged during cross-examination of any of the prosecutions witness even though the accused was identified by name and his identity card number.

34. Thirdly, ASP Soh had identified the accused as the person who was arrested at Woodlands Checkpoint.

35. Fourthly, his identity was established through his passport and identity card. They had been seized at the time of arrest and handed over to ASP Soh who identified them at the trial.

36. Fifthly, the accuseds statements such as the one recorded on 21 June 2001 had given an account of how he was arrested at Woodlands Checkpoint.

37. Sixthly, it was open to the court to re-call any witness, if the court considered this to be necessary.

38. The defences reply by Mr Tan was that the omission to challenge the identity of the accused could not form the basis of the prosecutions case.

39. Secondly, the charge was not evidence and the accused had claimed trial to the charge.
40. Thirdly, Mr Tan reiterated that ASP Soh was only at the scene of arrest later.
41. Fourthly, it was most unusual to re-call any prosecution witness after the close of the prosecutions case and such a power should be exercised sparingly.

My decision on the submission of no case to answer

42. The charge contained the name Lim Choo Song. It was read to the accused who claimed trial. He did not deny he was Lim Choo Song.
43. Secondly, SSSgt Ng Beng Chin (PW 16) was one of the officers present when the driver of SCV 7067K (the Driver) was arrested. He had handed an identity card and passport to ASP Soh. He referred to them, in his statement, as the accuseds identity card and passport (para 6). The identity card number was also mentioned in his statement (para 2). True, he did not specifically identify the identity card or passport before me, but they were nevertheless produced before me by ASP Soh.
44. Thirdly, Mr Tan had conceded the admissibility of the statements which were purportedly made by the accused. His only qualification was the accuracy of the statements and not the fact that they were made by the accused.
45. Fourthly, Mr Tan had himself posed questions to Insp Omer Ali Saifudeen (PW 7) and Sgt Choo (PW 17) regarding the first statement given by the Driver about an hour after he was arrested.
46. The questions posed by Mr Tan to these two witnesses were on the basis of instructions from the accused and were on the premise that it was the accused who had given the statement. Only certain specific aspects of his statement was challenged but not the fact that the accused had given the first statement.
47. For example, when Mr Tan questioned Sgt Choo, Mr Tan posed a put question as follows:
- Q All right. I put it to you that when the Accused here used the two words "tok pin", he did not mean drugs but poisonous substance.
- A I disagree, your Honour.
- [Emphasis added.]
- Mr Tan had accepted that the accused was the Driver who had given the first statement at Woodlands Checkpoint soon after his arrest.
48. Fifthly, in the accuseds third statement i.e recorded on 21 June 2001 before ASP Soh and an interpreter, he had referred to himself as the person arrested on the fateful day at Woodlands Checkpoint and as the Driver. He also described how the drugs came to be placed in the car and how he came to be arrested that day.
49. During cross-examination, the defence elaborated on its dispute about the accuracy of the third statement. The dispute pertained to minor details regarding the circumstances surrounding the arrest. There was no dispute then that the accused was driving the car and was the person arrested.

50. Sixthly, the accused's fourth statement i.e. recorded on 22 June 2001 reiterated that he was driving the car SCV 7067K when he was arrested.

51. Accordingly, I was of the view that there was a case for the accused to answer and he was informed of this accordingly.

EVIDENCE FOR THE ACCUSED

52. The accused elected not to give evidence. No other evidence was given for him.

SUBMISSIONS

53. The defence reiterated its submission for no case to answer as its closing submission.

54. Mr Chan then made an oral closing submission.

MY DECISION

55. In view of the evidence tendered by the prosecution, the accused's statements, the silence of the accused and the absence of any other evidence for the accused, I found that the prosecution had proved its case beyond a reasonable doubt.

56. Accordingly, I convicted the accused and sentenced him to death according to the law.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER

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