

Public Prosecutor v Sumardi bin Sjahril Habibie
[2021] SGHC 51

Case Number : Criminal Case No 59 of 2019
Decision Date : 01 March 2021
Tribunal/Court : General Division of the High Court
Coram : Chua Lee Ming J
Counsel Name(s) : Terence Chua, Lim Shin Hui and Lim Woon Yee (Attorney-General's Chambers) for the Prosecution; Ramesh Chandr Tiwary (Ramesh Tiwary), Ranadhir Gupta (A Zamzam & Co) and Si Hoe Tat Chong (Acacia Legal LLC) for the accused.
Parties : Public Prosecutor — Sumardi Bin Sjahril Habibie

Criminal Law – Statutory offences – Misuse of Drugs Act

1 March 2021

Chua Lee Ming J:

Introduction

1 The accused, Mr Sumardi Bin Sjahril Habibie, presently 46 years of age, was charged with having in his possession not less than 32.51g of diamorphine (a Class 'A' controlled drug) for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), punishable under s 33(1) of the MDA.

2 The accused claimed trial but elected to remain silent when his defence was called and did not call other evidence in his own defence.

3 I convicted the accused. However, I found that the accused's involvement in the offence was restricted to transporting, sending or delivering the drugs within the meaning of s 33B(2)(a)(i) of the MDA. As the Prosecution had issued a certificate of substantive assistance, I exercised my discretion under s 33B(1)(a) of the MDA and sentenced the accused to life imprisonment and the mandatory minimum of 15 strokes of the cane, instead of imposing the death penalty. I ordered that the sentence of imprisonment commence from the date of remand, *ie*, 13 June 2018.

4 The accused has appealed against his sentence despite it being the minimum possible in this case.

Facts

5 The following facts were not disputed.

6 On 13 June 2018, at about 9.00pm, the accused went to the vicinity of Gul Crescent, on instructions from a Malaysian Indian known to him as "Boss" and collected five bundles from a male Indian. The accused placed the five bundles in his "Yamaha" helmet bag. He then proceeded to Block 2, Beach Road, as instructed by Boss, to deliver three of the bundles to a Malay man wearing a green shirt. The accused was to wait for Boss' instructions regarding the delivery of the remaining two bundles.

7 At about 9.50pm, Central Narcotics Bureau ("CNB") officers arrested the accused at the open space carpark at Block 2, Beach Road, before the accused made any delivery. The accused was escorted to the carpark at Block 3, Beach Road, in a CNB vehicle. The accused was carrying the "Yamaha" helmet bag containing the five bundles. When asked by Station Inspector Tay Kent Chye if he had anything to surrender, the accused replied "5 batu inside Yamaha helmet bag". [\[note: 0\]](#)

8 The CNB officers searched, among other things, the accused's "Yamaha" helmet bag and recovered the five bundles (exhibits "A1A1", "A1B1", "A1C1", "A1D1" and "A1E1"; collectively, "the Drugs") from the bag. The Drugs were sent to the Health Sciences Authority ("HSA") for analysis. The HSA certified that: [\[note: 1\]](#)

- (a) A1A1 contained not less than 5.45g of diamorphine;
- (b) A1B1 contained not less than 7.92g of diamorphine;
- (c) A1C1 contained not less than 6.33g of diamorphine;
- (d) A1D1 contained not less than 6.09g of diamorphine; and
- (e) A1E1 contained not less than 6.72g of diamorphine.

9 In total, the Drugs were found to contain not less than 32.51g of diamorphine, a Class 'A' controlled drug listed in the First Schedule to the MDA.

10 In his statements to CNB officers (which were admitted into evidence at the trial without challenge), [\[note: 2\]](#) the accused admitted that (a) he collected the Drugs on the day in question, (b) he knew that the Drugs contained "heroin" (the street name of diamorphine), and (c) the Drugs were meant to be delivered to other persons on Boss' instructions. The accused was not authorised under the MDA or the regulations made thereunder to possess a controlled drug for the purpose of trafficking.

Conviction

11 The Prosecution's case was that the accused:

- (a) knew he was in possession of the Drugs;
- (b) knew that the Drugs contained heroin; and
- (c) was unable to rebut, on a balance of probabilities, the presumption under s 17(c) of the MDA that he possessed the Drugs for the purpose of trafficking.

12 Based on the evidence that was adduced, I found that the Prosecution had proved its case against the accused beyond a reasonable doubt and I convicted the accused of the offence as charged.

Sentence

13 The offence in this case was, upon conviction, punishable with death under s 33(1) read with the Second Schedule to the MDA. However, under s 33B(1)(a) of the MDA, the court had the discretion not to impose the death penalty and instead to sentence the accused to imprisonment for

life and not less than 15 strokes of the cane, if the requirements of s 33B(2) of the MDA were satisfied.

14 In the present case, I agreed with both the Prosecution and the accused that the accused's involvement in the offence on which he was convicted, was restricted to "transporting, sending or delivering" the Drugs within the meaning of s 33B(2)(a)(i) of the MDA. As the Public Prosecutor had issued a certificate of substantive assistance under s 33B(2)(b) of the MDA, both the requirements of s 33B(2) of the MDA were satisfied. I saw no reason not to exercise my discretion under s 33B(1)(a) of the MDA and I therefore sentenced the accused to imprisonment for life and the mandatory minimum of 15 strokes of the cane.

15 I further ordered that the sentence of imprisonment be backdated to the date of remand on 13 June 2018.

[\[note: 0\]](#) Bundle of Statements ("BOS"), Exhibit P91.

[\[note: 1\]](#) Agreed Bundle at pp 123–127.

[\[note: 2\]](#) BOS, Exhibits P91, P93 (translation at P95), P96–P98 and P176.