Tan Boon San v Public Prosecutor
[2000] SGCA 41

Case Number	: CA 8/2000
Decision Date	: 12 August 2000
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s)	: James Masih (James Masih & Co)/Nai Thiam Siew Patrick (Abraham Low & Partners) for the appellant; David Khoo (Public Prosecutor) for the respondent
Parties	: Tan Boon San — Public Prosecutor

JUDGMENT:

Grounds of Judgment

1. This was an appeal by the appellant against his conviction by the High Court of the following drug trafficking charge:-

> "You TAN BOON SAN,
>
> are charged that you on or about the 25th September 1999, at or about 10.20am, in a white Malaysian registered car bearing registration number MS 1265 at the Inward Car Bay Green Channel, Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, six (6) packets and sixteen (16) satchets containing not less than 139.27 grams of diamorphine, without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185."

The facts

2. The facts giving rise to the charge were largely undisputed and they were as follows. On 25 September 1999, at about 10.25am, the appellant drove a Malaysian registered car MS 1265 (the car) into Singapore's Woodlands Immigration and Customs Checkpoint from Johore Bahru, Malaysia. Having cleared Immigration, he proceeded to the Customs area through the Green channel. At the Primary Inspection Bay, Customs Officer Muhamad Yazid Bin Haidi (CO Yazid) directed him to proceed to the Secondary Inspection Bay, where upon request he opened the boot of his car and lifted the carpet on the floor of the boot. Underneath the carpet was a circular metallic depressed area which was the spare tyre compartment. Six packets, wrapped in newspapers, were tucked in the upper gap between the spare tyre and the spare tyre compartment. Upon seeing those packets, CO Yazid asked the appellant in Malay 'apa ini' ('what is this'). There was a dispute as to the reply of the appellant. According to CO Yazid, the appellant answered in Malay that he did not know. In examination-in-chief, the appellant said he did not mention anything about medicine. But in cross-examination and in re-examination he alleged that he said it was 'ubat', meaning medicine.

3. CO Yazid then took out one of the packets and instructed the appellant to remove the newspaper wrapping. This was complied with. What was inside the wrapping was a transparent plastic packet containing a yellowish granular substance. CO Yazid, suspecting it was drugs, asked the appellant in Malay what the substance was. According to CO Yazid, the appellant again answered in Malay that he did not know.

4. CO Yazid then took the unwrapped packet of yellowish granular substance and escorted the appellant to the Customs Green Channel Duty Office. Before moving away from the car, CO Yazid had the boot of the car locked. At the office, Senior Customs Officer Mohamed Ahmad Ibrahim (SCO Ibrahim) referring to the packet, asked the appellant in Malay, 'apa barang ini' ('what is this thing'). The appellant remained silent. SCO Ibrahim asked again 'drug kah' ('is it drug'). What was again in dispute was the

reply of the appellant. According to SCO Ibrahim, the appellant answered 'wah agak' ('I think so'). In cross-examination it was put to SCO Ibrahim that the appellant had replied 'wah agak ubat' ('I think medicine'). SCO Ibrahim testified that he only heard the words 'wah agak'.

5. SCO Ibrahim then seized the packet and had the appellant handcuffed. Thereafter, SCO Ibrahim, CO Yazid and the appellant returned to the car MS 1265, together with Superintendent of Customs Wee Hong Lock (SC Wee). The boot of the car was searched and the remaining five newspaper-wrapped packets containing yellowish granular substance were seized. All six packets were then placed in a carton box.

6. The appellant was then brought to a nearby office for a body search. The search by SCO Ibrahim revealed four airmail envelopes hidden in the appellant's socks – two on each leg. The four envelopes contained a total of 16 sachets of yellowish granular substance. SC Wee asked the appellant in Mandarin what the substance was, but the appellant kept silent.

7. The six plastic packets and 16 sachets of yellowish granular substance were sent to the Department of Scientific Services for analysis. They were found to contain a total nett weight of 139.27 grams of diamorphine.

8. After his arrest and while in remand at the Queenstown Remand Prison, the appellant cut his own wrists. According to Dr Stephen Phang Boon Chye, Associate Consultant at the Institute of Mental Health, who examined the appellant after the cut, he did not find any psychotic or depressive symptomatology in the appellant. In his opinion, the appellant was not suffering from any mental illness. In fact, according to Dr Phang, the appellant told Dr Phang that he cut his own wrists out of a sense of frustration and distress upon realizing that he would be facing the death sentence for drug trafficking. In the view of Dr Phang, what the appellant experienced was "a transient but understandable and not unexpected reaction to a stressful life circumstances." Dr Phang was called as a witness by the defence.

Statements made by the appellant

9. Altogether three statements were made by the appellant to the police and they were put in evidence by the prosecution. The appellant did not challenge that the statements were voluntarily made by him. The first was an oral statement made by him on 25 September 1999 which was reduced into writing. In this statement, the appellant in gist said that someone by the name 'Ang Moh' asked him to carry those packets into Singapore. He knew they were illegal things but he agreed because he needed money. He himself placed the packets in the boot of the car. He also gave these answers which we would like to quote:-

> "Q: When you placed these things and saw them, were you aware what was inside?
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> A: I did not pay attention. I placed them there after he gave to me.
>
> Q: Do you have anything more to say?
>
> A: I know what I did is an offence, but I did not know how serious it could be. Because things had to be hidden are questionable."

10. In the second statement, which the appellant gave on the same day but under s 122(6) of the Criminal Procedure Code (CPC), he merely stated:-

> "Firstly, it is because I owe people's money. Secondly, my son is mad. Need money to support him. I did not know it is a serious offence. That was why I did not hide the drugs. That is all I want to say."

11. The third statement was a long statement made by him under s 121(1) of the CPC where he gave a more detailed account of how he came to be in possession of the packets and what he thought they were. The relevant portions read:-

> 4. About a month ago, in August 1999, I met a male Chinese called "Ang Moh". I met him at "Sakura" coffeehouse in Johore. I told him I needed money. He said he could help me …

> 5. One week later, Ang Moh called me. We met at "Sakura" coffeehouse. He knew I went in and out of Singapore quite often. He asked me to bring into Singapore prohibited medicines. I asked him how much he was going to pay me. He told me I would get 300RM for one packet of about 400 grams. He told me these medicines were to help heroin addict to stop the urge for heroin. I asked him what happened if I got arrested. Ang Moh said at the most, I would be fined and the medicines confiscated. If fined, I would pay the fines from my own money.
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> 6. On 24th Sep 1999, Friday, Ang Moh called at 2 p.m. asking me to go to Sakura to pick up something from him …..…
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> 9. When I reached home, I opened the car-boot, opened the red bag. I saw six packets of stony substances that were not sealed properly. So I stapled them properly. I then used Chinese newspapers to wrap the 6 packets. One piece of the newspapers to wrap one packet. I also saw four envelopes. I did not open them but I knew there were 16 sachets of substances as "Ang Moh" had told me. These 16 sachets were already sealed properly. I put all the 6 packets and the 4 envelopes back into the red bag, put the red bag into the car-boot. I then went to sleep.
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> 10. The next day, on 25th Sep 1999 (Saturday) ….. I took the red bag from the car-boot of Honda Accord JBV 3606 and put it into the car-boot of a white Madza MS 1265. Just before leaving my house, I took out from the red bag the 4 envelopes. I put 4 envelopes into my socks. I put 2 envelopes containing 5 sachets each into the sock of my right leg. I put 2 envelopes containing 5 sachets and one sachet into the sock of my left leg. I did not use the red bag anymore. I put the 6 packets of stony substances already wrapped with newspapers along the spare tyre. I then covered the spare tyre with the car-boot carpet. I did not bother to hide too well, as I thought the most, these things would be confiscated.

12. In his oral testimony in court, the appellant repeated the defence raised in his statements, namely, that he did not know the true nature of the substance he was bringing into Singapore on behalf of Ang Moh. He was misled by Ang Moh. He thought it was Chinese medicine.

Decision of the trial judge

13. The learned trial judge, Judicial Commissioner Amarjeet Singh, rejected the claim of ignorance. He did not believe that the appellant really thought that the substance he was bringing into Singapore was Chinese medicine which helped heroin addicts curb their urge for heroin. He held that the appellant had failed to rebut on a balance of probabilities the statutory presumption of knowledge of the true nature of the substance. There was no basis for the appellant to place trust in what Ang Moh said bearing in mind the circumstances under which the substance was being passed from Ang Moh to the appellant to be brought here. The trial judge noted that as far as the appellant knew, Ang Moh did not run or own a Chinese medicine shop. He did not even know where Ang Moh lived or what his contact number was. No evidence was adduced to show that there was in fact a type of Chinese medicine that was known for helping heroin addicts.

14. As regard the appellant's claim in cross-examination that he told CO Yazid, when the latter opened the boot of the car and noticed the six packets, that they were medicines, the trial judge noted that he did not make such a claim during examination-in-chief. The trial judge did not accept this assertion as it was never put to CO Yazid that the appellant told him that what were in the packets were medicines. The trial judge, having regard to Dr Phang's evidence, also did not accept counsel's claim that the appellant had a dull mind and could easily be duped.

The appeal

15. In the appeal before us, counsel for the appellant reiterated the same contention which was made before the trial judge, i.e.,

that he did not know that the substance he brought into Singapore was diamorphine. It is settled law that for an accused person to be guilty of drug trafficking it must be shown not only that he brought the drugs into Singapore, it must also be shown that he knew or intended to bring those drugs into the country: see *Ng Kwok Chun & Anor v PP* [1993] 1 SLR 55.

16. In the present case, the physical act of bringing the diamorphine into Singapore was not in dispute It had been proved. In any case, the appellant did not challenge that he was in possession of the drugs. By virtue of s 18(2) of the Misuse of Drugs Act, he was presumed to have knowledge of the nature of the drugs. Thus, the burden shifted to the appellant to rebut the presumption on a balance of probabilities.

17. The appellant relied upon two previous cases to contend that the trial judge should have found that he had sufficiently rebutted the presumption of knowledge. We would observe that this issue is really one of fact and how a trial judge would determine it must necessarily depend on the evidence and the circumstances of the case. On a question of fact, no decision on any one case can ever be a precedent for another as the facts could hardly be identical. The only essential similarity between this case and the two cases referred to by the appellant, *PP v HL Win* [1995] 2 SLR 424, and *PP v Khampali Suchart* (unreported Cr Appeal 8/96), is that in those two cases, the accused persons also claimed that they thought the things they were asked to carry were something else and that they had been misled. The trial judges in those two cases accepted their explanations and acquitted them and the acquittals were upheld on appeal. There the similarity ends. The other relevant facts were quite different.

18. It cannot be over-emphasised that by its very nature, every assertion of ignorance by an accused person facing such a charge would have to be scrutinized in the light of all the surrounding circumstances. He has to satisfy the judge, on a balance of probabilities, that his claim of ignorance is genuine. The trial judge in the present case did carefully consider both cases and found them to be "readily distinguishable" on the facts.

19. It was clear to us that in the present case, the trial judge in coming to his conclusion did carefully examine the evidence and every significant point which the appellant had raised. First, he noted that the appellant had ample opportunity to check and ascertain the nature of the substance he was asked to carry (he left for Singapore the day after receiving the substance from Ang Moh). The circumstances under which the appellant got the substance were so suspicious that any reasonable person would have made an effort to verify what Ang Moh had said. Secondly, he found that the appellant was not a dull person as alleged by his counsel. While it is true that he only completed primary VI in a Chinese school, he had worked as an insurance/house agent, a car salesman and a horse bookie. In his passport it was stated that he was a contractor. The trial judge had also closely observed the appellant when he gave evidence. He did not find the appellant "slow of understanding, obtuse or stupid." Thirdly, though the appellant claimed that he knew Ang Moh ("red hair") some three years ago, he did not know his real name or where Ang Moh lived or what was his contact telephone number. He had no means of contacting him. Neither did he ask Ang Moh for these particulars. Presumably, it was to show that he knew Ang Moh for some three years and could trust him that the appellant alleged that a loan of MR500 which he gave to Ang Moh three years ago was repaid some days before the incident. On the contrary, the trial judge observed that the fact that Ang Moh had delayed repaying his debt for some three years (assuming the sum was in fact lent) should have alerted the appellant that he should be slow to trust Ang Moh. Fourthly, when CO Yazid saw the six packets upon opening the boot of the vehicle and lifting the floor carpet, the appellant did not tell the Custom Officer that that was ‘ubat’. He also found that when SCO Ibrahim asked the appellant if the substance was drugs, he answered "I think so" which he rightfully took it to mean "yes". Fifthly, the trial judge could not accept his explanation that he did not think the substance was diamorphine because he thought diamorphine was powdery white whereas the colour of the substance was yellow. He felt that the appellant was merely taking advantage of a literal interpretation of the Hokkien expression in referring to diamorphine as "peh hoon", meaning white powder, to substantiate his point. After all, the appellant said that he had never seen "peh hoon" before. Sixthly, while it was true that he also intended to come to Singapore to collect an insurance premium from a client, the trial judge found that that was merely incidental to the main object of bringing the diamorphine into Singapore for which he would be paid MR2000/-. Seventhly, in the light of Dr Phang’s evidence, the trial judge held that the appellant cut his wrists not because he felt he was duped but because of emotional despair in failing to successfully import the drugs into Singapore and having to face a charge which carried the extreme penalty.

20. In the light of the evidence which was before the trial judge, it was our judgment that he was amply justified to have found that the appellant had failed to rebut the presumption of knowledge. We would only highlight three striking aspects of the case

which undoubtedly demonstrated that the appellant's claim that he thought the substance was Chinese medicine could not be true. First, why didn't the appellant, upon being asked by CO Yazid what the six packets were, answer that they were Chinese medicine and instead answered that he did not know. In fact, his answer in examination-in-chief was he did not explain to any officer what he thought the packets were. Only in cross and re-examination, did he say he did mention it was 'ubat', a case of an afterthought. Secondly, if he really thought that the substance was just some prohibited Chinese medicine, nothing that serious, why did he hide the sixteen sachets which contained the substance in his socks? He was specifically asked about this and all he could say was "because the tyre compartment was dirty, so I first put it in my trousers pocket, subsequently then I transferred them into my socks." In our opinion the real answer was clear. Thirdly, he knew that drug trafficking carried the extreme penalty in Singapore. He had ample opportunity to verify what the substance was and yet deliberately chose not to do so. The observation of this Court in *Wong Soon Lee v PP* (Cr Appeal No 7/1999) of "turning a blind eye" is most pertinent. On his own evidence, he said he was desperate for money. He took the risk and was caught.

21. In the premises, there was no basis for us to interfere with the decision of the trial judge. Accordingly, we affirmed the conviction and sentence.

Yong Pung How	L P Thean	Chao Hick Tin
Chief Justice	Judge of Appeal	Judge of Appeal