

Public Prosecutor v Low Hong Siah
[2000] SGHC 137

Case Number : CC 43/2000
Decision Date : 11 July 2000
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Christina Koh with Mohamed Nasser Ismail for the prosecution; Shashi Natnan (Harry Elias Partnership) assisted by Edmond Wong (Wong, Gopal & Rai) for the accused
Parties : Public Prosecutor — Low Hong Siah

JUDGMENT:

Grounds of Decision

1 The accused is Low Hong Siah ("Low"), a male aged 37 years. Prior to his arrest on 30 December 1999, he was residing alone at Blk 560, Ang Mo Kio Avenue 10, #07-1766. He was unemployed at the time.

2 Low was charged as follows:

"You, Low Hong Siah, male, 37 years, NRIC: S 1519324-G, are charged that you on or about the 30th day of December 1999, at about 9.10 pm, at Blk 560 Ang Mo Kio Avenue 10 #07-1766, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, by having in your possession for the purpose of trafficking, 4 packets and 188 sachets containing not less than 222.28 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, Chapter 185 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185."

3 The Prosecution led evidence from 27 witnesses. Such evidence revealed that on 30 December 1999, at about 8.20 pm, Central Narcotics Bureau ("CNB") officers in several cars intercepted Low as he was driving his motor car bearing registration number EJ 2123D along Brighton Avenue. In his bid to evade arrest, Low rammed his car into one of the CNB cars and mounted the curb as a result. He then attempted to escape on foot. Low was apprehended and subdued by the CNB officers after a violent struggle.

4 The evidence of Inspector Herman Bin Mohamed Helmi, Special Task Force, CNB, is as follows. After Low was arrested, Inspector Herman and his party of CNB Special Task Force officers brought Low to his residence at Blk 560, Ang Mo Kio Avenue 10, #07-1766 at about 9.10 pm. Inside the flat, Low led Inspector Herman to the front bedroom and indicated to him the locations of the controlled drugs the subject of the charge. Using his right foot (as he was handcuffed), he pointed to an upright mattress by the window. Inspector Herman recovered a black plastic bag from behind this mattress. This contained several packets of a yellowish granular substance. Subsequently Low indicated with his head the wardrobe in the same bedroom. Inspector Herman opened the pair of doors at the left side of the wardrobe and recovered a paper bag, a shoe box, a white plastic bag, a yellow plastic bag, a black plastic bag and 3 packets wrapped in newspaper. In each of these, Inspector Herman found various numbers of sachets of a yellowish granular substance. He also recovered a single sachet of yellowish granular substance from the wardrobe.

5 Inspector Herman deposed that he recovered a total of 4 packets of yellowish granular substances from the black plastic bag found behind the upright mattress. He recovered a further 191 sachets of yellowish granular substances from the box, bags and

packages found in the wardrobe. Inspector Herman seized the said substances and, about one and a half hours later, handed them to Inspector Daniel Tan, the Investigating Officer. The latter took custody of the seized substances and he subsequently marked them as follows:

(a) the 4 packets of yellowish substance found behind the mattress were marked as "A1", "A2", "A3" and "A4";

(b) the 31 sachets of yellowish substance found inside the "AIR BAG" shoe box in the top compartment of the wardrobe were marked collectively as "B1a";

(c) 60 sachets of yellowish substance found inside the white "OCEAN" plastic bag in the top compartment of the wardrobe were marked collectively as "B2a".

(d) 2 sachets of yellowish substance found inside the flowerprint paper bag in the top compartment of the wardrobe were marked collectively as "B3a".

(e) 1 sachet of yellowish substance found in the top compartment of the wardrobe was marked as "B4".

(f) 60 sachets found inside the black plastic bag in the middle compartment of the wardrobe were marked collectively as "C1a".

(g) 22 sachets found inside the yellow plastic bag in the middle compartment of the wardrobe were marked collectively as "C2a".

(h) 5 sachets wrapped in newspaper and found in the middle compartment of the wardrobe were marked collectively as "C3a1".

(i) 5 sachets wrapped in newspaper and found in the middle compartment of the wardrobe were marked collectively as "C3b1".

(j) 5 sachets wrapped in newspaper and found in the middle compartment of the wardrobe were marked collectively as "C3c1".

6 Inspector Daniel Tan subsequently hand the seized substances to Dr Lee Tong Kooi, a Scientific Officer at the Department of Scientific Services. Dr Lee analysed the said exhibits and found diamorphine, a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act, to be present in them as follows:

(a) The exhibits marked "A1", "A2", "A3" and "A4" (4 packets) collectively contained a total of not less than 133.64 grams of diamorphine;

(b) The exhibits marked "B1a" and "B2a", comprising 31 and 60 sachets respectively, collectively contained a total of not less than 39.06 grams of diamorphine;

(c) The exhibits "C1a" and "C2a", comprising 60 and 22 sachets respectively and the exhibits "C3a1", "C3b1" and "C3c1", comprising 5 sachets each, collectively contained a total of not less than 49.58 grams of diamorphine.

7 In respect of these exhibits, Dr Lee produced 11 certificates under section 16 of the Misuse of Drugs Act, signed by him certifying that these 4 packets and 188 sachets of yellowish granular substance, with a combined weight of more than 3 kilograms, contained a total of not less than 222.28 grams of diamorphine. These are certificate numbers N1-2000-00003-001, N1-

2000-00003-002, N1-2000-00003-003, N1-2000-00003-004, N1-2000-00003-005, N1-2000-00003-006, N1-2000-00003-009, N1-2000-00003-010, N1-2000-00003-011, N1-2000-00003-012, N1-2000-00003-013.

8 Inspector Herman also found the following exhibits in Low's flat: a 'TANITA' digital weighing scale, a stack of empty plastic sachets, a plastic spoon and a pair of burnt disposable chopsticks, all recovered from the left bottom drawer of the wardrobe in the front bedroom. Inspector Herman handed them to Inspector Daniel Tan, who marked the plastic spoon "D3". This was also handed to Dr Lee for testing. Dr Lee found the plastic spoon to be stained with diamorphine and produced a certificate under section 16 of the Misuse of Drugs Act to certify to this.

9 On 30 December 1999, Low made four oral statements to Inspector Herman, one at the scene of arrest and three inside his flat. These are as follows:

(i) At the scene of arrest, Inspector Herman asked Low whether he had any drugs in his home. Low replied that he had. Inspector Herman asked how much he had to which Low replied that he didn't know. Low identified his home as Block 560 Ang Mo Kio Ave 10 #07-1766.

(ii) At Low's home, Inspector Herman asked him whether he had any drugs. Low answered in the affirmative. Inspector Herman then asked where they were to which Low replied that they were in the wardrobe and behind the mattress of the bedroom.

(iii) After Inspector Herman recovered the black plastic bag from behind the mattress he asked Low to whom the yellowish substance in that bag belonged. Low replied that it belonged to him. Inspector Herman then asked what was the substance in the bag. Low replied that it was heroin. Inspector Herman asked him what was the quantity and Low said that he did not know.

(iv) After Inspector Herman recovered from the wardrobe the various bags, boxes and packages containing the sachets of yellowish substance, he asked Low what they were. Low replied that they were heroin. He said that they belonged to him. Inspector Herman asked about the items recovered from the bottom left drawer of the wardrobe. Low said that they belonged to him and that he used them for "packing of heroin".

10 Inspector Herman deposed that he contemporaneously reduced these four oral statements into writing in his pocketbook on 30 December 1999. Inspector Herman said that he asked these questions in English and they were translated into Hokkien by Corporal Goh San who in turn translated Low's answers into English for Inspector Herman. Corporal Goh San confirmed that Inspector Herman's records of the 4 oral statements were accurate.

11 Low also gave the following statements to Inspector Daniel Tan:

(a) A cautioned statement recorded under section 122(6) of the Criminal Procedure Code on 31 December 1999 at 2.55 am;

(b) A long statement recorded under section 121 of the Criminal Procedure Code on 4 January 2000 at 11.00 am;

(c) A further statement recorded under section 121 of the Criminal Procedure Code on 4 January 2000 at 3.15 pm;

(d) A further statement recorded under section 121 of the Criminal Procedure Code on 7 January 2000 at 10.00 am and;

(e) A further statement recorded under section 121 of the Criminal Procedure Code on 10 January 2000 at 3.20 pm.

12 Low refused to say anything in his cautioned statement. However in his long statements he admitted to obtaining the yellowish substances recovered in his flat. He said that he had repackaged a large packet of the substance into sachets, each weighing about 8.2 grams. He used the plastic spoon to take out the substance and the digital scale to weigh the contents of each sachet. He used the chopsticks and a lighted candle to seal the sachet. He said that he had sold various numbers of sachets to several customers.

13 Counsel for Low cross-examined the Scientific Officer, Dr Lee Tong Kooi but did not cross-examine any of the other witnesses. Dr Lee had found the diamorphine content of the yellowish substances seized to be in the region of 7%. Counsel asked Dr Lee whether it was his experience that this was unusually high. Dr Lee agreed that he had seen a lower heroin content in the recent cases he examined, but did not find the diamorphine content in the present case to be unusual.

14 At the end of the case for the prosecution I found that a case against Low had been made out which if unrebutted would warrant his conviction. After warning him pursuant to section 189(2) of the Criminal Procedure Code, I called on Low to enter on his defence. He elected to remain silent.

15 The evidence may be summarised as follows:

(a) The Scientific Officer, Dr Lee Tong Kooi had analysed the yellowish substances seized from Blk 560 Ang Mo Kio Avenue 10 #07-1776 and produced certificates under Section 16 of the Misuse of Drugs Act to certify that the drug exhibits marked A1, A2, A3, A4, B1a, B2a, C1a, C2a, C3a1, C3b1 and C3c1 were found to contain not less than 222.28 grams of diamorphine;

(b) Inspector Herman found the yellowish substances in Block 560 Ang Mo Kio Avenue 10 #-07-1766. This flat was occupied solely by Low who was in sole possession of the drugs. Karen Chen Yunyu, an Estates Officer of the Housing and Development Board, stated that the owner of the unit at Block 560 Ang Mo Kio Avenue 10 #-07-1766, was Low. In addition, her evidence was that a recent inspection of the flat indicated that it was not rented out to anyone else. Lows statements also do not state that anyone else had access to his flat or was living with him;

(c) Inspector Herman Bin Mohamed Hamli gave evidence that Low had indicated to him the locations in Block 560 Ang Mo Kio Avenue 10 #-07-1766 where the yellowish substances were hidden, namely, behind an upright mattress in the front bedroom and in the wardrobe of the front bedroom;

(d) Counsel for Low did not challenge the admissibility of the 4 oral statements that Low made to Inspector Herman and the 4 long statements of Low recorded under the provisions of section 121 of the Criminal Procedure Code by the Inspector Daniel Tan. These statements are self-incriminating in that:

(i) In the four oral admissions to Inspector Herman, Low had admitted to keeping drugs in his flat, his ownership of the drugs found in his flat and that the drugs were heroin;

(ii) In the four long statements recorded by Inspector Daniel Tan, Low had admitted that he was the owner of the drugs that were discovered in his flat. Low further admitted that the drugs discovered were heroin which he had been selling for profit.

(iii) A digital weighing scale, some empty sachets, a plastic spoon and a pair of disposable chopsticks were recovered from Lows flat. Low admitted in his first long statement that he used this paraphernalia in his flat to re-pack the heroin into sachets for sale to his customers.

16 The Prosecution invoked the presumptions under section 17 and section 18 of the Misuse of Drugs Act in proving its case against Low. Section 18 provides that where any person is proved to have in his possession or custody or under his control anything containing a controlled drug or the keys of any place or premises in which a controlled drug is found, he shall be presumed to have that drug in his possession unless he can prove otherwise. I found that this presumption would be invoked in the circumstances, although in view of the positive evidence, including Low's admissions, it was not necessary to invoke it. Section 17 provides that any person who is proved to have in his possession more than 2 grams of diamorphine shall be presumed to have had that drug in possession for the purpose of trafficking unless he can prove otherwise. Again I find that the presumption would be invoked in this case although again in view of the evidence, principally the existence of the re-packaging paraphernalia, the large quantity of drug and Low's admissions in his long statement, it was not necessary to invoke it. Finally in respect of the quantity of diamorphine, section 16 of the Misuse of Drugs Act provides that a certificate purporting to be signed by a Scientific Officer of the Department of Scientific Services and purporting to relate to a controlled drug shall be admitted in evidence in these proceedings on its production by the prosecution without proof of signature and, until the contrary is proved, such certificate shall be prima facie evidence of all matters contained therein. Dr Lee had produced 11 certificates certifying that the drug exhibits he examined contained not less than a total of 222.28 grams of diamorphine and they would constitute prima facie evidence of that fact. There was no evidence tendered to the contrary. Therefore I must accept this evidence and find accordingly. I should add that apart from the presumption, I was satisfied with the evidence of Dr Lee and would have made the same finding in view of the evidence before me.

17 Finally, the prosecution submitted that I should draw adverse inference from Low's election to remain silent. In view of the overwhelming evidence of possession and knowledge by Low of the drugs found in his flat and the admissions he made in his oral and long statements, I had no doubt whatsoever that he was guilty as charged and found accordingly. I therefore convicted him of the charge and pronounced the death sentence as required by law.

Lee Seiu Kin

Judicial Commissioner