

Public Prosecutor v Kum Mun Hou and Others
[2000] SGHC 280

Case Number : CC 47/2000
Decision Date : 28 December 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Anandan Bala with Thong Chee Kun for the prosecution; Yang Ing Loong (Allen & Gledhill) with Ong Cheong Wei (Rayney Wong & Eric Ng) for the first accused; Ram Goswami (Ram Goswami) with Nicholas Aw (Aw & Tan) for the second accused; SS Dhillon (Dhillon Dendroff & Partners) with Yeo Chee Teck (Ang Jeffrey & Partners) for the third accused
Parties : Public Prosecutor — Kum Mun Hou; Yau Hock Seng; Gue Huay Quee

JUDGMENT:

Grounds of Decision

1. The three accused persons were prosecuted on a joint charge that they

in furtherance of (their) common intention, on the 5th day of January 2000, at about 11.00 am, along Still Road, Singapore, did jointly traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Cap. 185, to wit, by having in (their) possession for the purpose of trafficking, 3 packets containing not less than 76.53 grams of diamorphine at the aforesaid place, without any authorisation under the said Act or the regulations made thereunder, and (they) have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act, Cap. 185 and section 34 of the Penal Code, Cap. 224 and punishable under section 33 of the Misuse of Drugs Act, Cap. 185.

Four other charges against the third accused relating to other drugs found in premises known as 253A Onan Road, Singapore were stood down.

2. The accused were arrested after they were kept under surveillance by officers of the Central Narcotics Bureau ("CNB"). The first and second accused were arrested in motor car JCV 4973, while the third accused was arrested in his car SBQ 3367J.

3. CNB officers were at the Woodlands checkpoint when the third accused entered Singapore in his car SBQ 3367J on 5 January 2000 at about 10.20 am. The car left the checkpoint and made its way to the junction of Penefather Road and Dunman Road where it stopped for a while before going on to stop outside a Shell petrol station along Dunman Road. The first accused arrived in motor car JCV 4973 with the second accused as passenger, drew up behind motor car SBQ 3367J, then both cars moved off and made their way to an Esso petrol station along Still Road. Both drivers came down from their cars and went to the rear of the petrol station, whilst the second accused remained in motor car JCV 4973. After the drivers returned to the cars, they drove away from the petrol station along a side road running parallel to the main Still Road.

4. As the two cars moved along the side road, they stopped for a short while side-by-side, and a bag was passed over from motor car JCV 4973 to motor car SBQ 3367J. It was a swift transaction. Senior Staff Sergeant Tan Wu Chuan observed the bag to be white while his colleague Sgt Neo Chin Guan described it as a white-and-blue bag. They both said the bag was passed through the passenger's window of JCV 4973 although it was later established that that window was malfunctioning and could not be wound down. The cars drove off after that in separate ways.

5. Motor car JCV 4973 travelled to Whitley Road where it was stopped by Land Transport Authority officers near Bo Seng Avenue. When it stopped CNB officers moved in and arrested the first and second accused at about 11.10 am.

The first accused's statements

6. After the arrest, two statements were recorded from the first accused on 5 January which were admitted in evidence without objection. The first was an investigation statement -

1 Q: What time did you come to Singapore today?

A: About 9.10 a.m.

2 Q: How did you come to Singapore?

A: I drove here.

3 Q: Who did you come with?

A: With my friend Yau Hock Seng.

4 Q: How long do you know your friend?

A: About 2 years.

5 Q: What does your friend call you?

A: Kor Kor

6 Q: Why did you come to Singapore today?

A: For sight seeing.

7 Q: When you came to Singapore today, where did you go first?

A: I went to Bt Panjang coffee shop.

8 Q: After that where did you go?

A: After coffee shop, I was going back to Eunos.

9 Q: Why Eunos?

A: Because I am quite familiar. I went there to eat.

10 Q: After Eunos, where did you go?

A: From PIE, I went to Thomson Road Flower garden. Then I U-turn back when my friend called me to return the car. When I went back to PIE, I was caught.

(Numbering added)

7. The officer who acted as the Hokkien interpreter during the recording of this statement, Cpl Gabriel Ong Kok Leng conceded that the sixth answer could be to visit, travel, sightsee or shop, and the eighth answer should be he was going to Eunos, not going back to Eunos.

8. The first accused also made a cautioned statement that

I cannot understand why I am being charged. Three names mentioned in this charge, I only know Yau Hock Seng. I came to Singapore with him to visit. I took him to the coffee shop in Bukit Panjang to have a cup of coffee. The owner of the coffee shop can recognise me as I am a regular customer. After that, we went to Joo Chiat coffee shop for something to eat. And then I drove my car to Thomson Road with my friend. At Thomson Road, a friend called my handphone from Malaysia and asked to borrow my brother's car. Because the key was with me, I tried to head back to Malaysia. At Thomson Road, my friend and I were arrested. I have nothing more to say because I do not know how to explain.

The second accused's statements

9. Two statements made by the second accused were also admitted in evidence without objection. The first was an investigation statement recorded on 5 January -

1 Q: What time did you come to Singapore today?

A: 9.10 a.m.

2 Q: How you came to Singapore?

A: My friend fetched me here in the car.

3 Q: What is your friend's name?

A: I don't know his name. I call him "Ko Ko" (brother)

4 Q: How long do you know Ko Ko?

A: 4 years.

5 Q: Why did you come to Singapore today?

A: For shopping

6 Q: Once you reach Singapore at 9.10 a.m, where did you go first?

A: My friend brought me to a coffee shop for tea. I don't know the street name.

7 Q: After tea, where did you go?

A: We went shopping

8 Q: After shopping where did you go?

A: While in the car, someone called for Ko Ko and asked back for the car. So we were going back to Malaysia. That was when we were caught.

(Numbering added)

Sgt Lee Keng Hiang who acted as the interpreter in the recording of this statement conceded that the seventh answer could also be to go visiting or sightseeing.

10. The other statement was a cautioned statement recorded after the investigation statement on the same day in which the second accused said

I did not give any heroin to any person.

11. Motor car SBQ 3367J made its way to Onan Road where it came to a stop outside 253A, a two-storey house at about 10.55 am. SSgt Lim Jit Tong who was deployed to keep surveillance on the house saw the third accused get out of the car and went into the house empty-handed. A few minutes later he came out of the house and went back to his car. He took a white carrier bag from the car and went back to the house with it. Subsequently he returned empty-handed to the car and drove off.

12. The third accused was eventually arrested at about 11.25 am at the junction of Clementi Avenue 6 and Jalan Lempeng by CNB officers who intercepted his car. When he was searched, a bunch of two keys and other items were recovered from his left trousers pocket. Senior Staff Sgt Ang Oon Tho questioned the third accused in the car at the scene of arrest. The questions and answers were recorded by the sergeant and signed by the third accused. The statement which was admitted without objection, reads

Q1: 'Tow Seng Ti Toh Lok Lai?'

(Where did you come from?)

A1: 'Johor'

(Johor)

Q2: 'Chin Nung Kee Soh See Ti Toh Lok Eh?' (I show accused Gue Huay Quee a bunch of two keys seized from his left trousers pocket earlier)

(Where this two keys belongs to?)

A2: 'Johor Long Tow'

(Factory at Johor)

Q3: 'Chia Teng Woo Tok Ping Boh?'

(Is there any drugs in your car)

A3: 'Noh'.

(No).

13. The third accused was taken from the scene of arrest back to 253A Onan Road. The CNB officers conducted a raid on 253A Onan Road in the presence of the accused. They gained entry into his rented room on the ground floor of the premises with one

of the keys seized from him. The officers seized a carrier bag on a study table in the bedroom. The bag is predominantly white in colour with a logo and the words "Super Mobile" printed in blue and grey, and blue and grey panels along the sides. SSSgt Ang Oon Tho and Sgt Henry Chong Wee Loong gave evidence that after they entered the room when SSSgt Ang asked the third accused where the drugs were, he pointed with his chin to the table where the bag was on. Inside the bag were three packets of granular substance which form the subject matter of the joint charge against the accused persons. Other drugs and drug trafficking paraphernalia were recovered from the bedroom and other parts of the house which are not related to the charge.

14. He was questioned by SSSgt Ang again in the room. The third accused disputed the admissibility of this statement as well as four investigation statements which the investigation officer Inspector Saherly bin Limat recorded from him on 10, 13 and 24 January and 15 February.

15. A joint trial-within-a-trial was conducted to determine the admissibility of these five statements.

Trial-within-a-trial

16. SSSgt Ang questioned the third accused in Hokkien when they were in the bedroom and the third accused answered him in Hokkien and recorded the questions and answers in his pocket book as that happened. After that he read them back to the third accused, then the statement was signed by the third accused.

17. After that statement was recorded and signed, when officers had searched the bedroom, he asked the third accused whether there were any more drugs in the bedroom, and the third accused replied in the negative.

18. Mr Dhillon, counsel for the third accused put to the sergeant that he was very aggressive and high-handed towards the third accused when he recorded the statement. He also put to him that he agreed to let him smoke a cigarette if he signed the statement. The sergeant denied these allegations.

19. When the third accused gave evidence on the recording of his statement, he said that some of the answers recorded by the sergeant were not his answers. He signed the statement because the sergeant threatened to hit him on his stomach if he refused to sign, and because he was told that he could have a drink and a cigarette after he signed. He added that the drink and cigarette were given to him by Sgt Henry Chong Wee Loong after the statement was signed. He said that he would not have signed the statement if the threat and inducement were not made.

20. Under cross-examination by the prosecutor, he said that he signed the statement because the sergeant threatened to beat him if he did not, and also told him that he should sign because the statement would serve as a record, and that he should not be afraid if the things did not belong to him. In answer to another question he confirmed that he would not have signed the statement on the offer of a cigarette.

21. The prosecutor pointed out to him that it was not put to SSSgt Ang that he had threatened to hit him on his stomach, or that he offered to give him a drink if he signed the statement. The prosecutor asked him for an explanation why that was not put, but did not receive any.

22. Inspector Saherly recorded the first three statements from the third accused on 10, 13 and 24 January in his office. The last statement was taken on 15 February at the Queenstown Remand Centre. Mr Wu Nan Yong acted as the Hokkien interpreter for the first two statements and Ms Ong Lee Eng was the Hokkien interpreter for the last two statements.

23. Mr Dhillon cross-examined the inspector at some length. He established from the inspector that a cautioned statement was recorded on 5 January in which the third accused said "I am confused and I do not know what to say." Counsel then put to the inspector that he was very angry with the third accused when the statement was recorded and he warned him to co-operate or he will face the death penalty and told him that he will give him a few days to think before another statement will be recorded,

and advised him to admit his involvement.

24. Counsel also put to the inspector that during the recording of the statement of 10 January, he told the third accused that if he did not co-operate he could face a very severe punishment, and if he did not admit to the carrier bag in his bedroom he will be charged with all the drugs found in the house. Counsel added that during the recording the inspector suggested to the third accused that he placed the bag on the table and locked the room, but the third accused remained silent. When the statement was completed and read back the third accused looked at him in amazement, but he stared at the third accused, who remained silent after that.

25. On the recording of the second statement of 13 January, counsel put to the inspector that he repeated the warning that if he did not co-operate he will be charged with all the drugs recovered from the premises. On 24 January when the statement was recorded, although the accused said "white paper bag", but it became "white paper bag with blue wordings" when the statement was read back to him. The third accused looked at him when the statement was read back, but he stared at him, and the third accused remained silent.

26. During the recording of the last statement on 15 February the third accused was again unhappy with the statement when it was read back to him. He looked at the inspector but remained silent because the inspector stared at him. The inspector denied all these allegations.

27. Mr Wu Nan Yong gave evidence relating to the recording of the statements of 10 and 13 January. He interpreted everything that the accused said in Hokkien into English to Inspector Saherly, and affirmed that no inducement, threat or promise was offered by Inspector Saherly or himself. In cross-examination, he said that he looked at the accused when he read back the statement to him. However, it was not put to Mr Wu that the third accused had looked at the inspector, and remained silent after the inspector glared at him.

28. Ms Ong Lee Eng's evidence on the recording of the statements of 24 January and 15 February was that no inducement or threat or promise was made during the recording of the statements. Mr Dhillon asked her about the third accused looking at the inspector and the latter staring at him but she did not notice or remember that.

29. The third accused gave his account on the recording of the four investigation statements. In relation to the first statement of 10 January, his evidence was that before the recording commenced the inspector told him to co-operate, lest he would be in trouble and face capital punishment. When the statement was read back to him, he told the inspector it was not what he had said, but the inspector stared at him and he remained silent after that.

30. Before the recording of the statement of 13 January, the inspector asked him again to co-operate and told him that if he did not co-operate, he will be charged with all the drugs found in the house. He was frightened and shocked when he heard that, and was afraid that the inspector would frame him, so he decided to co-operate and did not object to what the inspector wrote. However when the prosecutor questioned him he said he wanted to make some amendments to the statement recorded, and the inspector told the interpreter to let him make the amendments.

31. On 24 January when his statement was recorded, the inspector again asked him to co-operate or he would face the capital punishment. When the statement was completed and read back to him, he realized that portions thereof were not his words. He wanted to amend them, but the inspector reminded him to co-operate. He contradicted himself on this point by saying that he did not express any desire to amend the statement, and had told the inspector he could write what he did.

32. After hearing the third accused and all the witnesses in the *voir dire*, I ruled that the statements in question were voluntary statements. The allegations made by the third accused and his counsel were inconsistent and contradictory.

33. When SSSgt Ang gave evidence, Mr Dhillon accused him of being aggressive and high-handed and alleged that he had offered to let the third accused smoke a cigarette if he signed the statement. When the third accused gave evidence himself, the sergeant's alleged wrong-doings grew. He alleged that the sergeant threatened to hit him on the stomach, assured him that the

statement was just a draft or a record in which his answers were recorded as "I do not know" or "I am not sure", and offered him a drink as well as a cigarette if he signed. The common complaint that was put by Mr Dhillon and mentioned by the third accused was the offer of a cigarette. That was denied by SSSgt Ang and Sgt Henry Chong Wee Loong who was alleged to have handed him the cigarette.

34. With regard to the first three statements recorded by Inspector Saherly, Mr Dhillon put to the inspector that when each statement was read to the accused, he stared at the third accused and caused him to sign the statement in silence. That differed from the third accused's own evidence that he asked to amend those three statements, and was not intimidated into silent submission.

35. I did not believe the third accused's evidence and found that he had not raised any reasonable doubt that the statements were made voluntarily. I therefore admitted the statements in evidence.

36. The statement recorded by SSSgt Ang reads

Upon entering the bedroom, I questioned the accused Gue Huay Quee some questions in the Hokkien dialect and accused Gue Huay Quee answered in the Hokkien dialect. The following were the questions and answers that were recorded in my pocket book:

Q1: 'Pang Keng Lai Bin Woo Mee Kia Boh?'
(Is there any drugs inside the room)

A1: 'Woo'.
(Yes)

Q2: 'Woo See Mee'
(What's that)

A2: 'Peh Hoon'
(Heroin)

Q3: 'Woo Lua Chuek Pek Hoon'
(How much heroin are there)

A3: 'Woo Neng Sar Liap'
(Two to three packets)

Q4: 'Pek Hoon See Siang Eh'
(These heroin belong to whom)

A4: 'Ai Giah Hor Lang Eh'
(Wanted to hand over to somebody)

Q5: 'See Siang'
(To who)

A5: 'Wah Beh Cheng Cho'
(I'm not sure)

The above questions and answers were read to accused Gue Huay Quee in the Hokkien dialect after they were recorded. He affirmed it to be true and correct.

He was invited to make any correction or alteration, but he declined the offer. Accused Gue Huay Quee then signed on my pocket book. After that, I also appended my signature.

37. The statement of 10 January recorded by inspector Saherly reads

I am known as 'Ah Quee', 'Pui Kia' or 'Ang Moh' to my friends. I am a partner of the above mentioned company dealing in timber. My partner is Lim Gek San. I have been working there for about two years. My company is in Malaysia and I stay in Singapore. I travel to Malaysia about 5 to 6 days in a week. I normally drive my car, SBQ 3367 J.

2. On 4.1.2000 at about 8.00 pm I drove into Malaysia. On the way there, I went to a moneychanger to buy about RM\$7500 using my own Singapore currency. I reached my workplace at about 11.00 pm. I then went to the workers' quarters and gave my foreman RM\$1200 for my workers' advance pay for the coming Hari Raya. I then left my factory. As I left my factory, one 'Ah Hou' paged for me. I then called him at 020196513286. He asked me to meet him at a restaurant in Senai. When we met, he said that there is something for him to do tomorrow and asked me whether I want to do it. The thing that he wanted me to do is for him to pass something to me. The something is actually 'Pei Hoon'. He did not tell me exactly what it is but I know because we have done this a few times before. At first, I did not want to do it but he scolded me and I agreed after that. I then asked him to call me tomorrow morning before he enters Singapore. I am shown a photo of a male Chinese and I recognise the person as 'Ah Hou'. (Recorder's note: Ah Hou is one Kum Mun Hou, M/24, Malaysian IC No: 760902-05-5257). I then went to meet my girlfriend. I sent her home at about 2.00 am on 5.1.2000. I then checked into Lion City Hotel and spend the night there.

3 On 5.1.2000 at about 10.00 am, 'Ah Hou' paged me again. When I called him, he told me that he is already in Singapore. I then said that I am still in Johor Bahru. He then told me to meet him at a Shell petrol station near Joo Chiat Police Post. At around 11.00 am I reached the petrol station but I could not see Ah Hou. I then called his handphone and we arrange to meet at an Esso petrol station nearby. At the Esso petrol station, I stopped my car along the exit road of the station. Ah Hou then drove up and stopped his car next to mine. A young boy seated on the front passenger seat then opened the car door and I lowered my window. The boy then passed me a white paper bag with blue wordings. They then drove off. I am shown a photo of a male Chinese and I recognised the person as the small boy. I do not know his name as this is the first time I saw him. (Recorder's note: The small boy is one Yau Hock Seng, M/19, Malaysian IC No: 811113-05-5657) I then went to 253A, Onan Road. I entered the house and went to a room on the ground floor. I then placed the bag on a table and locked the room before leaving.

4 I then wanted to drive to Bukit Batok to meet my sawmill partner. At the junction of Jalan Lempeng and Clementi Ave 6, I was arrested by a group of people who identified themselves as government men.

38. The statement of 13 January reads

5 My previous statement was read back and explained to me in Hokkien by the interpreter. I do not wish to make any corrections.

6 I rented the room at 253A Onan Road about one year ago from someone whom I called 'Er Lang'. I pay a monthly rental of S\$500 cash to 'Er Lang'. I met 'Er Lang' during one of my visits to his Karaoke Lounge a few years ago to entertain my friends. I only stay in the room occasionally as I am staying with my mother at the Whampoa flat. I let my friends who just came in from Malaysia to stay in the room while they find their own accommodation. I do not know the other tenants staying in the house. I also do not know much about 'Er Lang' and his girlfriend. When I rented the room, 'Er Lang' gave me two keys, one for the main door and one for my room. I made two sets of duplicate keys to give to my friends who used to stay in the room. One set was given to a Vietnamese lady but she had already left Singapore to return to Vietnam. I forgot to get the set of keys from her when I sent her to the airport to see her off. The other set was left in the room.

7 In October 1999, I was in financial difficulties. I met a Malaysian Chinese whom I called 'Ah Boy' at a night club in Johor Bahru. I told him that I needed some fast money. He said that he will take care of it and took down my handphone number. He told me to pass something to someone in Singapore. I could sense that it was something illegal. Some days later, 'Ah Boy' had called me on my handphone and asked me to make a spare key and leave the key in the room. He also gave me instructions to leave the main door and the room door unlocked so that someone could come and collect the set of keys. I do not know who took the key. A few days later, 'Ah Boy' called again and told me to be on standby in Singapore. I was then told to park my vehicle at near the Joo Chiat Food Centre. I did as I was told. Someone then came and park his car beside mine. The driver then said to me in Mandarin, "Friend, working one." He would then pass me a plastic bag. Out of curiosity, I opened the bag and saw one packet of yellow substance wrapped in few layers of plastic. I knew that the yellow substance was 'Pei Hoon' from my understanding from friends and news media and also from the big payment that I was promised for doing the job. I then drove to 253A, Onan Road and placed the bag on a table in the rented room. I then left the room and locked it up. The next day, 'Ah Boy' called me again to inform me to collect my payment from the rented room. I then went to the room and collected my first payment of S\$500.

8 I have done this for about six to seven times including the day I was arrested. The number of packets of 'Pei Hoon' varies from one to two packets each time. The day I was arrested was the first time that I had received three packets of 'Pei Hoon'. Since I gave a set of keys to 'Ah Boy', I did not stay in the room or check the things in the room. I only went to the room to put the 'Pei Hoon' and to collect my payment. I do not know anything about the other tablets found in my room. I also do not have any knowledge about the drugs found in the cabinet in the living room. I do not consume any drugs. I am also not aware of the items which were recovered from the cupboard.

39. The relevant parts of the statement of 24 January are

14 When I returned called to Ah Hou on 5.1.2000 morning, he told me that he

was already in Singapore. I was surprised because he did not call me earlier and that I would need at least one hour to reach Joo Chiat to meet him. He then answered that he can wait. I reached the hawker centre opposite the Joo Chiat Police Post at about 11.00 am but I could not find him. I then called Ah Hou at the same handphone number mentioned in Para 2. I asked him where he was and he answered that he was nearby. I then proceeded to make a turn and saw Ah Hou in a car with a Malaysian plate. Ah Hou was driving and there was a small boy sitting beside him. I then turned and stopped in front of a Shell station and waited for Ah Hou to stop his car behind mine. After that I started to move off and Ah Hou followed behind.

15 I then drove until I reached an Esso petrol station. I entered the station and Ah Hou followed. I then parked my car near the air pump and came out of my car to pump my tyre. Ah Hou stopped his car on the right side of mine. He then came out and went into the toilet. After I finished pumping my tyre, I went into the toilet. Ah Hou was inside and we spoke. I told him that there is no one around. Ah Hou mentioned further up. I then agreed. We then left the toilet and entered our cars. I then drove out very slowly along a small slip road. Ah Hou then drove from behind and stopped beside my car, blocking it slightly. The small boy sitting in the front passenger seat then opened the car door and passed a white paper bag with blue wordings onto my lap. I then took the bag and placed it on the front passenger seat. We then left in separate ways. I then drove to 253A, Onan Road to place the bag in my rented room on the ground floor.

40. The statement of 5 February did not add significantly to the previous statements, and need not be set out here.

Close of the prosecution case

41. At the close of the prosecution case I reviewed the evidence against the accused persons. The third accused had in the statement to SSSgt Ang made in the bedroom admitted his knowledge and involvement with the drugs recovered. In his investigation statements to Inspector Saherly he explained the drugs came into his possession. His account clearly implicated himself, the first accused Kum Mun Hou who he said had arranged the delivery, and to a lesser extent the second accused Yau Hock Seng who was with him when the drugs were transferred and who physically handed the drugs over. I therefore called all three of them to enter their defences.

Defence of the first accused

42. The first accused is 24 years old. He has attended school up to Form 5 (equivalent to the "O" level in Singapore) and had taken courses in business management and fashion design after that. His home town is Bahau, Negri Sembilan, but he was residing in Johor Bahau at the time of his arrest. He was employed in the running of video arcades in Johor Bahru since May 1999, and was staying in a rented room. He has known the second accused Yau Hock Seng who is also from Bahau, for more than two years. They were very good friends and were working for the same employer and sharing the rented room at the time of their arrest.

43. He became acquainted with the third accused in August 1999. The third accused had told him that he was engaged in rearing fishes and that he has a sawmill in Senai. On 21 December 1999 the third accused told him that his sawmill was due to open on 22 December and needed some timber. He arranged for the third accused to get the timber from his cousin who was in the timber

business.

44. He gave an account of his activities and visits to Singapore on the days before his arrest. On the evening of 1 January, he and the second accused had visited Singapore in his brother's car between 7 pm and 9 pm. On 3 January his employer told him that he did not have to work for a few days because the police were raiding video arcades.

45. On 4 January at about 9 am, he came to Singapore again with the second accused to look for a friend in Boon Lay. They met up with the friend at a coffee shop at Boon Lay, and returned to Johor Bahru at about 11 am. At about 6.39 pm, he paged for the third accused. He wanted to know if the third accused was in Singapore, and if he was, he wanted to look him up. At about 7 pm he entered Singapore again by himself to look for a friend. At about 7.51 pm he received a call from the third accused on his mobile phone. He asked the third accused whether he was in Singapore and if he could look him up. The third accused told him he was busy and told him to page him again at 10 pm. He returned to Johor to his rented room at about 9 pm and paged for the third accused at about 10 pm. The third accused returned his call and requested him to go to Singapore the next morning as he had something to discuss with him. The third accused told him to meet him at Joo Chiat, but did not say what he intended to discuss.

46. On 5 January he woke up at about 8 am and at about 8.30 am he left the house with the second accused in motor car JCV 4973 which belonged to a friend called Ah Loke. After entering Singapore, they had breakfast in a coffee shop in Bukit Panjang. At about 9.30 am they set off for Joo Chiat. They went to a Shell petrol station where he parked the car, and they went to a coffee shop across the road, and he paged for the third accused. The third accused returned his call and said he would be slightly late. He went back to the petrol station, where he used the toilet and bought some toll coupons. Then he drove around the vicinity with the second accused. Eventually he saw the third accused's car near the junction of Dunman Road and Joo Chiat Road, travelling in the opposite direction to him. He made a U-turn and drove towards the third accused's car. The third accused gestured for him to follow and he followed the third accused's car to a Esso petrol station along Still Road.

47. At the Esso petrol station the third accused stopped his car, alighted and pumped the tyres. He also left his car and went to the toilet behind the petrol station. The third accused followed him there and told him he had something to do and was not free to talk, and proposed that they meet in Johor that night, and he agreed.

48. After that exchange they went back to their cars and drove away from the petrol station. While they were travelling along the side road, the third accused stopped his car and wound down the window and he too stopped his car next to it. The second accused opened the car door, and the third accused said to him (the first accused) to meet that night. After that the second accused closed the car door, and they both drove off.

49. He had intended to go to Sin Ming to meet a friend. While he was driving along Thomson Road his mobile phone rang and he answered the call from Ah Loke. Ah Loke wanted to borrow his brother's car. As the keys to the car were with him, he decided to return to Johor instead of visiting his friend in Sin Ming.

50. Mr Goswami, counsel for the second accused, put to him that when the two cars stopped abreast along the side road, he told the second accused to reach under his seat to take out a bag and hand it to the man in the other car. The first accused denied this.

51. Counsel then put to him that it did not make sense for the third accused to arrange to meet him, and then keep the appointment only to say he did not have time and that they were to talk that night when he could have telephoned him to reschedule the meeting.

52. Under cross-examination by Mr Dhillon, the first accused confirmed that the second accused did not know the third accused.

53. The prosecutor asked him about his reaction when the third accused told him at the Esso petrol station about the postponed discussion. He said he was not angry or upset over that, and did not ask the third accused why he did not tell him about the postponement earlier.

54. When the prosecutor asked him if it struck him as strange that the third accused would stop his car along the side road and repeat what he had just said at the petrol station toilet, he said that did not occur to him.

55. When he was referred to his cautioned statement, he admitted that it was not correct that he only knew the second accused, and not the third accused and that he had not disclosed that he had met the third accused that morning. He explained that when he made the statement he wanted to dissociate himself from the third accused.

Defence of the second accused

56. Like the first accused, he is from Bahau. He was 18 years 2 months old when he was arrested. He attended Chinese school up to the primary six level. After that he worked as a house painter in Bahau. In December 1999 he went to Johor Bahru when there was no work as a house painter. He was working in Johor Bahru with the first accused whom he had known for three to four years. They were good friends and shared accommodation from 1 January 2000.

57. He was not familiar with Singapore roads. He had come to Singapore with the first accused on 1 January 2000 for a drive in the latter's brother's car NAY 9960. On 2 January he came again with someone known to him as Yieh Chee or Ah Yap in motor car JCV 4973 belonging to the latter and they went shopping. On 4 January he came to Singapore again in the morning with the first accused in NAY 9960. He intended to buy clothes for the Chinese New Year. They met the latter's friend at a coffee shop, then they went shopping for clothes but did not buy anything. They went back to Johor Bahru at about noon. In the afternoon, he entered Singapore again by himself in JCV 4973 for a drive. He had not gone very far before he lost his way and ended up in Johor Bahru. He turned round, re-entered Singapore and drove around for about half an hour, then returned to Johor Bahru.

58. On the next day, 5 January, the first accused woke him up in the morning and asked him if he wanted to accompany him to Singapore. He asked the first accused to bring him to buy clothes and the first accused agreed. Subsequently they drove into Singapore in JCV 4973. He sat in the front passenger's seat. He did not carry anything with him to the car, and did not see any bag in it.

59. They entered Singapore at about 9.10 am, stopped to have breakfast, and then made their way to a Shell petrol station at Dunman Road. The first accused parked the car there. They went to a coffee shop for about half an hour, then returned to the petrol station. The first accused bought some coupons, then they got into the car and drove around. At that time he asked the first accused where they were going, and was told that he was waiting for a friend.

60. After a while the first accused made a U-turn and went behind the third accused's car, then both cars moved off and went to the Esso petrol station along Still Road. Both cars stopped at the petrol station. The first accused told him that he wanted to go to the toilet, and left the car. About five minutes later, he returned and drove off, but after travelling a short distance he stopped his car next to the grey car. The first accused told him there was a bag under his seat, and instructed him to take it out and pass it to the person in the grey car. He bent down, felt for the bag, took it out, opened the car door and handed it to the third accused who was in the grey car through the window which was wound down, then the two cars drove off. The whole transaction was over in about five seconds. He only remembered there was some white in the colour of the bag, and that it was folded up, and he did not look inside it. When the bag recovered from the third accused's bedroom was shown to him in court, he could not say if that was the bag.

61. When he passed the bag to the third accused, the third accused did not say anything. There was no prior arrangements between him and the first accused to hand over the bag to anyone, and that was the first time he saw the third accused. He had not spoken with him before and had no dealings with him.

62. Mr Dhillon put to the second accused that when the bag was passed over, the third accused said to the first accused "I am busy. Why?" and the first accused replied "We'll meet at night." The second accused's response was that he did not hear this exchange.

63. He admitted under cross-examination by the prosecutor that throughout the investigations when statements were recorded from him on 11 and 19 January and 9 March, he did not mention the rendezvous at Dunman Road and Still Road. His explanation was that he was very frightened and confused and did not know what to do.

Defence of the third accused

64. He is a Singapore citizen, 35 years old. He completed secondary one before he left school. At the time of his arrest he had an interest in a sawmill in Johor Bahru and he had been going to Johor regularly since 1997.

65. He had rented the bedroom on the ground floor of 253A Onan Road since mid 1995. There were other bedrooms on the second floor of the premises which were rented out to and occupied by other tenants. He rented the bedroom so that his friends who came to Singapore can use it instead of checking into hotels. A Vietnamese lady friend had occupied it at one time. His friends' workers and his workers would use the room. He said that he seldom used it himself, and had not used it since the sawmill was incorporated on 23 November 1999, and had never spent the night there.

66. He had known the first accused since 31 August 1999, and are normal friends. The first accused had helped him in a purchase of timber on 22 December 1999. He did not know the second accused and had not met him before the day of the arrest, and never had any dealings with him.

67. On 4 January he went to Johor to pay his employees in advance of Hari Raya. After paying the salaries he received a page from the first accused and returned his call. The first accused asked to meet him at a restaurant in Senai. When they met there, the first accused told him that he had something to show him the next day and also wanted to discuss matters pertaining to timber with him. He told the first accused that he will be busy over the next few days and asked him not to show him timber samples. He also told the first accused that if he wanted to look for him in Singapore, he should check in advance if he was in Singapore or Malaysia.

68. After the meeting at the restaurant, he visited his girlfriend, and then spent the night in a hotel in Johor Bahru by himself. In the morning of 5 January, he received a page from the first accused at about 9.45 am. When he returned the call the first accused told him he had something to show him and wanted to meet him in Singapore. He told the first accused that he would only be in Singapore in an hour, and the first accused told him he would be at a hawker centre in Joo Chiat.

69. He left the hotel at 10 am and drove to Joo Chiat. When they met in their respective cars he signaled to the first accused to follow him. He drove to a Esso petrol station in Still Road. He intended to fill up on petrol and pump his tyres at the Esso petrol station which was his regular petrol station for getting petrol. When he reached the petrol station he got out and pumped his tyres. The first accused also got out of his car, and proceeded to the toilet. After he pumped the tyres he also went to the toilet because he needed to use it. When they met at the toilet the first accused told him he had something to hand to him. He told the first accused "no", that he was going to a meeting with his shareholder, and was very busy, and departed from the toilet without asking the first accused what it was that he wanted to hand to him.

70. He returned to his car, drove away, having forgotten about filling petrol. The first accused followed in his car, horned and blocked the way with his car. The second accused opened the door of the first accused's car and in a swift motion, dropped a bag onto his lap. He was surprised and told the first accused "I'm busy. What's up?" The first accused replied "See you tonight" and drove off.

71. After he received the bag he placed it on the front passenger seat of his car. The bag was taped, and he did not open it to check its contents. When his counsel showed him the bag recovered from the bedroom he said it was not the bag he received. As he did not want to have so many things in his car, he drove to 253A Onan Road and left the bag on a table in the living room on the ground floor of the premises. While he was there he wanted to use the toilet. He found the one on the ground floor was locked, and used the toilet upstairs. Then he left the premises after locking the main door.

72. His counsel brought to his attention Sgt Lim Jit Tong's evidence that he had entered the house twice, first empty-handed and then carrying a bag (to which there was no disagreement when Sgt Lim was cross-examined). He disagreed with Sgt Lim's evidence.

73. After leaving the house he was driving to Bukit Batok to meet a shareholder when he was arrested in Clementi by CNB officers. They brought him back to the house where drugs and drug-related paraphernalia were recovered. He agreed that the bag containing the drugs was recovered from the study table in the bedroom but denied that he had pointed to it with his chin when SSSgt Ang asked him where the drugs were. He denied that the three packets inside the bag belonged to him or were handed to him by the second accused. He said that the other drugs and paraphernalia recovered did not belong to him, and that he had not seen them before.

74. He claimed that the bag was shown to him in the bedroom after SSSgt Ang had asked the first question recorded, which he understood to be whether there were anything in the room, not whether there was any drugs in the room. He denied that he gave the second answer recorded that there was "peh hoon", and said that his answer was that he did not know, and was not sure. He also did not give the third recorded answer that there were two or three packets, but had said that he did not know. He did not say in reply to the fourth question that the heroin was to be handed to somebody, but had said they did not belong to him. (Counsel had put this to SSSgt Ang, who disagreed with him.) However he confirmed that he gave the fifth answer recorded.

75. He said that he signed the statement because his request for a smoke and drink was turned down and SSSgt Ang threatened to hit his stomach if he did not sign.

76. Counsel then brought him to the investigation statements recorded by Inspector Saherly with regard to the statement of 10 January. With regard to paragraph 2 he confirmed that on 4 January the first accused had told him he wanted to pass something to him without stating what it was. However he denied that he had said he knew it would be "peh hoon" because they had done it a few times before.

77. In paragraph 3 he had only said "a white paper bag" without the additional "with blue wordings". He also did not say that he went to a room on the ground floor, but only that he entered the house. In the last sentence of the paragraph, he did not say that he locked the room door before leaving but had said that he locked the main door before leaving.

78. When he was referred to the statement of 13 January, he said that paragraph 7 was not what he had said. As for paragraph 8, he disavowed the first three sentences and the reference to going to the room to deposit "peh hoon" and collect payment.

79. He also referred to paragraph 15 of his statement of 24 January. He denied telling the first accused that there was no one around, or that they agreed to go further up. He repeated that he had only referred to a white paper bag (without reference to blue wordings) and that he placed the bag in the living room, and not his rented room on the ground floor.

80. Under cross-examination by the prosecutor he said that he did not want to accept what the first accused wanted to hand over to him because he assumed they were timber samples. After the bag came into his possession he did not open it, and intended to return it to the first accused.

81. The prosecutor asked him why he kept the bag at 253A Onan Road when by his evidence he went there infrequently, and had not been there since 23 November 1999. His reply was that the premises were the nearest to the Esso petrol station, and he had the keys to the premises with him.

82. He also explained that he did not place the bag in the bedroom he rented because somebody was staying there. When asked why he left the bag in the living room which is accessible to other occupants and visitors to the house, he replied that he thought it was the natural thing to do.

Evaluation of the evidence

83. After hearing all the evidence, I reviewed the case of each accused person.

The first accused

84. He knew the third accused, and they kept in touch by paging and telephoning. He admitted that there was an appointment for him and the third accused to meet on the morning of 5 January and they met at Dunman Road before going to the Esso petrol station at Still Road. He did not dispute that a bag in his car was passed over to the third accused that morning.

85. In addition to that the third accused and the second accused had made damning allegations against him. The third accused, in his investigation statements, had stated that the first accused had arranged to deliver to him something which through previous transactions, he knew to be heroin. The second accused's evidence was that he instructed him to hand the bag over to the third accused.

86. The first accused had put forth his account of the events, which I found unsatisfactory. In his statement of 5 January, he stated that he had come to Singapore for sightseeing and that after breakfast at Bukit Panjang, he was going to Eunos to eat. This statement is untruthful because by his own evidence he did not make the trip to sightsee but had come to keep an appointment with the third accused, and that he did not go to Eunos to eat, but went to Joo Chiat to meet the third accused.

87. His cautioned statement is also untruthful. He knew that the person Gue Huay Quee named in the charge is the third accused. Furthermore he did not go to the Joo Chiat coffee shop for something to eat, but to keep the appointment with the third accused.

88. His account of the appointment and the postponement of the discussion lacked credibility. He said that he agreed to meet the third accused in Singapore for a discussion without being told what the third accused wanted to discuss, without knowing whether it would be of interest to him. On that morning when they spoke over the telephone when the third accused told him he would be late, and they met in Joo Chiat before they went to the Esso petrol station at Still Road before the third accused told him that he was too busy to talk. Any reasonable person in his position would be upset or annoyed to be put through all the trouble of coming to Singapore, and waiting for the third accused, to be told that the discussion was to be postponed when it could have been rescheduled over the telephone, yet he was neither angry nor upset, and did not ask the third accused why he did not reschedule the discussion earlier.

89. His account of the events outside the Esso petrol station was also not credible. His evidence was that the third accused had told him that he was not free to talk, and asked to meet that night at Johor, and he had agreed. It did not make sense for the third accused to stop his car along the side road to say again that they were to meet that night.

90. I also cannot accept his evidence that the second accused had acted on his own during the brief unplanned stop to hand over the bag to the third accused who was a stranger to him.

The second accused

91. His evidence that he did not know the third accused and had not seen him before 5 January and had no dealings with him was not disputed. The third accused confirmed this in his statements and evidence.

92. There was no direct evidence which implicated him. Neither the first nor the third accused said that he was involved in their appointment.

93. On the other hand, he was not truthful when he said in his investigation statement that he and the first accused had gone shopping. He withheld disclosure that he passed the bag to the third accused when he made his cautioned statement and in his subsequent investigation statements.

The third accused

94. The drugs in question were recovered from his rented bedroom. SSSgt Ang and Sgt Henry Chong gave evidence that he pointed to the bag containing the drugs when he was asked where the drugs were.

95. He had made statements to SSSgt Ang and Inspector Saherly which were admitted in evidence after the *voir dire*. I found that the statements were not only voluntary, but that he was speaking the truth when he made them despite the inconsistency between his evidence and SSGt Lim's whether he entered 253A Onan Road once or twice that morning. I did not regard that to be material as he admitted that he took the bag received from the first accused into the house.

96. I did not accept his evidence that he was surprised when the bag was delivered to him and had said "Why? I am busy." It was significant that the second accused did not hear him say that.

97. I also did not accept his explanation for keeping the bag at 253A Onan Road because he did not want to have too many things in his car. The bag was neither bulky nor heavy, and could easily be kept in the car without causing clutter or overloading. He said he was keeping the bag at 253A Onan Road till he can return it to the first accused. It was unreasonable for him to keep it at those premises which he claimed he had not been to since 23 November 1999, thereby necessitating a return trip to the premises to retrieve it when he could have kept it in the car and returned it to the first accused when they met that night. His evidence that he had left the bag unguarded on the dining table in the living room accessible to the other occupants or visitors to the premises was unbelievable.

My findings

98. I accepted SSSgt Ang and Sgt Chong's accounts of the recovery of the bag and found that the third accused's statements to Inspector Saherly truly described the events that took place. I also found that the first accused had instructed the second accused to hand the bag to the third accused. I therefore found that the first and third accused were involved in trafficking the drugs in question.

99. With regard to the second accused there was no direct evidence against him beyond his handing over of the bag, and that his co-accused did not implicate him. I was mindful that he was not forthcoming in his cautioned statement and investigation statements. I took into account his age, education and employment background and his explanation for the non-disclosures. Upon careful review and consideration, there was a reasonable doubt that he knowingly engaged in the dealings between the other two accused persons.

100. I acquitted the second accused and amended the charge against the first and third accused to

You, KUM MUN HOU and GUE HUAY QUEE

in furtherance of your common intention, on the 5th day of January 2000, at about 11.00 a.m., along Still Road, Singapore, did jointly traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Cap. 185, to wit, by having in your possession for the purpose of trafficking, 3 packets containing not less than 76.53 grams of diamorphine at the aforesaid

place, 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, Cap. 185 and section 34 of the Penal Code, Cap. 224 and punishable under section 33 of the Misuse of Drugs Act, Cap. 185.

and convicted them, and passed the mandatory death sentence.

101. The two convicted persons appeal against my decision.

Kan Ting Chiu

Judge

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