

Public Prosecutor v Sim Kwong Choon
[2001] SGHC 11

Case Number : CC 1/2001
Decision Date : 12 January 2001
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Anandan Bala and April Phang (Attorney-General's Chambers) for the prosecution; Anthony Lim (Anthony & Wee Jin) for the accused
Parties : Public Prosecutor — Sim Kwong Choon

JUDGMENT:

Grounds of Decision

1 The Accused was charged as follows:

"That you, **SIM KWONG CHOON**

1ST CHARGE on or about the 24th day of July 2000, at about 4.10 pm, inside motorcar bearing registration number ES 3526X, at a carpark lot number 475, of Blk 233, Pending Road, Singapore, did traffic in a controlled drug specified in Class A to the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking, 49 sachets and 4 straws of substance containing not less than 39.88 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 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

2ND CHARGE

on or about the 24th day of July 2000, at about 5.50 pm, at Blk 787D, Woodlands Crescent, #07-20, Singapore, did traffic in a controlled drug specified in Class A to the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking, 1 packet and 127 sachets of substance containing not less than 137.38 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 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185."

2 He indicated he wished to plead guilty to both Charges but, as is the time-honoured practice in offences carrying the mandatory death penalty, his plea was rejected and the Prosecution was asked to prove the two Charges against him. Not surprisingly, no questions were asked of the Prosecutions witnesses save for the Investigating Officer and even then, the questions were few and perfunctory.

3 On 24 July 2000, officers from the Central Narcotics Bureau ("CNB") proceeded to Blk 787D Woodlands Crescent and stationed themselves in and near the block to conduct surveillance on the Accused who lived in #07-20 of that block of flats. At about 3.30 pm, the Accused was seen leaving his flat with a black and blue sling bag. He walked to Blk 787A, the multi-storeyed carpark, and drove his car bearing registration number ES 3526X out of the carpark.

4 The Accused travelled along Woodlands Crescent to Woodlands Drive 72. He then made a U-turn and returned to Woodlands Crescent, stopping at the roadside near to the carpark exit of Blk 787D. He then drove into the carpark of Blk 787D. A male Chinese (later ascertained to be one Teo Chin Yeh) stood next to the Accuseds car and talked to the Accused who remained in the drivers seat.

5 At about 3.50 pm, both the Accused and Teo drove away in their respective cars. Teo was followed by some CNB officers and was arrested later at Marsiling Lane. Three sachets of ketamine were seized from Teo.

6 The Accused drove to the Bukit Timah Expressway and on to Bukit Panjang Road. At about 4.05 pm, when he reached the carpark of Blk 233 Pending Road and stopped near the Pending LRT Station, he was arrested by the CNB officers. A plastic bag containing some substance was found on the handbrake. The Accused admitted that it contained 30 sachets of heroin. He then told the CNB officers that he was supposed to meet a male Chinese at Blk 223 Pending Road. Four of the CNB officers then proceeded with the Accused in his car to the said Blk 223, with one of the officers having taken over the drivers seat. At Blk 223, three of the officers positioned themselves at the void deck while the Accused returned to the drivers seat with the remaining officer seated next to him at the front of the car. The Accused then pointed out one Ang Chi Ming who was approaching the car as the man he was supposed to meet. Ang was then arrested as well.

7 The Accuseds car was then searched. A total of 49 sachets and 4 straws of heroin as well as a large assortment of other drugs were found in the car. These were analysed subsequently by the Department of Scientific Services to contain not less than 39.88 grammes of diamorphine (the subject of the First Charge). The Accused told the CNB officer questioning him at the scene that the 30 sachets of heroin and the tablets in the plastic bag belonged to Ang Chi Ming. He admitted that the 18 sachets of heroin and other tablets inside the blue and black sling bag were his. The remaining sachet and the four straws of heroin were found in a clutch bag on the floorboard at the drivers seat.

8 A team of CNB officers then proceeded to the Accuseds flat at Woodlands Crescent. Using the Accuseds key, they gained entry into the flat. No one was inside.

9 The Accused was asked whether there were any drugs inside the flat. He said there were, led the CNB officers to the master bedroom and used his chin to point to a built-in cabinet near the toilet. Inside the cabinet were some bags containing a total of one plastic packet and 127 sachets of heroin together with various tablets. The said packet and the 127 sachets were later analysed by the Department of Scientific Services to contain not less than 137.38 grammes of diamorphine (the subject of the Second Charge).

9 When further questioned, the Accused informed the CNB officers that there were more drugs in a box in the magazine rack in the master bedroom. The box contained a digital weighing scale, numerous empty sachets, a packet of finger gloves and various other drugs. 12 handphones were also found in the master bedroom. The Accused admitted that all the drugs in the master bedroom were his. Cash of S\$3,000 and RM\$240 were also found in a drawer of the computer table in that bedroom. Nothing incriminating was found in the other bedroom in the Accuseds flat.

10 In his statements to the Investigating Officer, the Accused said that the drugs in his car and in his flat belonged to one Ah Jua or Siang Leng. He said that he had retrieved the drugs from a dustbin on the second floor of the multi-storeyed carpark at Blk 787A. He also stated that on 24 July 2000, the day of his arrest, he was bringing between 30 to 50 sachets of heroin to Ah Jua. He claimed that he was storing the heroin, the empty sachets, the digital weighing scale and the finger gloves for Ah Jua who was the one selling the heroin. However, he acknowledged that some of the other drugs were his.

11 At first, he told the Investigating Officer that Ah Jua or Siang Leng was Ang Chi Ming, the person arrested at Blk 223 Pending Road. Later he said "that Ah Jua and Siang Leng whom I had mentioned in previous statement are two different persons. Ah Jua is not the same person arrested together with me." He claimed that the person arrested at Pending Road was known to him as Sung Leng.

12 When the Accused was called upon to make his defence to the two Charges, he elected to remain silent and did not wish to call any witnesses on his own behalf. Counsel for the Defence also did not make any submissions on the law or the facts of the case.

THE DECISION OF THE COURT

13 On the uncontroverted evidence presented by the Prosecution, it was clear that the Accused was in possession of all drugs that were the subject of the two Charges before me. The Prosecution, having proved that the Accused was in possession of more than two grammes of diamorphine, was therefore entitled to invoke Section 17(c) Misuse of Drugs Act in that the Accused was presumed to have the diamorphine in his possession for the purpose of trafficking. The Accused did not attempt in any way to prove that the said possession was not for trafficking.

14 In any event, the evidence adduced showed clearly that he was in possession of the diamorphine for the purpose of transporting, sending or delivering it to the owner, whoever he was, and in respect of the First Charge, was actually in the process of doing so. That brought the case squarely within the definition of "traffic" in Section 2 Misuse of Drugs Act which states:

"traffic" means

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act or the regulations; and
"trafficking" has a corresponding meaning;"

15 The two Charges had therefore been proved beyond reasonable doubt by the Prosecution and I found the Accused guilty and convicted him on both Charges accordingly. As both Charges involved diamorphine of more than 15 grammes, the mandatory death sentence was imposed. The Prosecution consented to the return of the S\$3,000 to the Accused's wife.

Tay Yong Kwang

Judicial Commissioner