

Public Prosecutor v Mohd Sharif bin Ibrahim
[2001] SGHC 237

Case Number : CC 29/2001
Decision Date : 27 August 2001
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Han Ming Kwang and Shirani Alfreds [Attorney-General's Chambers] for the prosecution; James Masih [James Masih & Co] and Gurcharanjit Singh [Cooma & Rai] for the accused
Parties : Public Prosecutor — Mohd Sharif bin Ibrahim

Judgment:

1. The accused is a 36 year old unemployed man who was arrested together with his girl-friend Siti Rohaya at 8.20pm on 11 October 2000 at the ground floor of Block 251 Tampines Street 21 by officers of the Central Narcotics Bureau ("CNB"). The accused was searched and two foils containing some loose heroin were recovered from his left trouser pocket as well as \$660 in cash, \$650 of which were in an envelope, from his right trouser pocket. The accused and Siti were taken up to his room in flat #04-454 in the same block. 98.71g nett of heroin was found in a black briefcase (P44) in his room. An Instant Urine Test was conducted on Siti and the accused at the CNB headquarters at 1am on 12 October 2000 and they tested positive for opiates. The flat at Block 251 belongs to the uncle and aunt of the accused. Another couple (Emran and his wife Suriani) together with one Ruzaini Bin Ajis were subsequently arrested in connection with the charge against the accused. Siti was charged together with the accused; the other three shortly thereafter. Siti, Emran, Suriani, and Ruzaini were later given a discharge not amounting to an acquittal.

2. The black briefcase (P44) in the room was seized from the accused. The briefcase was locked and the accused told the arresting officers that he "did not know where the key was". One of the arresting officers, Sgt Goh San, opened the briefcase by force. It transpired at the trial that the briefcase was locked by a combination lock and no key was required. Inside the briefcase were two packets of heroin wrapped in cellophane, three brown envelopes two of which had handwriting on them, two digital weighing scales, one brown envelope containing eight sachets of heroin, and one marker pen. The CNB officers also found a plastic box containing a sachet of heroin together with several empty sachets. This box was found in a drawer of the accused persons wardrobe. Another officer, Insp Herman, asked the accused to whom the drugs in the room belong and the accused said that they were his. He was asked what sort of drugs they were and he said "heroin". He also said that all the drugs were "for smoking". When asked, he said that he did not know how much he smoked a day. Various investigation statements were recorded from the accused, four of them were admitted in evidence without challenge. The statements incriminated the accused directly and substantially.

3. A "document expert" from the Health Sciences Authority (formerly Department of Scientific Services), Ms Lee Gek Kwee, was called by the prosecution to give an opinion as to the authorship of the writing on two of the brown envelopes (P49 and P50) found in the black briefcase (P44). She was given two sheets of specimen writing of the accused written on the direction of the investigating officer Insp. Abdul Halim when the accused was in custody. Ms. Lee conceded that the material was not sufficient to give a more definitive view, but it was nevertheless sufficient for her to conclude that the accused cannot be ruled out as the person who wrote on the two envelopes. The prosecution also called Siti Rohaya who testified that a substantial part of P50 was written by her. A fresh set of handwriting by the accused, written after Ms. Lee was called, was then given to her.

Under cross-examination she conceded that the fresh set of handwriting differs substantially from that on the two brown envelopes. Mr. Masih produced a letter written by the accused some time before his arrest which was written in the same handwriting as that produced by the accused in court. Ms. Lees response was that it is not uncommon for a person to have more than one style of writing. The one on the brown envelope was written as a scribble and at some speed. The two other documents produced at trial were written slowly and deliberately. She held the view that despite the apparent difference in style, so far as the writing on the envelopes were concerned it cannot be ruled out as being written by someone other than the accused.

4. The defence declined to make any submission at the close of the prosecution case, and on the evidence adduced, I was satisfied that a case had been made out and called the accused to enter his defence. He elected to testify.

5. The evidence of the accused was brief. He denies that the black briefcase belongs to him. He said that it was Emrans bag which the latter left with him on the morning of 11 October. The bag was locked and he did not know the combination to unlock it. He had no knowledge as to what the bag contained save what Emran told him, namely that it had pornographic video tapes. Emran told him that he (Emran) was under surveillance and therefore wanted to leave the bag with the accused for safe-keeping. The accused admitted, however, that the small sachets of heroin found in the cupboard in his room belonged to him. He also admitted that on that day he had delivered some small portions of heroin to a friend.

6. The accused also denied that the handwriting on the brown envelopes were his. He said that the specimen he provided to Insp. Halim ("HW-1") was written by him on Insp. Halims instructions to "copy" the writing on the brown envelopes which the inspector had placed on the table. He testified that he understood the inspector to mean "copy" by way of imitation as opposed to copy by way of reproduction. Therefore, he wrote out HW-1 to resemble the writing on the envelopes.

7. The accused testified that the person to whom he delivered a small quantity of drugs to was Mohd Idris. This was corroborated by the evidence of Mohd Idris who was called as a prosecution witness. The accused also testified that this delivery was made on the instructions of Emran. The accused went to meet Siti at the nearby playground after he gave the drugs to Mohd Idris. There Sitis handphone rang and it was Emran on the line, asking the accused whether the delivery had been made. The accused and Siti were arrested before the accused could complete his conversation with Emran.

8. In the course of his evidence-in-chief the accused denied that he had given the incriminating answers to Insp. Herman that he (Insp. Herman) had recorded in his pocketbook. Insp. Herman testified that he invited the accused to make corrections and then sign the record but the accused declined to do so. The accused denied at trial that the answers recorded were what he had said, but he could not recall what he actually said to Insp. Herman. The incontrovertible evidence was that an interview did take place in which Insp. Herman questioned the accused. I have not been persuaded by the accused that Insp. Hermans account was wrong or inaccurate. The accused also denied that the four investigation statements (admitted as P32, P33, P34 and P35) made to Insp. Abdul Halim are true. He claimed that virtually all the incriminating parts were concocted by him in order to protect his uncle in whose flat he stayed.

9. He said that whilst they were still in his uncles flat on the evening of the arrest, he heard some officers say that the flat would be confiscated if the drugs were found in the flat. At one point he also said that the officers said that his uncle might also be charged. At that juncture, the DPP Mr. Han hesitated because he was not sure whether the accused was raising the issue of the

voluntariness of the statements. Mr. Masih conceded on behalf of the accused that voluntariness was not in issue, and the accused himself retracted his assertion that the CNB officers told him that his uncle might be charged. I therefore did not require a trial-within-a-trial to determine the voluntariness of those statements.

10. In my opinion, the incontrovertible facts based on evidence of the prosecution as well as the evidence-in-chief of the accused, are that the accused was a heroin trafficker having delivered heroin to Mohd Idris shortly before his (accused's) arrest on 11 October 2000. He also had heroin in his possession on his person as well as in his cupboard.

11. The only issue is whether the heroin in the black briefcase belonged to him or was in his possession with knowledge that it contained heroin. In this regard, I do not accept the evidence of the accused that he did not know what was in the black briefcase. On his own evidence, the briefcase was handed to him by his friend Emran together with a seemingly gratuitous largesse of \$650 on the morning of the day he (the accused) was directed by Emran to deliver heroin to Mohd Idris. And even on his own account, the briefcase contained illegal material. His girl-friend Siti and himself were also heroin consumers. In these circumstances, I do not believe the accused that he did not know what was in the briefcase.

12. Some time was spent over the handwriting found on the two brown envelopes P49 and P50. The prosecution's expert evidence was simply that the accused cannot be ruled out as the author. I note that Siti claimed authorship over some parts of the writing. I find Siti to be a truthful witness although I suspect that she might have erroneously admitted one of the words "pckt" in P49 to be hers when it seems to me otherwise, but in my view, the evidence of the handwriting is not crucial. Although the accused said that the writing concerned the calculations for his "dodol" business and the envelopes were handed to Emran in early October, that does not explain Siti's handwriting on them. No evidence was led as to whether Siti had already written on them when the accused gave one of the envelope (P49) to Emran. It also does not explain where P50 came about or how Emran obtained it since it was also found in the briefcase that Emran handed to the accused.

13. The accused though unemployed, appears to be an intelligent person capable of reading English as he indeed read all his four investigation statements in court without assistance from the court interpreter. Emran was offered to the defence but was not called. The question is, was the defence obliged to call Emran to corroborate the accused, or, was the prosecution obliged to call Emran as a rebuttal witness? I accept that there is no obligation on either party to call Emran, but the failure of the defence to do so in the present circumstances reduces the value of the claims made by the accused, especially those that attributed the briefcase and drugs to Emran. It is true that on the face of it, an assertion by the accused invariably invites rebuttal, but it is not an invitation that must be taken up. At this stage of the trial, the burden is on the accused to raise a reasonable doubt. If there is any adverse inference to be drawn, on the facts and circumstances of this case, it would have to be drawn against the failure by the defence to call Emran as a witness. It would be wrong to draw an adverse inference against the prosecution as Emran's testimony was never part of its case. It is obvious that the approach most favourable to the accused is to draw no inference whatsoever, but there is no sound or rational basis for that in this case. The obvious inference that I must draw is that Emran was unlikely to corroborate the accused; but it is not difficult to appreciate why - if he saves the accused he condemns himself. In these circumstances, I regard the drawing of the said inference to be of much lower value than it otherwise might have, and hence, I have merely taken the failure of the accused to call Emran as another point to be weighed in the pot of evidence against him.

14. The accused made no attempt to explain why he had not adduced his cautioned statement in

evidence to support the story upon which his defence was based. In taking this omission into account, I have considered his evidence that he made up stories to Insp. Halim in order to prevent his uncles flat from being confiscated by the authority. However, I do not find his testimony to be sufficiently credible to entertain any reasonable doubt on its account.

15. On the evidence before me, I am not satisfied that the accused had rebutted the presumption against him. The evidence of his uncle that he (the uncle) never saw the briefcase before does not assist the accused if, as he said, Emran only handed the briefcase to him that morning. Given the circumstances and his relationship with Emran, I do not think that the accused was entitled to say that he did not know and had no reason to suspect that the briefcase contained drugs. On his own evidence, it contained illegal pornographic tapes which Emran wished to hide from the police. There was no question in this case as to whether the accused had sole and exclusive possession of the room he occupied at block 251, Tampines since the accused admitted in court that he was in possession of the briefcase. The only issue being his knowledge of the heroin in that bag.

16. I therefore find that the prosecutions case had not been rebutted. The accused was accordingly convicted and sentenced to suffer death.

Sgd:

Choo Han Teck
Judicial Commissioner