

Yeoh Aik Wei v Public Prosecutor and Another Case
[2003] SGCA 4

Case Number : Cr App 14/2002, CC 48/2002
Decision Date : 06 February 2003
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ
Counsel Name(s) : Peter Fernando (Leo Fernando & Partners), Moh Yong Chee Chuen Alan (Tan Peng Chin LLC) for the Appellant; Hamidul Haq (PP) for the Respondent
Parties : Yeoh Aik Wei — Public Prosecutor

Criminal Law – Controlled drug – Unauthorised import – Presumption of knowledge – Whether rebutted presumption – Misuse of Drugs Act (Cap 185) s 18(2), 21

Delivered by Chao Hick Tin JA

1 This was the appellant Yeoh Aik Wei's (Yeoh) appeal against his conviction on a capital charge of the unauthorized import of a controlled drug, namely, 327.59 grams of diamorphine, for which offence he was sentenced to death. We heard the appeal on 20 January 2003 and dismissed it. We now give our reasons.

The facts

2 The facts of the case were largely not in dispute. At all material times, Yeoh resided in Johore but worked in Singapore. Thus, he commuted almost daily between the two countries. On 7 March 2002, at the early hour of 00.45 am, the appellant drove a Malaysian-registered Honda car from Johore into Singapore and stopped at the Woodlands Checkpoint. The duty officer, Cpl Yeo Kia Huat, inspected the boot of the car and found four newspaper-covered bundles in the well for the spare tyre. When questioned, Yeoh told Cpl Yeo that he did not know what they contained. As instructed, Yeoh then opened up the four bundles and they were found to contain some granular substance. Thereafter, he was placed under arrest.

3 Narcotics sniffer dogs were soon brought to the scene and they sniffed out four more bundles, two each on the left and the right sides of the boot of the car. Yeoh remained calm throughout the period from the time when Cpl Yeo checked the boot until the last four bundles were sniffed out.

4 At 2.50am, ASP Omar Ali Saifudeen of the Central Narcotics Bureau, who had arrived earlier at the scene, asked Yeoh some questions. He recorded the questions and answers in his pocket book and Yeoh signed against that recording. The gist of his answers was that he was asked by one "Tua Pui" to drive the car to Singapore for which he was to be paid \$200/-. He said the things in the bundles were drugs. However, he later explained that he gave such an answer because he merely repeated what one of the policemen, who uncovered the bundles, said that they were.

5 In his s 122(6) statement recorded later that morning, Yeoh stated that he had nothing to say. In his s 121 statement taken from him in the afternoon, at about 3.05pm, Yeoh opened up and gave the following account. He owed a debt of RM\$2,000 to a loan shark by the name of Tua Pui who, on the

morning of 6 March 2002, gave him an ultimatum to either drive a car containing a package to Singapore or pay up the entire loan forthwith. That day, he came to work in Singapore as usual. In the course of the day, having given thought to the demand made by Tua Pui, he decided that he would do the latter's bidding. At about 11.30pm, having returned to Johore after work, he met Tua Pui at the Mavesta Apartments. Tua Pui passed on to him a car key, a mobile phone with a phone number already keyed-in and two SIM cards. He was instructed to call that keyed-in number on his arrival in Singapore. As he knew that Tua Pui was a drug dealer involved in the sale of Ecstasy tablets, he thought that what he was asked to transport to Singapore were also Ecstasy tablets.

6 At the time of his arrest, a handwritten note in Chinese was found on Yeoh. He admitted writing the note but denied that it was a "farewell" note. We shall return to this note in a moment as it was germane to the defence raised by Yeoh.

7 No finger prints of Yeoh were found on any of the wrappings of the eight bundles. The substance in the eight bundles was later established to contain 327.59 grams of diamorphine.

Decision below

8 In his defence at the trial, Yeoh repeated the assertion made in his s 121 statement that he did not know it was diamorphine that he was bringing into Singapore. He thought it was Ecstasy tablets.

9 In view of the presumptions raised in ss 21 and 18(2) of the Misuse of Drugs Act (MDA), the burden fell on Yeoh to show, on the balance of probabilities, that he lacked such knowledge. At the conclusion of the trial, the judge found that the presumption had not been rebutted because:-

(i) There were material discrepancies between his testimony in court and what he said in his statements;

(ii) The handwritten note was a farewell note;

(iii) In the light of the suspicious circumstances, there was deliberate turning of a blind eye on the part of Yeoh as to what was in the car that he was driving into Singapore.

Appeal

10 Before us, counsel for Yeoh submitted that the trial judge erred in fact and in law by holding that Yeoh knew it was diamorphine he was importing. He argued that the trial judge failed to give sufficient consideration to the following points:-

(i) That at the Mavesta Apartments compound, Tua Pui in answer to Yeoh's query said that there was one package containing Ecstasy tablets in the car and that it was not diamorphine.

(ii) The fact that Yeoh omitted certain facts in his statements could not mean that his claim, that he did not know he was importing diamorphine, could not be true.

(iii) That Yeoh was not guilty of "Nelsonian" knowledge because he was assured by Tua Pui that the package only contained Ecstasy tablets and was told by Tua Pui not to know where the package was kept and neither should he look for it in the car.

(iv) That the handwritten note was not a "farewell" note as Yeoh did not have death in mind. He was concerned that if he were caught transporting the Ecstasy tablets into Singapore, he would land himself in jail and would not know what to expect.

(v) That it was wrong of the trial judge to attribute guilt just because Yeoh had remained calm throughout the period when the eight packages were uncovered in the car.

Our consideration

11 We propose to deal with these grounds in turn, but in relation to grounds (i) and (ii) we shall consider them together as they are inextricably linked. We would, at this juncture, set out the facts which Yeoh omitted to mention in his statements and which he only alleged at the trial:-

(i) He was afraid that Tua Pui would kill him if he could not repay his debt as Tua Pui had previously said that he had arranged for loan defaulters to be knocked down by vehicles.

(ii) He once had a conversation with Tua Pui in which the latter told him that trafficking in Ecstasy would not attract the death penalty.

(iii) While Tua Pui was handing the car key over to him at the compound of Mavesta Apartments, Yeoh had asked and was told by Tua Pui that there was only one packet of Ecstasy tablets in the car and that trafficking in Ecstasy would not attract the death penalty in Singapore. He said he knew what the penalty in Singapore for trafficking in diamorphine was and would not have agreed to indulge in that.

12 Yeoh sought to explain to the court why these facts were omitted in his statements. Basically, what he said was that he was so shocked and confused when he realized what he had carried in the car that he forgot everything. He also did not mention being coerced into trafficking the drugs as he was not questioned by the officers about that. As for him saying nothing in his s 122(6) statement,

again he said he was so shocked to be charged for trafficking in diamorphine instead of Ecstasy tablets that he did not know what to say.

13 The trial judge did not accept these explanations. Neither did we. If it were true that Yeoh was being deceived by Tua Pui, and we accept that he could thereby be shocked, that should not have prevented him from stating the true position. The truth would have come out naturally. There should be no necessity for anyone to prompt Yeoh to tell the truth. There was a gap of some 7-8 hours before he was asked to give his s 122(6) statement, and there was an even longer lapse of time before he gave his s 121 statement. The fact that it was not mentioned then, and only some months later at the trial, clearly smacked of an afterthought. If, in fact, he was fooled by Tua Pui, then, following the shock, there should have been anger and he would have disclosed all that in his s 122(6) statement instead of having nothing to say. His silence was certainly hard to fathom. In our view, it was a case of being caught red-handed and he had really nothing to say.

14 Turning to ground (iii), we do not think it is possible to set out all the factors that would be sufficient to warrant an inference that an accused person has turned a blind eye. An issue such as this is not amenable to precise elucidation. Much would depend on the circumstances of each case. The most obvious considerations would include the background of the person who handed over the goods to the accused and their previous dealings, and, whether there was an opportunity for the accused to inspect the package. One really cannot generalise and even with regard to each pertinent factor, the weight which the court should give to it may well vary in the light of other circumstances: compare *PP v Hla Win* [1995] 2 SLR 424 with *Yeo Choon Huat v PP* [1998] 1 SLR 217. Even in a case where the accused had no opportunity to inspect, if the circumstances were obviously suspicious, and he could have rejected the request to carry the package, then the latter would be a relevant consideration.

15 The circumstances of the present case were so suspicious that any reasonable person, knowing that trafficking in diamorphine would attract the capital punishment, would naturally have probed more into what he was being asked to carry. All the more so when, according to Yeoh, Tua Pui had threatened him. In any event, the written note of Yeoh confirmed that in Yeoh's own mind, he realized that in undertaking the task for Tua Pui, it could very well be his last journey.

16 This brings us to ground (iv). In order to appreciate whether the note was or was not a farewell note, it is necessary that we set it out in full. We should add that it was written in Chinese and the following is the translation –

"When you all read this letter, I may have left you all forever. Don't feel sorry for me. I have no regret over this. I am tired of walking the journey of life. I have lost my joy, satisfaction or happiness.

A most joyful event in life is to have a partner truly in love with you. As for me, I am always a failure. I have let my past love slip and lost it forever. I

truly regret, upset and feel sorry. Superficially, I appear as if nothing has happened but I do care about this love. Please call 04-6437924 and send my regards to Hui Min. I was in the wrong in the past. I indulged in gambling and neglected her. I lost all my money and no surprise that she left me. I heard that she would be getting married, is it true?

Whenever I see lovers going in pairs, I am envious of them because they are blessed with love of bliss and they know how to treasure each other.

In life, I do not know how to treasure kinship and friendship. I have lost your zeal in doing anything nor bother to show any concern. Sorry to say that kinship and friendship are very hypocritical. When you are rich, people will befriend you and when you are poor, people will despise you. May be I was a bit stupid without realising that all of you care for me.

I feel excited on the very thought of leaving this painful world. It is like freeing myself from such agony. I can give up fame and gain, the gay and material world and finally leave in peace.

Please tell my 3 bosom friends that I am leaving.

1. Lok Lok (Johor)
2. Boon Lee (Johor)
3. Chee Ping (Sp)"

17 Much as Yeoh tried to explain why he wrote the note, we were unable, like the judge below, to accept the meaning he sought to place on it at the trial. He said, having made up his mind to undertake the task for Tua Pui, he realized that if he were caught he would be put in jail. He did not know what to expect in jail, not having previously served any prison term. He explained that the words "leaving this painful world" in the note meant "going to prison". This explanation was extremely tenuous if not incredible. It contradicted the plain words of the note – "when you all read this letter I may have left you all forever"; "I feel excited on the thought of leaving this painful world"; "leave in peace". It is true that he moaned about his failure in his love life. But it seemed to us clear that the entire tenor of the note was that he was prepared to die, writing it after having made up his mind to help Tua Pui drive the car into Singapore. This could only be because he appreciated that, if he were caught by the authorities in Singapore, he would most likely face a capital charge and the death penalty.

18 Turning to ground (v), while the fact that a potential accused remains calm in the face of incriminating evidence being uncovered need not necessarily suggest he is guilty, in the context of the defence raised by Yeoh, that it was only Ecstasy tablets that he was being asked to transport, his conduct of remaining calm was certainly inexplicable. Ordinarily such a person would have, either

by words or action, expressed shock and disgust at being so betrayed or made use of. We accept that how a person would react to such a situation may vary from individual to individual. If this were the only or main ground upon which the trial judge had relied upon to conclude that Yeoh was guilty of the charge, we would have hesitated in affirming it. But when this consideration was viewed together with the other considerations dealt with above, the finding of guilt which the court below had made was really inevitable.

19 Section 21 of the Act provides that if any controlled drug is found in any vehicle "it shall be presumed, until the contrary is proved, to be in the possession ... of the person in charge of the vehicle for the time being". Under s 18(2), any person who is proved or presumed to have a controlled drug in his possession shall, "until the contrary is proved, be presumed to have known the nature of the drug". So the burden clearly fell on Yeoh to rebut the presumption of knowledge, on the balance of probabilities.

20 In the circumstances of this case, not only was there nothing to suggest that the judge was wrong to hold that the presumption of knowledge was not rebutted, it was our opinion that he was correct in coming to that conclusion. The considerations alluded to above overwhelmingly showed that Yeoh knew what he was carrying for Tua Pui into Singapore. He was mentally prepared, as evidenced by his handwritten note, for the ultimate sanction in law should he be caught in the act. There was simply no doubt in the matter.

21 In the result, the appeal had to be dismissed.