

Public Prosecutor v Abdul Kahar bin Othman
[2013] SGHC 164

Case Number : Criminal Case No 8 of 2013
Decision Date : 27 August 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Jean Chan, Lim How Khang and Wong Woon Kwong (Attorney-General's Chambers) for the Public Prosecutor; Johan Bin Ismail (Johan Ismail & Company) and Abdul Rahman Bin Mohd Hanipah (J.R.B. Law LLP) for Accused.
Parties : Public Prosecutor — Abdul Kahar bin Othman

Criminal Law – Misuse of Drugs Act

[LawNet Editorial Note: The appeal to this decision (and to the decision in [\[2013\] SGHC 222](#)) in Criminal Appeal No 4 of 2015 was dismissed by the Court of Appeal on 1 October 2015. See [\[2016\] SGCA 11.](#)]

27 August 2013

Judgment reserved

Choo Han Teck J:

1 The accused claimed trial before me on two charges of trafficking diamorphine under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”). The evidence showed that the accused was driving a motor car (SFZ 1852T) along the slip road from Boon Lay Way into Jurong Town Hall Road on 6 July 2010 at 3.17pm when he was stopped by officers from the Central Narcotics Bureau (“CNB”). He was promptly arrested. The CNB officers took him and his car to a nearby car park at Block 225A Jurong East Street 21. There, SSI Sea Hoon Cheng and SSSgt Larry Tay searched the car (SFZ 1852T). A red carrier bag (“G1”) was seized from the car. The CNB officers found a packet wrapped in newspaper in the carrier bag. The packet was found to contain granular substances. Those substances were sent to the Health Sciences Authority (“HSA”) for analysis and were subsequently ascertained by the HSA to contain 26.13g of diamorphine. This became the subject matter of the first charge.

2 At 4.15pm, the accused was taken to his flat at Block 325 Bukit Batok Street 33 where a search of the flat was conducted by SSSgt Larry Tay and three other CNB officers, namely, SSSgt Jason Tay, SSgt Mohd Hafiz and SSgt Alwin Wong. The accused was residing in the flat with his younger brother and mother. In the accused’s bedroom, a red plastic bag (“A1”) was found beneath the bottom drawer of the accused’s cabinet. A1 contained numerous plastic sachets, a sachet of brown granular substances wrapped in newspaper, as well as a small packet of crystalline substance. A dark blue bag with coloured prints (“A2”) was also found in the same spot beneath the bottom drawer. In it was a light blue plastic bag which in turn contained a purple coloured plastic bag from which two packets of brown granular substances were found. The granular substances from the sachet and packets in A1 and A2 were sent to the HSA for analysis and were found to contain not less than 40.64g of diamorphine. This became the subject matter of the second charge.

3 The CNB officers also found some drug related utensils and equipment in the bedroom. These included a stained metal spoon, a digital pocket weighing scale, an open packet of rubber bands, and

two brown envelopes, one of which had words written on it. A shoe box marked with the brand "Camel Active" was found inside the accused's wardrobe. There was cash amounting to \$59,834 in the shoe box. A separate white plastic bag bearing the brand "This Fashion" was also found in the wardrobe and contained cash amounting to \$9,335.

4 The accused testified that he had an upholstery business and in the course of looking for material for his work, he came to know a person called "Latif" in Malaysia. The accused met Latif on a few occasions and they became good friends. The accused stated that he had no business dealings with Latif. Latif telephoned the accused at 7am on 6 July 2010 and asked to meet at the void deck of the accused person's flat. No reason for the meeting was given. The accused met Latif about 8am and Latif said to him, "I want to ask for your help. I want to go to Jurong. I have something important to do". Latif handed the accused a dark blue bag with coloured prints, A2, and told the accused, "Please keep this bag for me". The accused testified that he asked Latif about the contents of the bag and was told that they were things to do with work and that he had to bring them back to Johor. The accused took A2 from Latif who then instructed the accused to meet him at Joo Koon Circle that same day at 3pm. Meanwhile, the accused kept A2 in a drawer in the cupboard in his bedroom.

5 Subsequently, the accused drove to Joo Koon Circle at the appointed time. Latif walked to the car and the accused handed him the red carrier bag, G1. Latif took G1 and walked to a motorcyclist who had stopped his motorcycle behind the accused person's car. Less than a minute later, Latif returned to the accused and handed G1 back to the accused. The accused asked Latif, "What is this?" and Latif told him that it was something to do with his work in Johor. The accused placed G1 on the floor board of the front passenger seat and was driving home when he was stopped and arrested.

6 From the testimony of the accused, the dark blue bag, A2, that he took from Latif at 8am in the void deck was the bag found in his bedroom, and was the subject of the second charge, while the red carrier bag, G1, found in his car at 3pm was the subject of the first charge. The accused did not deny that G1 which was found in his car was in his possession. His defence was that he did not know that both bags in question contained drugs, thereby implicitly suggesting that the accused believed what Latif had told him, and as narrated in his testimony.

7 The three statements recorded under s 121 of the Criminal Procedure Code (Cap 186, 1985 Rev Ed) (the "CPC") did not mention the accused's defence, and instead contained incriminatory evidence of the accused's knowledge of A1, A2 and G1. A *voir dire* was carried out during the trial as the accused had challenged the voluntariness of the three statements recorded under s 121 of the CPC, and the two statements recorded under s 122(6) of the CPC. The accused alleged that recorder ASP Aaron Tang, and translator Madam Sofia had fabricated the statements, and that he signed because he was told that the money and flat would be seized and confiscated if he did not. The accused was unable to prove that the statements were recorded under threat, inducement or promise, and this was also denied by ASP Aaron Tang as he stated that it was a routine account (Madam Sofia had since died). The accused had contradicted himself by first saying ASP Aaron Tang and Madam Sofia had threatened to implicate his mother, and then by saying that ASP Aaron Tang and Madam Sofia had made the statements up themselves. He then changed his evidence towards the end of the cross-examination in the *voir dire* by saying that ASP Aaron Tang had asked him some questions and he had answered. But he did not know what he had written. I also found that there was specific and elaborate personal information about the accused, his wife and his mother in the statements that could have only come from the accused himself. Hence, I disbelieved him and admitted all five statements into evidence at trial.

8 The accused attempted to convey the impression that detailed enquiry about the two bags was unnecessary because Latif and himself were close friends. However, given the bare facts

narrated above, I had expected the accused to explain *why* he thought that it was unremarkable that Latif needed him to keep two bags of those sizes. The two bags could have easily been carried by Latif. Also, it would have been natural for the accused to have asked what the two bags contained. The accused claimed that he asked, but in this case, should he have been satisfied with Latif's answer that they were "material for his work"? I found that the accused was unable to explain the necessity of keeping the two bags for Latif, thereby leaving a large gap in his defence unexplained, and his defence unconvincing.

9 The accused also tried to portray himself as an innocent friend of Latif. Thus, he disputed the CNB account that he had resisted arrest and that A2 was not concealed beneath the cabinet drawer but placed in the drawer itself, implying that there was no attempt to hide it. He claimed that A2, which contained the two packets of brown granular substances, would not have fit beneath the drawer. No firmer attempt was made to demonstrate this and looking at the photographic exhibits, and the size of the two packets of granular substances, I am of the view that A2 was not too big to be kept beneath the drawer. When it was discovered, the drawer was taken out and photographs of the drawer and the blue bag were taken in the presence of the accused. If the defence was true, the accused would have indicated to the CNB officers where the various articles were found. However, he did not do so. Even if the defence version was true, namely, that all the material found in the cupboard were placed in the drawer and not concealed beneath it, the articles seized would still have to be considered against the entire circumstances of the defence's case as the accused did not seek to explain the circumstances to the CNB officers present, but remained silent (see also [10]). Furthermore, there was a plastic bag that contained drug trafficking paraphernalia. In his statements recorded under s 121 of the CPC, the accused admitted that A2 and the paraphernalia belonged to him, but he retracted this at trial and also claimed that the red plastic bag, A1, was found in A2. This was an attempt by the accused to disclaim knowledge of A1, A2, and their contents, and attribute all of them to Latif. I disbelieved him as this was inconsistent with his earlier statements recorded under s 121 of the CPC and the testimonies of the CNB officers who were at the flat searching his bedroom. The accused maintained that he had only pushed A1 into A2 as A1 was coming out from A2 when Latif handed A2 to him. Yet, he was unable to explain why his DNA traces were found on the interior surface of A1 as well. When questioned further, he said that it was "a long push" which did not help to explain the DNA. As such, I disbelieved his version of events.

10 The prosecution evidence was that the accused was questioned at the car park and asked whether he knew what G1 was, who it belonged to, and what the contents were for, but that the accused had refused to answer any of the questions. When A2 was found in his bedroom, he was again asked about the bag and its contents. Again, the accused refused to answer the questions. In his testimony, the accused said that at the car park, SSgt Mohd Hafiz had only asked one question, namely, "What's this?" and because the accused answered "I don't know", nothing was recorded. Mr Johan, counsel for the accused, submitted that this was because SSgt Mohd Hafiz had hoped for a confession and as he did not get one, he did not make a note of the solitary question and answer. I was not inclined to accept this version of the event by the accused or the explanation by his counsel. I note that SSgt Mohd Hafiz had asked another CPIB officer to sign his notebook to indicate that the questions were asked but no answers were recorded, hence I inferred that the accused had not wanted to answer any questions by SSgt Mohd Hafiz, and SSgt Mohd Hafiz had not attempted to elicit a confession from the accused.

11 If the accused's version of events were true, it was inexplicable why he had chosen not to say anything when confronted with the drugs in his car and in his flat. In his statement recorded under s 121 of the CPC, he stated that he had not replied because he was in "shock". However, nothing would have been more reasonable for a person in those situations to tell the CNB that the bags belonged to Latif if it truly belonged to him. Instead of corroborating his defence that he put before

this court, he elected to remain silent.

12 Another reason why I disbelieved the version of events narrated by the accused and rejected his defence was that he had not given a satisfactory explanation as to how he was found to have \$69,169 in cash in his bedroom. A bank book in the name of his mother was found, not in his mother's room, but in his. That bank account showed that there was sum of about \$100,000 in credit of his 76-year-old unemployed mother. The large sum of money in cash and in the bank book required some explanation. If they were earned from his upholstery business he ought to have accounted for them in some rough way even if he had not kept proper accounts. The accused also testified that the money consisted of earnings when the mother worked as a cleaner in Shangri-La Hotel and allowances from the accused and his siblings. However, I found that explanation to be very weak as he had testified that his mother earned about \$1,000 a month but she was retired by the time of his arrest, and he gave her about \$1,000 a month but could not remember how much his brother gave her. I thus found that the accused was not truthful and failed to account sufficiently for the money and the circumstances of the bankbook in his testimony, and was thereby not convinced by his version of events.

13 Finally, the accused's cautioned statement indicated guilt. There, he stated in his cautioned statement to the first charge –

My family does not know about my activities. My family is not involved in this matter. I hope that my wife in Indonesia can be allowed into Singapore to see me. That's all.

In respect of the second charge he said –

I am sorry I don't change. I have caused problems to everyone especially my family and my wife. Now I cannot look after her; I am sorry to her and my family. That's all.

14 For the reasons above, I found that the accused's defence was not defensible, and that the accused had knowledge of the contents of A1, A2 and G1.

15 The accused did not dispute that he had possession of the diamorphine in his flat and car. According to the statements recorded under s 121 of the CPC, he admitted to possessing the diamorphine for the purpose of trafficking. The CNB officers also found drug trafficking paraphernalia that indicated that he was re-packing and selling the diamorphine that he had received, see also [3]. It could also be inferred from the circumstances and the amount of diamorphine in the accused's possession that the diamorphine was not intended for personal consumption. I found that the prosecution had proved its case in both charges beyond a reasonable doubt and that the accused was possessing diamorphine for the purpose of trafficking. Thus, I found the accused guilty of the two charges and convicted him accordingly.

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