

Public Prosecutor v Mohd Arsad Bin Hassan
[2004] SGHC 67

Case Number : CC 11/2004
Decision Date : 01 April 2004
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Ravneet Kaur and Lee Cheow Han (Deputy Public Prosecutors) for prosecution;
Rudy Gunaratnam (Tan Rajah and Cheah) and Hariprasad Ratnagopal (Harry Elias Partnership) for accused
Parties : Public Prosecutor — Mohd Arsad Bin Hassan

*Criminal Law – Statutory offences – Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ss 5(1)(a), 33
– Whether quantity of diamorphine trafficked exceeded 15 g mandating death penalty.*

1 April 2004

Tay Yong Kwang J:

1 The accused is a 45-year-old male Singaporean. He was tried and convicted on the following charge:

That you, Mohd Arsad bin Hassan on the 8th day of July 2003, at or about 5.15 pm, at the car-park next to Bedok Theatre and Changi Theatre along New Upper Changi Road, Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by selling 6 packets of granular substances containing not less than 46.9 grams of diamorphine to Staff Sergeants Ashari bin Hassan and Mohd Affendi bin Ideris, officers of the Central Narcotics Bureau (CNB) for a sum of \$20,100/-, without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the Misuse of Drugs Act, Chapter 185 and punishable under section 33 of the Misuse of Drugs Act.

As the amount of diamorphine involved exceeded 15g, the mandatory death penalty was passed on the accused.

2 He was originally charged with three others for joint trafficking in the same amount of drugs. The charges against the three others have been reduced to non-capital ones and will be dealt with by the subordinate courts.

The Prosecution's case

3 The evidence of the Prosecution was largely unchallenged as the defence of the accused related only to the amount of heroin he agreed to sell to the undercover officers. He claimed the amount was six packets or sachets and not the one pound and five sachets eventually transacted. I shall set out the undisputed evidence first.

4 On 8 July 2003, at about 11.00am, the two Central Narcotics Bureau ("CNB") officers named in the charge, Ashari and Affendi ("the undercover officers"), and another CNB officer embarked on an undercover operation in which they were to pose as buyers of drugs. As arranged *via* telephone the

day before, they went in a car SCQ 6392D ("the undercover car") to meet the accused outside the Sultan Mosque. They were informed by the accused that he would be wearing a white long-sleeved shirt with brown stripes and sunglasses. After driving past the accused once to make sure he was not known to them, the undercover officers let the third officer disembark a short distance away and then went in the undercover car to meet the accused.

5 The accused got into the undercover car. Ashari, the driver, said he was Nick and introduced Affendi, the front passenger, as Didi. They proceeded to the S-11 coffee shop outside the National Library in Stamford Road where they had discussions over a meal and some drinks. The amount of heroin and the price were agreed. The transaction would take place later in the afternoon in a "left-right" manner, meaning that cash would be handed over upon delivery of the drugs. The accused then asked that he be driven to Bishan and the undercover officers obliged.

6 From the start of the undercover operation, numerous CNB officers were keeping surveillance on all the happenings. The accused alighted along Bishan Street 23 and walked to Sin Ming Industrial Road to meet a female Malay. They bought some food at a coffee shop and then went up a block of flats and entered one of the apartments.

7 At about 4.05pm, the accused and his female companion left the apartment and boarded a taxi along Marymount Road. The female alighted at Toa Payoh while the accused continued travelling in the taxi to the car park next to the Bedok and the Changi Theatres. There he alighted and telephoned Ashari to ask him where he was. Having been told the location of the undercover car in the car park, the accused walked towards it and got into the rear left seat. He then made some calls using his mobile telephone.

8 At about 5.00pm, a blue-coloured motorcycle FU 3654L with a pillion rider arrived at the said car park and circled it a few times. The accused received a call and he alighted from the undercover car. He then walked towards the direction of the motorcycle a short distance away. The pillion rider took out a plastic bag from his sling bag and handed it to the accused. The accused held the plastic bag in his hand and walked back towards the undercover car while the motorcycle left the car park. He did not open the plastic bag to look at its contents.

9 The accused opened the rear left door of the undercover car and hurriedly asked for payment. The undercover officers asked him to get into the car as they wanted to inspect the contents before paying him. The accused sat down in the rear left seat with his left leg outside the car and the rear left door widely opened. He looked around nervously when he handed the plastic bag to Affendi. Affendi opened the plastic bag and saw another plastic bag inside containing a packet wrapped in newspaper and a white envelope. He tore off a small portion of the newspaper and saw heroin in the packet. He then gave the pre-arranged signal by saying the words "*barang baik*" (meaning "good stuff") which Ashari repeated over his mobile telephone.

10 The other CNB officers in the vicinity then moved in to effect arrest. When the accused saw a car approaching the undercover car, he bolted. He was arrested after a short chase and a brief struggle.

11 The white envelope in the plastic bag was found to contain five sachets of white granular substance. The plastic bags and their contents were handed over by Affendi to Inspector of Police Tan Seow Keong ("Insp Tan") who in turn handed them over to the investigating officer, Insp Cheng Chee Piow, at about 1.25am on 9 July 2003 at the Police Cantonment Complex. Subsequently, the packet of yellow granular substance weighing 439.8g was analysed and found to contain not less than

43.59g of diamorphine at a confidence level of 99.9999% while the five sachets of white granular substance weighing 39.31g were found to contain not less than 3.31g of diamorphine at the same confidence level. These added up to the 46.9g of diamorphine mentioned in the charge. Fingerprint analysis of the plastic bags and the large packet of heroin revealed no identifiable fingerprint.

12 The evidence that was in dispute related mainly to what was said between the accused and Ashari relating to the amount of drugs involved in the transaction. In court, Ashari elaborated on his written statement given at the preliminary inquiry. He testified that he was given an undercover assignment to try and purchase heroin from a male Malay known as Jack. He got in contact with Jack in early July 2003. He used the pseudonym Nick.

13 On 6 July 2003, at around midnight, Ashari received a telephone call from the accused who said that Jack used his mobile telephone to call Ashari and that was how he got Ashari's mobile telephone number. The accused identified himself as Arsad and claimed to be Jack's friend. He said he would negotiate with Ashari directly. Ashari was shocked by the call and he terminated it. The accused called a second time and told Ashari, whom he addressed as Nick, not to cut the line off. He claimed that Jack obtained his supplies from him and it would be cheaper if Ashari dealt directly with him (the accused).

14 The accused quoted the price of \$3,800 per set of heroin and was willing to sell a minimum of three sets. He used the words "*kereta*" (drug jargon for one set of ten sachets of heroin) and "set" interchangeably and the words "*barang*" and "*panas*" to refer to heroin.

15 On 7 July 2003, the accused called Ashari but the CNB officer was in the middle of an operation and could not talk to him. Later, Ashari called the accused who told him he had the stuff and could deliver it the following day. He also told him that he charged \$3,800 for one "*kereta*" or set and asked Ashari to take five sets (or 50 sachets or about one pound of heroin) for a total of \$19,000 which was inclusive of delivery. He was aware that Ashari had \$20,000. Ashari assumed he got this information from Jack. The price of \$19,000 for five sets was agreed. The CNB officer told the accused they would deal in the "left-right" manner – the seller was to deliver the drugs and the buyer would then hand over the money in exchange. The accused wanted the transaction to take place the next day.

16 However, Ashari was instructed to meet the accused in the morning first. Ashari therefore called the accused and suggested that they get acquainted before completing the deal. He told the accused that since they were buying in large quantities, he would like to see him personally to arrange the time and the location for the transaction. They agreed to meet at 11.00am on 8 July 2003 in front of the Sultan Mosque.

17 As indicated earlier, Ashari and Affendi went to pick up the accused and they went to the S-11 coffee shop in Stamford Road. There, the accused told the undercover officers that he had good news for them. He would supply one "*batu*" or one pound at a discounted price of \$18,500. He told them one "*batu*" of "*barang*" or "*panas*" could be packed into 50 to 60 sachets. He also offered them another half set or five sachets of heroin at a discounted price of \$1,600. The undercover officers were reluctant to purchase the extra five sachets as they were instructed to buy one pound. Eventually, they agreed to buy the one pound and five sachets offered for a total of \$20,100.

18 Ashari reiterated the terms of the deal and the accused confirmed them. He told the undercover officers to meet him at Jalan Sultan again at past 4.00pm that day. He would call his supplier to bring the drugs there, take them from him and deliver them to the undercover officers in

their car. They were to pay him the agreed amount and then leave the place. Ashari agreed with the plan except the location as he had not received instructions on that yet. The accused asked for \$50 as an advance for his transport and was given the money.

19 After sending the accused to Bishan, the undercover officers returned to their headquarters to brief their superior officers. At about 3.30pm, the accused called Ashari to finalise the location and was told to meet in the car park in Bedok, off New Upper Changi Road. At about 4.30pm, the undercover officers arrived in the undercover car and parked in lot number 637 in the car park as instructed. When the accused arrived in the taxi, he called Ashari who stepped out of the car to wave to him.

20 When the accused was in the undercover car, he asked the CNB officers whether the money was ready. After receiving their assurance, he made some telephone calls, speaking in Malay. Ashari asked him about the mode of transport of his supplier. The accused told him it could be by car, van or motorcycle. The rest of the events happened as described earlier. Ashari added that while Affendi tore off a piece of the newspaper in which the large packet of heroin was wrapped, he did not tear open the white envelope containing the five sachets.

21 Ashari had been doing undercover work in the CNB for the last 16 years. He testified that an undercover officer had to know and speak in drug jargon when dealing with traffickers. Heroin was sold in straws, packets/sachets and sets. Six packets or sachets of heroin, like the five seized during the operation, would have a street value of not more than \$2,000.

22 In cross-examination, Ashari said that the word "*ubat*" was not used by the accused to refer to heroin during their negotiations. The word was old jargon used a few years back. This was despite the accused having used that word in an oral statement to Insp Tan on 8 July 2003. He also said that the accused asked him whether he knew how many packets were in one set and he told the accused there were ten. He did not ask the accused what was meant by "*kereta*" as it was drug jargon or how big the packets were as they came in a standard size of 8g per packet. He assumed the accused knew the size of a packet. He maintained that the deal with the accused was for one pound and five packets and not for six packets of heroin.

23 Ashari agreed that the details about the negotiations were not in his statement tendered at the preliminary inquiry but produced his pocket diary to show that those details were recorded therein not later than one day after the respective events. He did record that the words "*set*" and "*satubatu*" were used.

24 Ashari's evidence was confirmed by and large by Affendi.

25 On 8 July 2003, at about 7.50pm, Insp Tan recorded an oral statement from the accused in Bedok Police Station. Sergeant Alfian bin Idris, one of the CNB officers involved in the undercover operation earlier that day, interpreted for the accused who spoke in Malay. The admissibility of this statement was not challenged by the Defence. It was recorded that Insp Tan pointed to the large packet of yellowish granular substance wrapped with plastic and newspaper and the five packets of white granular substance and asked the accused, "What are these?" The accused answered, "*ubat*". He was then asked what they were for and he said they were to be passed to Nick for \$20,100. He also told Insp Tan that he took the drugs from two persons who were on a motorcycle but he did not know the rider. The pillion rider was known to him as Ali Kong. Insp Tan explained that the envelope containing the five packets had been torn open then and the five packets were taken out and shown to the accused. In cross-examination, it was put to him that the large packet was shown to the

accused with the newspaper intact and not torn. He agreed he did not record that the newspaper wrapping was torn but maintained it was already torn when Affendi handed the large packet to him. In fact, Insp Tan pulled the torn piece to reveal more of the drugs inside when recording the oral statement.

25 On 10 July 2003, at about 2.37pm, Assistant Superintendent of Police Ong Pang Thong ("ASP Ong") recorded a long statement from the accused with the assistance of a certified interpreter. This was done at the Police Cantonment Complex. The drug exhibits had been photographed and weighed in the accused's presence on 9 July 2003. The admissibility of this statement was also not challenged by the Defence.

26 In that statement, the accused stated that he knew he would be dealing in "*enam kereta*" or six "packets" of heroin but did not know the actual weight of the drugs. It was Ali Kong who informed him about the drug transaction to be carried out between 4.30pm and 5.00pm on 8 July 2003. He also stated that on 6 or 7 July 2003, he received a telephone call from Nick saying that Jack had introduced him to the accused for the purchase of drugs. Nick asked for six packets of heroin. The accused knew from Jack that Ali Kong dealt in drugs and therefore called Ali Kong to enquire about the availability of six packets. He was told by Ali Kong that they were available for sale at the price of \$20,000. Nick agreed with the price and asked the accused whether he could obtain further supplies from him in future at a cheaper rate. The accused told him he would check this out with his friend. The accused stated further that he was promised a commission upon the completion of the drug deal but did not know how much that would be.

27 On the day of the transaction, when the accused was handed the drugs by Ali Kong who was riding pillion on the motorcycle, he could not see the contents as there were two plastic bags and the one inside was opaque. He did not open up the plastic bags to check the contents. Ali Kong reminded him to collect \$20,000 cash from the buyer.

28 The accused described Ali Kong as a male Malay whom he got to know through Jack, also a male Malay. He got acquainted with Jack during their time together in the drug rehabilitation centre. He knew Ali Kong for about two to three months before his arrest. Ali Kong gave him his contact number after the introduction by Jack and they kept in touch regularly by telephone.

29 The accused stated that was the first time he had been involved in a drug transaction, that he admitted the charge preferred against him and was remorseful and pleading for a light sentence.

30 Ali Kong is still at large.

The case for the accused

31 The accused was the only witness for the Defence. He testified that he was serving sentence in prison between 1995 and April 2003. He was working as a cleaner before his arrest on 8 July 2003. He was a drug addict but had never sold drugs before the incident in question.

32 When the accused gave his evidence-in-chief in the morning of 26 March 2004, his evidence was somewhat at variance with the Prosecution's evidence where the events of 6 and 7 July 2003 were concerned. However, after the lunch break, when he was cross-examined, he agreed with the Prosecution's version of events on those days. He explained that he tried to remember the events during the lunch break and could now recall them more accurately.

33 He stated that he was under the impression throughout the drug deal that only six packets or sachets of about the same size as the five packets found in the white envelope were involved. Six "*kereta*" of heroin meant six packets of that size to him although he did not know what the weight of such packets was. He knew the standard size of the packets as he was a drug addict. He used to buy heroin in straws of about one inch in length rather than in packets. In his long statement of 10 July 2003, he asked for a lighter sentence as he was still under the impression that only six such packets were involved.

34 The first time he discussed with Nick about the quantity and the price of the drugs was at the S-11 coffee shop in Stamford Road on 8 July 2003. Their previous conversations were only about Nick's interest in purchasing drugs. He called Ali Kong immediately after Nick asked for six packets and was told that the price would be \$20,100. He disagreed with the Prosecution's version of the discussions that took place at the S-11 coffee shop.

35 The first time the accused saw the contents of the plastic bag handed to him by Ali Kong was at the Police Cantonment Complex when the photographs of the exhibits were being taken. He was shocked to see the contents.

36 He was tired, sleepy and confused when he was giving the long statement on 10 July 2003.

37 In cross-examination, the accused said that the current price of one straw of heroin was about \$50. He did not know the current street price of one packet of heroin as he had been in prison for the last eight years. He heard inmates in prison complaining that the price of drugs was very high.

38 He claimed he was not shown the drug exhibits at Bedok Police Station while giving the oral statement on 8 July 2003. On 10 July 2003, he did not tell ASP Ong that he did not know there was so much heroin involved as he was not asked about this by the recording officer and he did not know he had to say that.

39 When asked whether the large packet of heroin was quite different in size and weight from the five smaller packets, the accused agreed that it was so. He said maybe there was something else that Ali Kong wanted delivered in the plastic bag. The thought did not cross his mind as he was rushing to complete his task of handing over the drugs to the buyers. He also trusted Ali Kong not to cheat a fellow drug addict. He would accept whatever commission Ali Kong was willing to give him for the task.

40 The accused did not supply drugs to Jack. He agreed he did ask for an advance payment of \$50 from the undercover officers. He wanted it to top up his pre-paid phone card. He had no idea how much heroin there was in one straw compared to one packet but opined that one could probably get a lot of straws of heroin from one packet.

The decision of the court

41 The accused did not deny he was trafficking in heroin on 8 July 2003. The only issue in contention was whether he intended to sell only six packets containing a total of roughly 48g of drugs or whether the deal was for one pound and five packets of the same.

42 I had no difficulty accepting that the Prosecution's version was the truth. I believed the evidence of the undercover officers, particularly that of Ashari, relating to the discussions over the

telephone and at the S-11 coffee shop. The material portions of that evidence were recorded in Ashari's pocket diary without the CNB officer having a clue about what the accused was going to say in his defence. I also accepted Ashari's evidence concerning the jargon used for drug transactions such as the one here.

43 It was argued that the undercover officers' written statements supported the accused's evidence that the amount and the price of the drugs were first discussed at the S-11 coffee shop and not over the earlier telephone conversations. Both undercover officers stated that, "At the coffee shop, we *negotiated* with [the accused] on the price and quantity of the heroin." [emphasis added]. They then "struck a deal with [the accused]" (according to Ashari). In my opinion, the undercover officers were indeed still negotiating with the accused as the details relating to the time and place of delivery of the drugs had not yet been agreed upon. Further, the amount and the price agreed upon earlier in the telephone conversations were varied by the accused. They therefore had to negotiate at the S-11 coffee shop. A deal was then struck on the revised terms. The accused's version that there was no discussion on the amount and the price before 8 July 2003 contradicted his long statement given just two days after the event.

44 Clearly, the accused, a self-confessed drug addict who was back in the company of drug addicts and traffickers within three months of his release from eight years' incarceration, would know what "*kereta*" and "set" meant. For the same reason, I found it highly incredible that he had no inkling whatsoever about the market price of one packet of heroin of about 8g in 2003. He had mentioned to the undercover officers the price of one set of ten packets at \$3,800 or \$380 per packet. He later offered the undercover officers another five packets for \$1,600, showing that he was aware each packet was worth some \$320 to \$380. If, as he claimed, six packets were to be sold for \$20,100, each packet would cost \$3,350.

45 Ali Kong, like the undercover officers, obviously did not share the accused's alleged misunderstanding that only six packets were involved. Surely, the supplier would know the market price range and would not have quoted such an exorbitant price to the potential buyers who had not given any hint that they were either really stupid or really desperate for drugs.

46 The value of the transaction would have indicated to the accused that a large amount of heroin was involved. If one straw of heroin was worth about \$50, \$20,100 would translate into 402 straws of heroin.

47 The accused's denial that he was shown the drug exhibits during the taking of the oral statement on 8 July 2003 was clearly at odds with his counsel's cross-examination of Insp Tan where it was put to the witness that the large packet was shown to the accused with the newspaper wrapping intact. The accused did not point out to Insp Tan then that he was not aware that such a large packet of heroin was in the plastic bags. He would surely have done so if he was indeed shocked by the amount of drugs seized, which was about ten times more than what he allegedly contemplated.

48 The weight of the contents of the plastic bags handed over to him by Ali Kong would have alerted him to the fact that there could not be only six packets of some 8g each inside. Six such packets would have weighed a total of 48g while the contents weighed some 479g. Even if the weight escaped his attention during his anxiety to complete the job, surely the bulk would not have. He did not have the plastic bags with him for merely a few seconds. He had a short conversation with Ali Kong before walking back towards the undercover car in the car park in Bedok. He did not look into the plastic bags obviously because he knew what was inside – one pound and five packets of heroin,

as arranged with the undercover officers.

49 I was satisfied that the charge against the accused was proved beyond reasonable doubt and I convicted him accordingly. The mandatory death sentence was passed on him.

Accused found guilty and sentenced to death.

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