

Yap Ah Chuan v Public Prosecutor
[2001] SGCA 71

Case Number : Cr App 15/2001
Decision Date : 17 October 2001
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s) : James Bahadur Masih (James Masih & Company) and David Tan Tee Boon (Lawrence Chua and Partners) for the appellant; Raymond Fong (Deputy Public Prosecutor) for the respondent
Parties : Yap Ah Chuan — Public Prosecutor

Judgment

GROUND OF DECISION

This was an appeal from the decision of the Judicial Commissioner Woo Bih Li ("the judge"), in which he convicted the appellant of an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185). The appellant was sentenced to death, as required by s 33 and the Second Schedule to the Act. The appellant appealed against the conviction.

The charge

2 The charge read:

That you, Yap Ah Chuan

on the 19th day of January 2001, at about 1.20 p.m., at Blk 218 Choa Chu Kang Ave 3 #03-246, 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 having in your possession for the purpose of trafficking, 2 blocks, 54 sachets and 1 straw containing a total of more than 15 grams but less than 55.38 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, Chapter 185, and punishable under section 33 of the aforesaid Act.

The offence

3 The substantive offence is found in s 5(1)(a) of the Misuse of Drugs Act, which provides:

5. --(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore

(a) to traffic in a controlled drug

This substantive offence includes the offence of possession of a controlled drug for the purpose of trafficking, as provided for in s 5(2):

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

4 The elements required for the offence are as follows. The *actus reus* is the possession of a threshold amount of a controlled drug. The relevant provision in this case is s17(c):

17. Any person who is proved to have had in his possession more than

(c) 2 grammes of diamorphine

This element must be proved by the prosecution beyond a reasonable doubt.

5 The *mens rea* is the intention to traffic in that controlled drug. The presumption in s 17(c) reverses the burden of proof such that, instead of the prosecution having to prove beyond a reasonable doubt the accuseds intention to traffic, it is the defence which has to show (on a balance of probabilities) that the accused had no such intention. The relevant part of s 17 provides:

17. Any person who is proved to have had in his possession more than

(c) 2 grammes of diamorphine

whether or not contained in any substance, extract, preparation or mixture *shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose (emphasis added).*

The background facts

6 On 19 January 2001, a party of officers from the Central Narcotics Bureau ("CNB") arrived at Blk 218 Choa Chu Kang Central and discovered the appellant at the landing between the fourth and fifth storeys. On arrest, the appellant led the officers to his home and surrendered two packets, 25 sachets and a straw of heroin. Inspector Gary Chan ("Inspector Chan") (PW13) took a statement from the appellant ("the first statement"). The officers searched the apartment and found another 29 sachets of heroin. At this point, Inspector Chan took another statement from the appellant.

7 The particulars of the items found are as follows. It would be useful at this point to adopt and adapt a table from the judges grounds of decision. A final column, labelled "status", has been added.

Item	Exhibit No	Weight (g)	Diamorphine weight (g)	Found	Status
1 sachet	P78	6.26	0.27	Rack in appellants bedroom	Court held it was for appellants own consumption
2 sachets	P79	9.92	0.51	Pouch on rack in appellants bedroom	

1 straw	P80	0.23	0.01		
10 sachets	P81	73.90	4.26	White envelope on coffee table in appellants bedroom	Appellant admitted it was for trafficking
5 sachets	P82	37.49	2.29	Newspaper on coffee table in appellants bedroom	
5 sachets	P83	37.28	2.22		
1 packet	P84	447.20	19.14	White bag in appellants bedroom	Appellant claimed it was for own consumption
1 packet	P85	446.80	17.88		
2 sachets	P86	14.91	0.92	Hazeline Snow box on study table in appellants bedroom	Court held it was for appellants own consumption
29 sachets	P87	216.40	7.88	Cookie tin on table near kitchen	Appellant claimed it was for own consumption

8 The total weight of the drugs found was 1,290.39 g, and the total diamorphine weight was 55.38 g. The appellant admitted to possessing 8.77 g of the diamorphine for the purpose of trafficking. Hence the issue was whether the appellant possessed the remaining 46.71 g of diamorphine for trafficking.

9 The officers also found various paraphernalia used for drug consumption, two mobile phones and two pagers.

10 As mentioned above, the appellant made two statements which were recorded by Inspector Chan. He also made a long statement, recorded in four tranches, which was recorded by the Investigating Officer, Inspector Muruganandam (PW 21). The defence did not challenge the voluntariness of any statement.

The evidence of the prosecution

11 The prosecution called a total of 22 witnesses. The majority of them were Central Narcotics Bureau officers, who gave evidence as to the appellants arrest and the location of the drugs. Others were staff of the Centre for Forensic Science, Health Sciences Authority, who had analysed the appellants urine sample and the drugs. The combined effect of their evidence proved beyond reasonable doubt, that the appellant was in possession of 55.38 g of diamorphine. At this point, the s 17 presumption operated to place on the appellant the burden of proving that he did not intend to

traffic in the drugs.

The evidence of the defence

12 The first point which the defence tried to establish was that the appellant was heavily addicted to heroin. The appellant had been detained in drug rehabilitation centres ("DRC") seven times between 1983 and 1998. He was imprisoned for two years from 1998. During this period, he spent more time incarcerated than free. However, he reverted to his drug habit each time he was released. The table below shows his level of consumption over this period, according to the appellant. It should be noted that the appellants evidence as to the period of detention is not on fours with the records, and in any case, some of the time periods do not make sense. However, these inconsistencies are not material.

Approximate time	Sachets consumed	Grade of heroin
Before 1 st detention (1983)	2 / week	3
After 1 st detention	2 / week	3
Before 2 nd detention (1984)	5-6 / week	3
After 3 rd detention (1986)	8 / week	3
Before 4 th detention (1988)	4 / week	4 (superior grade)
After 4 th detention	8 / week	4
Before 5 th detention (1991)	11 / week	3
After 5 th detention	15 / week	3

After 6 th detention	20-21 / week	3
After 7 th detention	20 / week	3
After imprisonment	2.5-3 / day	3

To support this, the appellants sister, Yap Bee Hoon ("Ms Yap")(DW2) also testified regarding the withdrawal symptoms which she had witnessed in the appellant, and her failed attempts to rid him of the addiction.

13 The appellant claimed that most of the drugs were for his own consumption. Hence the second point which the defence attempted to address was, why the appellant had purchased such a large quantity of drugs from one Ah Boy for his own consumption. The reasons given were:

a As Ah Boy would not supply drugs for three weeks over the Chinese New Year period, the appellant bought a larger amount to tide himself over during that period.

b The appellant wanted to show Ah Boy that he could pay for a large quantity of drugs, so that he could win Ah Boys trust.

14 The third point which the defence tried to establish was that the appellant, though an odd-job painter with a drug habit, could pay \$12,000 for the heroin. It was also alleged that Ah Boy allowed the appellant to have the drugs on credit. The appellant planned to pay by either of the following ways. The first option was:

a He would borrow \$10,000 from his brother-in-law, Goh Hak Hua ("Mr Goh") (DW3).

b He would make a profit of \$1,000 from selling certain exhibits P81, P82 and P83; and

c He would return to work and earn the balance of \$1,000.

If Mr Goh could not or would not lend him the money, the appellant claimed that he could return to work and save about \$10,000 in seven months. He would also sell exhibits P81, P82 and P83. This was his second option.

15 The appellant claimed that the drugs could not have been meant for sale because:

a There was no weighing machine in the appellants bedroom with which the packets could be accurately weighed.

b The packets had not been machine-sealed.

16 The appellant added that one of the mobile phones had been given to him by one Ah Heng, so that

he could contact the appellant when he wanted to consume drugs with the appellant. The appellant also said that both pagers belonged to him, but only one was still in use.

The Judicial Commissioners decision

17 The judge handed down his grounds of decision on 7 August 2001. He first set out the background facts relating to the appellants arrest and the recovery of the drugs. He then set out the gist of the appellants statements to the police. He then documented the proceedings before him.

18 The judge found that the charge against the appellant was proved beyond reasonable doubt for the following reasons:

a He did not believe that the appellant had bought such a large quantity of drugs merely because Ah Boy would not supply him with drugs for three weeks over the Chinese New Year period.

b He did not believe that the appellant had tried to borrow \$10,000 from Mr Goh.

c He did not believe that Ah Boy would not chase the appellant for payment.

d He did not believe that the sachets could not be for sale because they had not been sealed by machine, as the sachets which the appellant had admitted were for sale had also not been sealed by machine.

e The fact that there was no weighing scale in the appellants bedroom was irrelevant, as there was no evidence that buyers would not buy drugs unless they had been accurately weighed.

f He accepted the evidence of the prosecutions expert, Dr Choos opinion that the appellant was only mildly addicted to heroin.

g He did not believe that Ah Heng gave the appellant a mobile phone merely for the purpose of contacting him so they could consume drugs together. He also did not believe that the appellant had terminated the line of his second pager.

h He was not satisfied with the appellants attempt to explain away the inconsistencies between his statements and his evidence, by saying that he had been confused and tired when he gave his statements.

19 We do not discuss points (d), (e) and (g) above as they are minor and we see no reason to overturn the judges findings thereon.

20 The judge also held that 1.81 g of the diamorphine was probably for the appellants own consumption, as these items were not found with the other drugs and were neither in an envelope nor covered with newspaper. The respondent submitted before us that the judge should not have conducted the apportionment exercise, but the status of the 1.81 g of heroin would not have affected the outcome of our decision.

The issues

21 The issues in this appeal were:

- a Whether the appellant was severely addicted to, and consumed large amounts of, heroin.
- b Whether it was believable that the appellant had bought an unusually large amount of drugs on credit, for his own consumption.
- c Whether it was believable that the appellant would be able to pay for the drugs.

22 In dealing with these issues, the following passage from *Public Prosecutor v Lim Ah Poh and another* [1992] 1 SLR 87 was borne in mind:

An appellate court will not disturb findings of fact unless they are clearly reached against the weight of the evidence. In examining the evidence, an appellate court has always to bear in mind that it has neither seen nor heard the witnesses and has to pay due regard to the trial judges findings and their reasons therefor.

The first issue

23 The first question was whether the appellant was severely addicted to heroin. The prosecutions final witness was Dr Choo. Dr Choo had, in a little less than a year, attended to about 1,000 drug addicts at DRCs. He was called to rebut the defences case that the appellant was heavily addicted to heroin, and hence that it was very likely that exhibits P84, P85 and P87 were also meant for the appellants own consumption.

24 Dr Choo first described the withdrawal symptoms associated with mild, moderate and severe cases of drug addiction respectively. He then spoke about the treatment which had to be administered in each case. He also offered an opinion on the average amount of heroin which a mildly-, moderately- and severely-addicted person would consume per day.

25 Dr Choo felt that the following factors pointed to the conclusion that the appellant was only mildly addicted to heroin:

- a Several reports by different doctors at the DRCs stated that the appellant was mildly addicted to heroin.
- b Each time the appellant was in DRC or in prison, he did not have access to drugs. This would mean that, each time he reverted to his drug habit, he would start by consuming small amounts as his tolerance to drugs had not built up. It was hence unlikely that the appellants consumption rate was as high as he claimed it was.
- c Dr Choo and his staff nurse examined the appellant on the day of his arrest and found that his symptoms were consistent with that of mild addiction. He was well enough to be discharged the next day.
- d As Ms Yap testified, the appellant recovered from his withdrawal symptoms

after "cold turkey" treatment. If he had been severely addicted, he would have died as a result of such treatment.

26 The defence did not challenge Dr Choos status as an expert and failed to produce any relevant evidence which rebutted Dr Choos opinion.

27 The second question was whether it was likely that the appellant was consuming 2.5 to 3 sachets of grade 3 heroin a day prior to his arrest for the present charge. This was the evidence given by the appellant at trial. However, in the third tranche of his long statement (recorded on 29 January 2001), the appellant had stated that he smoked a sachet of heroin a day and hence his average monthly consumption was 30 sachets. When cross-examined on this inconsistency, the appellant claimed that he may have been confused as to the quality of the heroin, because if it was of a better grade, he would require fewer sachets. However, as pointed out by the prosecution, the only time during which he consumed grade 4 heroin was 1986 to 1987. There should be no reason for such confusion in 2000.

28 Dr Choo also opined that it was unlikely that the appellant consumed 2.5 to 3 sachets of heroin a day. His rate of consumption was more likely to be 0.5 sachet per day.

The second issue

29 The first question was whether the drugs were for the appellants own consumption or for trafficking. Several parts of the appellants statements suggested that the appellant was trafficking in drugs:

a From the first statement:

Q: Whom does this drug belong to?

A: I safe keep for my friend.

.

Q: What are all these substances for?

A: He call me to pass to people when he contact me. I do not know who will take from me as I will be instructed by Ah Boy.

Q: How much will you earn from all these?

A: About one thousand dollars.

b From para 15 of the second tranche of the long statement (recorded on 26 January 2001):

I have not paid the money to him, as I will have to sell the heroin and pay it to him later. I normally would sell the heroin and pay Ah Boy later. Ah Boy would call me regularly to check if I could pay him his money.

c From para 21 of the third tranche of the long statement (recorded on 29 January 2001):

The profits, which I had obtained from the heroin trafficking, had been loaned out to my friends. For each ball of heroin that I purchase from Ah Boy, I would make about \$3,000 profit.

d From para 27 of the fourth tranche of the long statement (recorded on 30 January 2001:

The other reason why I do not have many customers is because I had just started selling drugs about three weeks before my arrest I have five friends who are living in Teck Whye to whom I sell heroin.

30 The appellant only mentioned the notion of personal consumption in the third tranche of the long statement (para 24):

I would like to say that on the day of my arrest there were two balls of heroin and another 30 over sachets of heroin seized in my flat. All these drug (*sic*) were actually meant for my own consumption.

However, during the trial, the appellant admitted that exhibits P81, P82 and P83 were meant for trafficking. The appellant seemed to have changed his story more than once: he first spoke of his trafficking in general terms, then claimed that all the drugs seized were for his personal consumption, then circumscribed his admissions as to trafficking to exhibits P81, P82 and P83. We found this account unbelievable.

31 The second question was why the appellant bought such a large quantity of drugs if they were merely for his own consumption. Neither reason given by the appellant at trial had been mentioned in his statements. Under s 123(1) of the Criminal Procedure Code (Cap 68), the court could draw any relevant inferences from this failure. The appellants first reason was that Ah Boy would not supply him with heroin for three weeks over the Chinese New Year period. At the trial below, defence counsel submitted that the appellant would take between 60 and 72 days to consume three packets of heroin, and this made the appellants case credible. The prosecutions calculations, based on two packets, 54 sachets and a straw of heroin, concluded that the appellant would have enough to last him more than 51 days. A period of 51 to 72 days can by no means be mistaken for three weeks, and with respect this aspect of the appellants case was not credible.

32 The appellants second reason was that he had ordered a large quantity of heroin from Ah Boy so that, on his making full payment, Ah Boy would think him a reliable customer and trust him. There were many holes in this line of reasoning. The largest one was the premise that the appellant could make payment at all (see the third issue below). It also went against common sense to go to so much trouble to gain Ah Boys trust. Surely the relationship between drug supplier and drug user is of a commercial nature rather than one built on trust. For this reason, the appellants evidence that Ah Boy supplied the heroin to him on credit and did not chase him for payment was also difficult to believe.

The third issue

33 A key element in the appellants first payment option was a loan of \$10,000 from Mr Goh. It should be noted that the appellant did not mention in any of his statements that he had asked Mr Goh for a loan. Once again, the court could draw adverse inferences under s 123 of the Criminal Procedure Code.

34 Mr Gohs testimony also cast some doubt on the truth of this claim. The first issue was Mr Gohs ability to make the loan. In response to a question by the judge, Mr Goh revealed that his personal savings amounted to more than \$10,000 but less than \$15,000. While he may have been able to lend the appellant \$10,000, that would have meant parting with a large part of his savings. Given that the appellant still had not repaid a loan which he had previously taken from Mr Goh, and that the appellant did not hold a regular job, it was unlikely that Mr Goh would see his money again.

35 Secondly, Mr Goh was not sure of, and did not care for, the reason behind the appellants request for a loan. This seemed strange, given the reason above. Under cross-examination, he admitted that he knew of the appellants drug habit, but claimed that it did not occur to him that the appellant might use the money to buy drugs. It also did not strike him that this might undermine the efforts of the appellants family to rid the appellant of his addiction.

36 Thirdly, Mr Goh had not even agreed to the appellants request. He was unable to communicate his decision to the appellant because the latter had been arrested. He was evasive as to his level of willingness to make the loan, and maintained that he would "consider" the appellants present and future requests.

37 As for the appellants second payment option, it was unlikely, given his monthly salary of about \$2,000 and his expensive drug habit, that he could save \$10,000 in seven months.

Conclusion

38 For the reasons above, we dismissed the appeal.

Sgd:
YONG PUNG HOW
CHIEF JUSTICE

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L P THEAN
JUDGE OF APPEAL
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