

23/81

IN THE PRIVY COUNCIL

No. 22 of 1981
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O N A P P E A L
FROM THE COURT OF APPEAL OF SINGAPORE

B E T W E E N:-

TAN AH TEE		<u>First Appellant</u>
	- and -	
LOW HONG ENG		<u>Second Appellant</u>
	- and -	
THE PUBLIC PROSECUTOR		<u>Respondent</u>

C A S E FOR THE RESPONDENT

Record

1. This is an appeal by special leave granted by the Board (Lords Diplock, Fraser and Roskill) on 1st April 1981, from the judgment of the Court of Criminal Appeal of Singapore (Wee Chong Jin, C.J., Kulasekaram, J., Chua J.) dated 10th October 1979 which dismissed the Appellants' appeal against their convictions for trafficking in a controlled drug (section 3(a) of Misuse of Drugs Act 1973) read with section 34 of the Penal Code (Chapter 103) and sentences of death in the High Court, Singapore (Choor Singh and Rajah J.J.) on 22nd September 1978.

2. The Appellants were charged jointly as follows:-

"That you on or about 10.25 a.m. at Singapore, not being authorised by the Misuse of Drugs Act 1973 (No. 5 of 1973) or the regulations made thereunder and in furtherance of the common intention of both of you, did traffic in a controlled drug specified in Class 'A' of Part I of the First Schedule to the Misuse of Drugs Act, 1973 (No. 5 of 1973), to wit, 459.3 grams of diamorphine, and you have thereby committed an offence under section 3(a) of the Misuse of Drugs Act 1973 (No. 5 of 1973) read with section 34 of the Penal Code (Chapter 103)

Record

and punishable under section 29 of the said Misuse of Drugs Act."

3. The case for the prosecution against both Appellants may be summarised as follows.

At about 10.15 a.m. on 3rd September 1976 two officers from the Central Narcotics Bureau kept observation on the First Appellant's car parked near property in Kim Ijam Road, Singapore. The First Appellant was seen to emerge from a building in company with the Second Appellant. The First Appellant was carrying a plastic bag which on reaching his car he handed to the Second Appellant. The Appellants drove off, followed by the officers.

At about 10.55 a.m. the car stopped in Dickson Road. The Second Appellant alighted, carrying the plastic bag and the First Appellant drove off. The officers then arrested both the Appellants. The plastic bag was found to contain heroin which analysis revealed as containing 459.3 grams of diamorphine.

4. Section 15(c) of the Misuse of Drugs Act 1973 provides that any person who is proved or presumed to have had in his possession more than 2 grams of diamorphine (heroin) shall, until the contrary is proved, be presumed to have had such controlled drug in his possession for the purpose of trafficking therein.

5. Following a submission of no case to meet, made on behalf of both Appellants the learned trial judges ruled at the close of the Prosecution case as follows:-

Explain to the two accused that we find that the Prosecution has made out a case against both of them on the charge on which they are being tried, which if unrebutted would warrant their conviction. Accordingly we call upon both of them to enter upon their defence.

Before any evidence is called for the defence we have to inform you that you will be called upon by the Court to give evidence in your own defence. You are not entitled to make a statement without being sworn or affirmed and accordingly if you give evidence you will do so on oath or affirmation and will be liable to cross-examination. If after being called upon by the Court to give evidence you

refuse to be sworn or affirmed or having been sworn or affirmed you without good cause refuse to answer any questions, the Court in determining whether you are guilty of the offence charged may draw such inferences from the refusal as appear proper. There is nothing in the Criminal Procedure Code which renders you compellable to give evidence on your own behalf. You shall accordingly be not guilty of any contempt of court by reason of the refusal to be sworn or affirmed when called upon by the Court to give evidence. We now call upon you to give evidence in your own defence. If you have any difficulty in deciding whether or not you should give evidence on your own behalf, you may consult your Counsel."

6. The Appellants consulted with their Counsel and elected to give evidence. The evidence of each Appellant was to the effect that they did not know what was in the plastic bag and that they were innocent carriers.

7. The Appellants were convicted and sentenced to death. In giving their grounds of decision on 22nd January 1979 the learned trial judges said (at page 14 of Volume III of the Record of Appeal which forms Appendix I to this case):

"At the close of the Prosecution Case, the Prosecution had clearly made out a prima facie case against both accused on the charge on which they were being tried.

Proof of the fact of transporting from Kim Yam Road to Dickson Road coupled with the presumption under section 15(c) of the Act that the Accused were in possession of the heroin for the purpose of trafficking, made out a case which if unrebutted would warrant the conviction of both accused.

In our judgment both accused failed to rebut the case made out against them by the Prosecution. The defence of both accused depended entirely on their credibility. They made a bare denial and claimed innocent involvement in the machinations of Ah Teo alias Ah Pui. We were satisfied beyond a reasonable doubt that both accused were not speaking the truth. In our judgement they knew what they were doing...

We had no doubt at all about the guilt of the two accused and accordingly we convicted them on the charge on which they had been tried."

Record

8. The Appellants appealed to the Court of Criminal Appeal upon various grounds but not on the constitutional issue which is the sole issue upon which leave was granted in this Appeal.

9. The relevant statutory provisions in this Appeal are the same as those set out in paragraphs 2, 3 and 4 of the Respondent's case in the consolidated Appeal of Haw Tua Tau v. Public Prosecutor No. 56 of 1980.

10. The Respondent respectfully repeats and adopts the Argument as set out in paragraphs 16 to 28 of the Respondent's case in Haw Tua Tau (supra).

11. The Respondent further submits that once the Prosecution had proved that the Appellants were in possession of the plastic bag containing in excess of 2 grams of diamorphine it was on the facts of these Appeals incumbent upon the Appellants to give evidence or to call evidence consistent either with their being innocent carriers or to rebut the presumption of trafficking under section 15(c) of the Misuse of Drugs Act 1973.

The facts relating to the possession of the plastic bag were peculiarly within the knowledge of the Appellants. The Respondent submits that there was nothing unfair in requiring the Appellants either to raise at least a doubt in the mind of the court in rebutting the otherwise irresistible inference that they knew what was in the plastic bag or to satisfy the court on the balance of probabilities that they possessed the drugs otherwise than for the purpose of trafficking. The Respondent submits that on the facts of these Appeals there is no practical distinction involved, in the decision of the Appellants whether or not to give evidence, between the statutory presumption and the inevitable inference dictated by common sense.

12. The Respondent respectfully submits that this appeal should be dismissed and the judgment of the Court of Criminal Appeal, Singapore should be affirmed for the following among other REASONS:

(1) The Respondent repeats and adopts mutatis mutandis the REASONS set out in the Respondent's case in Haw Tua Tau supra.

STUART McKINNON, Q.C.

JONATHAN HARVIE.

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- and -

LOW HONG ENG Second Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

CASE FOR THE RESPONDENT

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