Tan Chuan Ten and another
v
Public Prosecutor

[1997] SGCA 16

Court of Appeal — Criminal Appeal No 23 of 1996
Yong Pung How CJ, M Karthigesu JA and L P Thean JA
27 January; 2 April 1997

Criminal Law *— Statutory offences — Misuse of Drugs Act (Cap 185, 1985 Rev Ed) — Possession of controlled drugs — Evidence against co-accused of common intention to trafficking wholly circumstantial — Whether reasonable inference of common intention can be drawn on totality of evidence — Whether defence ought to have been called*

Criminal Law *— Statutory offences — Misuse of Drugs Act (Cap 185, 1985 Rev Ed) — Accused found in possession of controlled drugs — Presumption of trafficking —* Prima facie *case made out — Whether common intention with co-accused material — Section 17 Misuse of Drugs Act (Cap 185, 1985 Rev Ed)*

Facts

Both appellants were convicted of trafficking in heroin under s 5(1)(*a*) read with s 5(2) and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed). The first appellant Tan was arrested in a flat with ten newspaper bundles containing one hundred sachets of heroin. The fingerprint of the second appellant Tong was lifted from one of the ten sheets of newspaper used to wrap the ten bundles. Tong was arrested at a different location. The trial judge inferred (a) from the fingerprint that Tong wrapped that particular bundle of drugs; and (b) that as all the bundles were wrapped in half pages of newspapers of the same date as well as in similar manner, Tong "in all probability" also wrapped all of them and delivered them or had them delivered to Tan, as they were in regular contact with each other. The appellants appealed against their convictions.

Held, dismissing the first appellant's appeal but allowing the second appellant's appeal:

(1) A *prima facie* case had been made out against Tan as he was in possession of the drugs. It was immaterial whether or not he committed the offence in furtherance of a common intention with Tong. The burden was on Tan to rebut the presumption of trafficking, and on the facts, he failed to do so: at [13].

(2) The evidence against Tong was wholly circumstantial. On the totality of the evidence, the inference that could reasonably be drawn were that Tong and Tan met, and that Tong handled or touched one or more of the pieces of newspapers used to wrap the drugs. Although the evidence showed a strong suspicion that Tong might be involved in Tan having possession of the drugs, the evidence on the totality was not sufficient from which the court could reasonably draw the inferences that Tong wrapped and delivered the drugs to

Tan. Therefore a *prima facie* case had not been made out against Tong at the close of the Prosecution's case. His defence ought not to have been called: at [16], [25], [30] and [32].

Case(s) referred to

Foong Seow Ngui v PP [1995] 3 SLR(R) 254; [1995] 3 SLR 785 (refd)

PP v IC Automation (S) Pte Ltd [1996] 2 SLR(R) 799; [1996] 3 SLR 249 (folld)

PP v Oh Laye Koh [1994] 2 SLR(R) 120; [1994] 2 SLR 385 (distd)

PP v Tan Aik Heng [1995] 1 SLR(R) 710; [1995] 2 SLR 244 (refd)

Wong Mimi v PP [1971–1973] SLR(R) 412; [1972–1974] SLR 73 (folld)

Legislation referred to

Copyright Act (Cap 63, 1988 Rev Ed) s 136

Criminal Procedure Code (Cap 68, 1985 Rev Ed) ss 121, 122(6)

Misuse of Drugs Act (Cap 185, 1985 Rev Ed) s 17 (consd);
ss 5(1)(*a*), 5(2), 18(4), 33

Penal Code (Cap 224, 1985 Rev Ed) s 34

Sant Singh (Wee Tay & Lim), Laurence Goh Eng Yau (Lawrence Goh Eng Yau & Co) and Gordon Oh (Chor Pee & Co) for the first appellant;
Surian Sidambaram and Parambir Singh Sekon (K S Chia Gurdeep & Param) for the second appellant;
Arul Selvamalar and Marcus Song (Deputy Public Prosecutors) for the respondent.

[Editorial note: This was an appeal from the decision of Amarjeet Singh JC in the High Court. See [1996] SGHC 281.]

2 April 1997 Judgment reserved.

L P Thean JA (delivering the judgment of the court):

1 The first and second appellants were convicted by the High Court of trafficking in 100 sachets of substance containing a total of 66.42g of diamorphine at Apartment Block 204 Jurong Street 21, #07-255, Singapore, on 17 January 1996, an offence under s 5(1)(*a*) read with s 5(2) and punishable under s 33 of the Misuse of Drugs Act (Cap 185) ("the Act"), and they were sentenced to death. Against their convictions, both the appellants have now appealed.

The facts

2 The relevant facts which are not in dispute are these. On 17 January 1996 at about 7.00pm, officers from the Central Narcotics Bureau ("CNB") arrested the second appellant, Tong Chee Kong ("Tong") whilst he was driving his car number SBY 9666 P along Bedok North Avenue 1. A male Chinese passenger in the car was also arrested. Upon the arrest of Tong, the following items were recovered:

(a) cash on his person amounting to $17,418.80;

(b) two Motorola mobile phone numbers 98235797 and 97245149 respectively;

(c) two pagers numbers 96003857 and 94130199 respectively;

(d) a white plastic bag with two empty plastic bags inside on the floor board of the front passenger seat and

(e) his restricted passport which showed that he went to Malaysia on 12 January 1996 and returned on 17 January 1996.

3 On the same day at about 11.42pm, Senior Staff Sergeant Kanasalingam, Corporal Ey Hock Chin and a party of CNB officers arrested the first appellant, Tan Chuan Ten ("Tan") at Apartment Block 204, Jurong East Street 21, #07-255, Singapore 600204. At the time of the arrest, the following items were found in the flat:

(a) a Marlboro cigarette packet containing two sachets of yellow granular substance;

(b) a white plastic bag labelled "Together we care" containing three bundles wrapped with newspaper, and inside each of the bundles were found ten plastic sachets of yellow granular substance;

(c) a blue "SCV" plastic bag containing seven bundles also wrapped with newspaper, and again inside each of the bundles were found ten sachets of yellow granular substance;

(d) a razor blade cutter, a lighter, an empty straw, a bundle of empty plastic bags, a burnt tin foil paper and a roll of tin foil paper;

(e) a pager and

(f) cash amounting to $3,910.

4 The ten bundles were each wrapped in sheets of newspaper, and all the sheets came from *The Straits Times* dated 11 January 1996. One fingerprint was lifted from one of the ten sheets used to wrap the ten bundles; the fingerprint was found on the inside of the sheet which wrapped the bundle. Assistant Superintendent Lau Yeow Khoon testified that the print was from the left fore finger of Tong. This evidence was not challenged by Tong.

5 All the granular substances were subsequently analysed and were found to contain diamorphine. The two sachets of granular substance (9.55g gross) in the Marlboro cigarette packet were found to contain not less than 0.86g (nett) of diamorphine with a purity content in the region of 9%–10%. The 30 sachets of granular substance (219.2g gross) found in the three bundles in the white plastic bag contained not less than 19.53g (nett) of diamorphine with a purity content of 9%–9.10%. The 70 sachets of

granular substance (512.0g gross) found in the seven bundles in the blue plastic bag contained not less than 46.89g (nett) of diamorphine with a purity content of about 9.3%. The total net diamorphine content of the 100 sachets (from the ten bundles) was 66.42g (nett), which formed the subject matter of the charge.

6 After Tan was arrested, a statement was recorded from him by the investigating officer, Inspector William Chew Khai Chow, with the assistance of an interpreter, Wu Nan Yong. In his statement, Tan merely said: I have nothing to say.

7 As for Tong, the Prosecution sought to admit in evidence a statement recorded from him under s 121 ("s 121 statement") of the Criminal Procedure Code (Cap 68) ("the Code"). The statement was recorded on 27 February 1996 by the investigating officer, Inspector William Chew, with the assistance of the interpreter, Wu Nan Yong. This statement was not challenged by Tong's counsel and was accordingly admitted in evidence. In addition, a statement was recorded from him under s 122(6) of the Code ("s 122(6) statement") and was admitted at the request of the Defence.

8 The relevant portions of the s 121 statement are as follows:

> 3 The last time I met Ah Ngeow [Tan] was about ten over days before my arrest. I did not meet him on the day of my arrest by CNB officers at Bedok. I contact Ah Ngeow through his handphone no 728????. I also contact Ah Ngeow through his pager no 5001868 without using any code number.
>
> …
>
> 5 I met Ah Ngeow about ten over days at the Regent night club in Orchard Road area before my arrest. Both of us had liquor in the night club. We had general conversation and also on horse betting. We went to the night club on our own. I also did not send him in my car after the drinking session.
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> 6 Since that last drinking occasion at the Regent Night Club, I did not see Ah Ngeow because I went to Kuala Lumpur in my car no SBY 9666P. I returned to Singapore on 17 January 1996 and was subsequently arrested. On the day before my arrest, I remember I paged Ah Ngeow. Ah Ngeow returned my call on my handphone no 8235197. I paged him to find out how much was the bill he had paid in our last drinking session at the Regent night club because we used to share the bill. Ah Ngeow told me that he paid over $300 that night. I did not meet Ah Ngeow on the day of my arrest. I still owed him my share of my money of the bill.
>
> 7 I did not give any heroin to Ah Ngeow which were found in his flat. I am now informed that my finger print was found on the newspaper wrapping containing the heroin seized from Ah Ngeow. I cannot explain why my fingerprint was found on the newspaper

> wrapping containing the heroin seized from Ah Ngeow. I do not know why my fingerprint was on the newspaper wrapping.

9 His s 122(6) statement recorded on 29 March 1996 is as follows:

> I did not know that Ah Ngeow is involved in heroin activities. I did not give him any heroin. I always have newspaper in my car and Ah Ngeow has always travelled in my car SBY 9666P. I did not involve in heroin activities. I am a loan shark and a runner for horse betting. I also have my own business. My income from these three sources was more than $15,000 a month. As such I did not have to sell heroin. I am married with a two-year son. That is all.

10 At the commencement of the trial, the charge preferred against both the appellants was that on or about 17 January at about 11.42pm at Apartment Block 204, Jurong East Street 21, #07-255, in furtherance of their common intention, they had in their possession the drugs for the purpose of trafficking and that by virtue of s 5(2) of the Act they committed the offence of trafficking in those drugs. At the close of the case for the Prosecution, the charge against them was amended to the effect that they committed the offence between 11 January and 17 January. The purpose of the amendment is clear. While there was incontrovertible evidence that Tan had possession of the drugs in his apartment at about 11.45pm on 17 January 1996 when he was arrested, there was no primary evidence as to the precise date and the approximate time when Tong allegedly delivered the drugs to Tan. The Prosecution's case was that Tong delivered the drugs to Tan and Tan had possession of the drugs at a point of time during the period between 11 January and 17 January 1996.

***Prima facie* case**

11 As the evidence shows, Tan was found in possession of 66.42g of diamorphine at the time of his arrest. By virtue of s 17 of the Act, he is presumed to have had the diamorphine in his possession for the purpose of trafficking, and by virtue of s 5(2) of the Act, unless the presumption is rebutted, he committed the offence of trafficking in that quantity of diamorphine. Hence, at the close of the prosecution, the trial judge held that a case had been established against Tan which, if unrebutted, would warrant his conviction.

12 As against Tong, the trial judge also held that a *prima facie* case had been made out. From the evidence adduced by the Prosecution he drew, first, the "tentative" inferences that Tong wrapped the bundle containing ten sachets of diamorphine in the half newspaper sheets, as his fingerprint was found on the inside portion of the wrapping of one of the bundles, and, secondly, as all the bundles were wrapped in half pages of newspapers of the same date as well as in a similar manner Tong "in all probability" also wrapped all of them and delivered them or had them delivered to Tan

between 11 January and 17 January 1996, as they were in regular contact with each other. On the basis of these inferences the trial judge held thus:

> The Prosecution had *prima facie* proved that the 100 satches of heroin in the newspaper bundles were received by the first accused and the second accused had delivered them to the first accused. The actual offence constituted by the "criminal act" referred to in s 34 of the Penal Code was possession by the first accused of the heroin for the purpose of trafficking and it was he who committed the said 'criminal act'. Section 34 states:
>
> > 'When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him.'
>
> His intention was to have the heroin for the purpose of trafficking and he trafficked in the same by virtue of the presumption under ss 17(*c*) and 5(2) of the Misuse of Drugs Act (Cap 185).
>
> Section 34, in the circumstances, rendered the second accused liable for the said 'criminal act' as he put the first accused in possession of the heroin pursuant to a prearranged plan and concert which acts constituted the common intention.
>
> Accordingly, the Prosecution had proved *prima facie* that both the accused persons had trafficked in the 100 sachets containing 66.42g of diamorphine.

The appeal

13 In our judgment, clearly a *prima facie* case had been made out against Tan at the close of the case for the Prosecution, and before us it has not been argued otherwise. Even though the charge preferred against Tan and Tong were that, in furtherance of their common intention, they had possession of the quantity of diamorphine for the purpose of trafficking, we think that in so far as Tan is concerned, it is immaterial whether or not he had a common intention with Tong in furtherance of which he committed the offence. He was in possession of the drugs at the material time, and by virtue of s 17 he was presumed to have had the drugs for the purpose of trafficking and by virtue of s 5(2), unless the presumption is rebutted, he committed the offence of trafficking. The burden is on him to rebut the presumption.

14 As for Tong, the position is different. He and Tan were charged that between 11 January and 17 January 1996, in furtherance of their common intention, they had in their possession at Apartment Block 204, Jurong Street 21, #07-255, 66.42g of diamorphine for the purpose of trafficking. There was no primary evidence that Tong was in possession of the drugs at any material time, nor was there any primary evidence on which it can be maintained that he was in joint possession of the drugs with Tan under s 18(4) of the Act. At the time when Tan was found to be in possession of

the drugs, Tong was already in the custody of the CNB officers. He would only be liable for the offence with which he and Tan were jointly charged, if there was in existence a common intention between them in furtherance of which Tan committed the offence. Hence, as against Tong, the essential ingredient of the charge which must be established at the close of the case for the Prosecution was the existence of the common intention between him and Tan. The crucial question therefore is whether this ingredient had been established.

15 At that stage, the criminal act which the Prosecution had proved that Tan committed was the possession of the drugs in his apartment for the purpose of trafficking. As against Tong, the Prosecution had to prove that there existed a common intention between Tan and Tong in furtherance of which Tan committed that criminal act. The common intention need not be the same as or identical with the intention of Tan who committed the criminal act itself, but it must still relate to and be consistent with Tan's intention, and the criminal act committed by Tan must be in furtherance of that common intention: *Wong Mimi v PP* [1971–1973] SLR(R) 412 at [23]. As in most cases, the common intention may be inferred from the primary facts; it may be inferred from any act which Tong did which was part of the criminal act committed by Tan or which facilitated the commission of the criminal act; or it may be inferred from any pre-arranged plan made by them or any evidence showing that they acted in concert.

16 The evidence on which the Prosecution relies is wholly circumstantial. At the risk of repetition, we refer again to the primary facts so as to determine what inferences the court can reasonably draw. Tong knew Tan for more than a year before his arrest. He was arrested at 7.00pm on 17 January 1996, whilst he was driving his car at Bedok North Avenue 1. At the time of his arrest, he had with him the following items:

(a) a sum of $17,418.80;

(b) two handphones;

(c) two pagers;

(d) a plastic bag with two empty plastic bags inside; and

(e) his restricted passport, which showed that he went to Malaysia on 12 January 1996 and returned on 17 January 1996.

17 Later on the same day at about 11.45pm, Tan was arrested and there were found in his possession, among other things, ten bundles each containing ten sachets of diamorphine. All the ten bundles were wrapped in sheets of newspapers and each of them was wrapped in the same or similar manner, and all the ten sheets of newspapers were from *The Straits Times* of 11 January 1996. Each sheet was half a page of the newspaper. Tong's fore fingerprint was found on one of the ten sheets of newspapers; it was on the inside of the sheet wrapping the sachets and on the bottom half of the page

on the right side closer to the centre rather than to the edge of the newspaper.

18 Lastly, there was the s 121 statement made by Tong on 27 February 1996 which was more than a month after his arrest. There, he admitted that he and Tan were friends for more than a year; that the last time he met Tan was "about ten over days" before his arrest; that they went drinking at a lounge; that they went there separately and he did not give Tan a lift home in his car; that he went to Malaysia after their last meeting and returned to Singapore on 17 January 1996; that after his return on the same day, he paged for Tan who later returned his call. In the course of his statement being recorded, he was told that Tan was arrested on the same day with ten bundles each containing ten sachets of diamorphine wrapped in sheets of newspaper, and that his fingerprint was found on one of the sheets of newspaper. However, he could not explain how his fingerprint came to be on that piece of newspaper.

19 In his s 122(6) statement recorded on 29 March 1996, Tong explained that his fingerprint might be on the newspaper because "he always had newspapers in his car and Tan always travelled in his car".

20 The question is whether on the totality of the evidence there can reasonably be inferred a common intention subsisting between Tong and Tan in furtherance of which Tan had possession of the drugs at his home for the purpose of trafficking. The Prosecution submits that the following inferences could reasonably be drawn. Tan did not take any newspaper dated 11 January 1996 from Tong before Tong left for Malaysia on 12 January. Tong met Tan soon after his return from Malaysia on 17 January 1996. Tong had wrapped the drugs with the newspapers and at that meeting he delivered them to Tan. On the basis of these inferences, the Prosecution submits that the essential element of common intention had been established and that Tong acted in concert with Tan in putting Tan in possession of the drugs. In support, the Prosecution relies on *Foong Seow Ngui v PP* [1995] 3 SLR(R) 254, a decision of this court.

21 In that case, L arranged for F to purchase a quantity of heroin from T. Pursuant to the arrangement, T brought the drugs to F's flat and the transaction was consummated there with all three of them being present. After the purchase, F and L began to repack the drugs, and F then took a small portion of the drugs and went downstairs with a view to delivering it to a buyer. At the landing of the lift on the ground floor he was arrested. The CNB officers then went up to F's flat and on entering they found L seated on the floor repacking the heroin with T seated across talking with L. All three of them were jointly charged with having the drugs in their possession for the purpose of trafficking in furtherance of their common intention. At the close of the case for the Prosecution, the trial judge held that while a *prima facie* case had been made out against F and L, no such case had been made out against T. The trial judge found that he could not

draw any irresistible conclusion adverse to T from his proximity to the drugs, in view of the evidence that he was a drug addict. He was of the view that T's presence in the flat could have been for no other purpose than to consume the heroin there. Accordingly, he acquitted T without calling for his defence. On appeal by the Prosecution, this court held that a *prima facie* case had been made out, and that there was some evidence, not inherently incredible, which, if accepted, would establish all the essential elements of the charge and remitted the case to the High Court with a direction that T's defence be called: *PP v Tan Aik Heng* [1995] 1 SLR(R) 710. Upon the case being remitted, the defences of all three of them were called, and at the conclusion they were convicted. They appealed and this court dismissed their appeals.

22 In dealing with the common intention this court said, ([20] *supra*) at [57]:

> As we have said in *PP v Tan Aik Heng*, the Prosecution has invoked s 34 of the Penal Code to establish liability of all the accused for the criminal act, *ie* the offence, committed by one or more of them in furtherance of their common intention. The criminal act was not the sale and purchase of the one pound of heroin that took place between Tan and Foong at the latter's flat through the instrumentality of Lim. The criminal act was the trafficking in the quantity of diamorphine in question at the material time, and the act of trafficking was not any of the acts as defined in s 2 of the Act. The offence here was founded on possession of the drugs for the purpose of trafficking.

The court found that F and L were in joint possession of the drugs for the purpose of trafficking and thereby both committed the criminal act of trafficking in the drugs, and continued at [59]:

> The next question relates to Tan's involvement. On this question, we assume for the moment that Tan was not in possession of the drugs for the purpose of trafficking. On that assumption, Tan would only be liable for the criminal act, if there was a common intention among the three of them, in furtherance of which Foong and Lim committed the criminal act. What then was the common intention? The common intention was to put Foong or Lim or both of them in possession of the drugs. All three of them had acted in concert and there was a pre-arranged plan to bring the drugs to Foong. Prior to delivery of the drugs to Foong, each of them was engaged in carrying out a different act: Tan was engaged in obtaining the drugs for sale and delivery to Foong; Lim was engaged in procuring Tan to come to the flat to deliver the drugs to Foong; and Foong was engaged in asking Lim to obtain the drugs for him. The drugs were eventually brought to the flat and were sold and delivered to Foong. Thus all their separate acts resulted in Foong having possession of the drugs at the material time. As he had possession of the drugs, s 17 of the Act operates and he is presumed to have had the drugs in his possession for the purpose of trafficking and by virtue of s 5(2) he committed the offence of trafficking in the drugs. The resulting criminal act, *ie* the offence, was committed by Foong.

23 In this case the evidence adduced by the Prosecution showed that at or about 11.45pm on 17 January 1996 in his apartment Tan had possession of the drugs. In so far as such possession is concerned, there was clearly no evidence which can really establish the element of common intention. Assuming that it can reasonably be inferred that the drugs were packed by Tong and delivered by him to Tan on 17 January after his return from Malaysia, the delivery could only have taken place sometime before Tong was arrested. At the time when the drugs were delivered to Tan, there was then subsisting the common intention between the two of them to put Tan in possession of the drugs. But, it does not follow that the common intention continued thereafter so long as Tan had possession of the drugs. Having sold and delivered the drugs to Tan, Tong parted company with Tan. Thenceforth, Tong was not concerned with what Tan would do to the drugs, *eg* whether he sold or otherwise disposed of them or whether he kept them for his own consumption or for the purpose of trafficking. When Tan was found to be in possession of the drugs in his apartment at about 11.45pm, Tong was nowhere near there and it certainly cannot be said that there was then still subsisting the common intention in furtherance of which Tan had possession of the drugs.

24 Clearly, it was for this reason that the Prosecution amended the charge by enlarging the period so as to encompass the earlier alleged act of delivery of the drugs by Tong to found the element of common intention. The Prosecution says that at some point in time during the period between 11 January and 17 January 1996 Tong wrapped the drugs in ten bundles with newspapers and delivered them to Tan at his apartment and at the time of delivery there was in existence the element of common intention, *ie* to put Tan in possession of the drugs. If these facts were established, the case would be on all fours with *Foong Seow Ngui* ([20] *supra*) and the Prosecution would have proved the essential element of common intention. The question then is whether there is any evidence, not inherently incredible, which if accepted, would show that Tong delivered the drugs to Tan at a point of time within this period, *ie* between 11 and 17 January 1996.

25 The evidence adduced was wholly circumstantial and the question revolves on what inferences the court can reasonably draw from the primary evidence. A reasonable inference is one which, on looking at the totality of the evidence, one can say that there is a reasonable degree of probability, not just a mere possibility or a strong suspicion, that fact which the court infers did occur. Such an inference does not have to be the only inference that the court can reasonably draw from the evidence. There may be another or other inferences which the court can reasonably draw and any one of them may be relied upon to establish a *prima facie* case.

26 In *PP v IC Automation (S) Pte Ltd* [1996] 2 SLR(R) 799, the accused was charged with various offences of sales and/or distributions of infringing

copies of the complainants' programs under s 136 of the Copyright Act (Cap 63, 1988 Ed). The evidence adduced by the Prosecution was wholly circumstantial. It was held that although it had been proved that the accused had in their possession infringing copies of the complainants' programs there was no evidence of any sale or distribution and accordingly the learned magistrate held that no *prima facie* case had been made out at the close of the case for the Prosecution and he acquitted the accused. On appeal Yong Pung How CJ dismissed the appeal. The learned Chief Justice in the course of his judgment said, at [17]–[18]:

> All that is required at this stage of the proceedings [*ie*, close of the case for the Prosecution] is a minimum evaluation of the evidence as a whole (also see *Ng Theng Shuang v PP* [1995] 1 SLR(R) 407). The totality of the prosecution evidence must be considered. This requirement did not entail picking out all the plums and leaving the duff behind. If the evidence of the witness upon which the prosecution case depended on was self contradictory and out of all common sense or reason, the court is entitled to reach the conclusion that there is no evidence to support an essential ingredient in the charge; alternatively, the evidence may be said to be so inherently weak that it is inherently incredible or manifestly unreliable.
>
> Of course, this will be a question of degree. But what this means is that if there are parts of the evidence which go towards supporting the charge, then that in itself does not assure that there is a case to answer. The state of the rest of the evidence must also be taken into account. To this may be added that at this stage of the proceedings, the assessment of credibility is usually not in issue, unless it had been so shaken that the Prosecution is left with nothing. If the credibility is merely shaken, there remains a case to answer.

27 We respectfully agree with this approach and what the learned Chief Justice said there is equally apt and applicable in determining what inferences the court can reasonably draw from the primary evidence adduced in this case. We find that the circumstantial evidence, apart from the one fingerprint of Tong on the piece of newspaper used to wrap one of the ten bundles, is extremely weak and tenuous, and does not support the inferences which the Prosecution urged the court to draw.

28 Turning to the evidence of the fingerprint the Prosecution relies on the position of the fingerprint. The fingerprint was found on the bottom half of the page on the right side of the newspaper closer to the centre rather than to the edge of the newspaper and was on the inside of the newspaper wrapping the diamorphine. The Prosecution therefore submits that this indicates that the print was made while the diamorphine was being wrapped. But, when one reads a newspaper, one often turns the page and folds it so that one does not have to open up two broad sheets at the same time. And having read a page or pages of the newspaper, one often folds them downwards or upwards into half and then sideways once or twice for

the purpose of carrying or handling the newspaper. Hence, the mere position of the fingerprint on a particular sheet of the newspaper does not lead to an inference that Tong must have wrapped the bundle with that sheet of newspaper and that he must have wrapped all the other nine bundles. It is also relevant to consider that there was no fingerprint of Tong on the outside of any of the wrappings. If he did wrap the drugs, it would be likely that his fingerprints would be found on the outside of the wrappings, since that would be where finger pressure would be exerted. Something more is needed to support the inferences that Tong wrapped the drugs and delivered them to Tan. There is no evidence which lends support to such inferences.

29 It seems to us that even the trial judge had difficulty in drawing such inferences. He drew what he described as his "tentative inferences" that Tong wrapped the bundle of ten sachets of diamorphine in that half newspaper sheet on which his finger print was found and that Tong "in all probability" also wrapped all the other nine bundles. This approach with respect is not correct. The inference must be one which he can reasonably draw from the evidence and the fact that can reasonably be inferred must be one which did occur and not one which "in all probability" occurred.

30 On the totality of the evidence, the inferences that can reasonably be drawn are that during the period between 11 and 17 January 1996 Tong and Tan met, and that Tong handled or touched one or more of the pieces of newspapers used to wrap the drugs. But to draw the further inferences that Tong used the ten pieces of newspaper and wrapped the drugs into ten bundles and delivered them to Tan is a quantum leap, and in our judgment such inferences are conjectural and speculative. All that the evidence has shown is a strong suspicion that Tong might be involved in Tan having possession of the drugs, but the evidence on the totality is not sufficient from which the court can reasonably draw the inferences that Tong wrapped and delivered the drugs to Tan.

31 The Prosecution relies on *PP v Oh Laye Koh* [1994] 2 SLR(R) 120 where this court purely on the basis of circumstantial evidence drew the inference that the accused murdered the victim and held that a *prima facie* case had been made at the close of the case for the Prosecution. In that case, there were several strands of evidence from which such inference could reasonably be drawn. However, such was not the case here.

32 In our judgment, a *prima facie* case has not been made out against Tong at the close of the case for the Prosecution and his defence ought not to have been called. We would therefore allow his appeal.

Defence of Tan

33 We now turn to Tan's defence. Tan gave evidence in his defence, and his evidence, so far as relevant, was briefly this. He was a chronic drug

addict and was in the habit of consuming one sachet of diamorphine a day and the 100 sachets of diamorphine found in his possession were for his own consumption. He started smoking ganja in 1977. From 1980 onwards he consumed heroin. By the time of his arrest he was consuming one sachet of heroin a day.

34 Tan gave an account of how his consumption of heroin escalated. He said that up to 1992 his rate of consumption was between five to six straws of heroin per day. He then bought heroin in straws. After his wife left him in December 1992, he became depressed and his consumption increased. From March/April 1993 he started purchasing one sachet of heroin at a price between $160–$180 to smoke. The sachet would last him between four and five days. From January 1994, his intake further increased and a sachet would last him about two and a half days. From June 1995 he was consuming one sachet plus one straw of the type found in his possession per day. A sachet of heroin (same as the 100 sachets) would make about 17 to 20 of such straws. The straw he used (5.8cm long) with one end sealed would contain more powder than the straw (known as a "suku straw") sold in the market. The "suku" straw is only half as long and of smaller circumference and the equivalent to his straw would be about three "suku" straws of heroin.

35 At the time of his arrest, he was consuming heroin about four times a day to avoid the onset of withdrawal symptoms. Each of the four sessions at every three to four hours would last about an hour or two. In each session he would fill up the straw three or four times from a packet for consumption. His first session would be from about 10.00am. The next would be at about 2.00pm and later in the evening and again at about 10.00pm before he slept, and the process was repeated daily. Each day he would consume one sachet of heroin or 17 to 20 straws. His last consumption of heroin was about 11.00pm, *ie* shortly before his arrest on 17 January 1996.

36 He bought the drugs from his earnings from various jobs. After completing his national service in April 1992 he earned $1,500 per month, working as partner with his brother in his electrical company and thereafter till December 1992 he worked in his wife's company Wei Jade House earning $1,000–$2,000 per month until their separation in December 1992. At the same time he was earning $2,000 to $3,000 per month working three to four nights in a gambling house in Owen Road where he had started working at the age of 15. From 1992 he earned $1,000 to $3,000 per month from his gambling activity. In 1993, however, he only worked by helping out in a billiard room at Maude Road from which activities he earned $50 to $100 per day or about $1,000 to $3,000 per month. As his income was insufficient to support his drug addiction, he started to commit robberies with one Chow Sern Hwee who is now serving a sentence of imprisonment. He was wanted by the police. He also borrowed about between $1,000 to

$3,000 from his two brothers from 1993–1995. On 5 July 1995 his wife gave him $30,000 as his share in the matrimonial home which she sold. The payment was evidenced by an acknowledgement note. He said that of the $30,000 he had used about $15,000 to buy heroin for his consumption since, including the $6,000 he spent on the purchase of the 100 packets found on him on 17 January 1996. Of the balance of $15,000 he had spent $5,000 to pay back his debts. He still had cash of about $3,910 which was recovered upon his arrest.

37 There is no doubt that Tan was a hardcore severe drug addict. After his arrest, two urine specimens of Tan were taken and sent for analysis. It was found that the two urine specimens contained 41.79μg and 41.08μg of morphine per 5ml of urine. Following his arrest Tan was warded in hospital for drug withdrawal symptoms on several occasions. For the period 18 to 22 January 1996 he was warded in Changi Prison Hospital for drug withdrawal symptoms. After his discharge he was brought to the accident and emergency department of Alexandra Hospital for a pre-statement medical examination, but after the examination he was readmitted to Changi Prison Hospital for possible drug withdrawal.

38 On 23 January 1996 he was discharged from Changi Prison Hospital and again brought to Alexandra Hospital for a pre-statement medical examination. He was found to be fit for the recording of a statement and he was brought to the CNB and a s 122(6) statement was recorded from him. Later he was brought back to the lock-up in the Criminal Investigations Department ("CID") after the post-statement medical examination. On 25 January in the CID lock-up he was found lying on his back, shivering and unable to get up. He was again admitted into Changi Prison Hospital. On the following day he was discharged from the hospital. On 27 January he was found curled up in a foetal position in the CID lock-up and was readmitted to Changi Prison Hospital. On admission he suffered two seizures within half an hour and was referred to the accident and emergency department of Changi Hospital. He had a third seizure at the accident and emergency department of Changi Hospital and subsequently had to be placed on an intravenous drip for one day for rehydration. He remained in Changi Hospital until 30 January and was diagnosed to have suffered fits which were induced by heroin withdrawal. On the same day he was referred to Changi Prison Hospital from Changi Hospital and was observed to have lost 10.5kg since 22 January 1996. He remained warded in Changi Prison Hospital till 6 February. He was then reviewed as an outpatient at the Changi Hospital and the final diagnosis of Changi Hospital was that Tan suffered from heroin withdrawal and fits induced by the heroin withdrawal.

39 The trial judge dealt with the medical evidence relating to Tan's withdrawal symptoms in depth and found that soon after his arrest Tan was suffering from severe drug withdrawal symptoms and that his addiction to

diamorphine was severe. We agree entirely with the trial judge's finding and there was indeed ample evidence of Tan's severe addiction. It is unnecessary for us to rehearse all the evidence on this issue which has been fully dealt with by the trial judge.

40 There still remains the question whether on the evidence Tan has rebutted the presumption that he had the drugs in his possession for the purpose of trafficking. It is this burden which the trial judge held that he had failed to discharge. The trial judge did not accept his evidence that all the drugs were meant for his consumption. The quantity of diamorphine was large and on the basis that Tan consumed a sachet a day the entire quantity would last for about 98 days, *ie* three months and eight days or thereabouts. Tan's explanation for buying such a large quantity was that his supplier was about to go into hiding in Malaysia for one to two months. The trial judge, however, did not accept his evidence.

41 As regards Tan's resources to finance his purchase of drugs the trial judge found that the cash reserve from the $30,000 received from his wife in July 1995 had by then dwindled to just under $10,000. His purchase of such a large quantity of drugs at one time was done with a view to trafficking in drugs so as to support his severe drug addiction. The trial judge did not believe entirely Tan's evidence in respect of his income from illegal activities. He was involved in illegal activities at different times and the relevant period was from 1993 to January 1996. Tan stated that his income was between $1,000 and $3,000 per month. The trial judge estimated that probably his income was at the lower range. Being severely addicted to drugs his capacity for work would be affected adversely.

42 The trial judge came to the conclusion that notwithstanding his severe drug addiction a substantial portion of the drugs was intended for sale. Assuming that he required a two-month supply of diamorphine, *ie* approximately 40.5g for his own consumption, there would still be an excess of 25.92g above his needs.

43 For all these reasons, the trial judge found that Tan had not, on a balance of probabilities, rebutted the presumption under s 17 of the Act. We agree with the trial judge. On the evidence the trial judge was justified in making this finding, and we can see no ground for disturbing it.

Conclusion

44 For the reasons given above, we dismiss Tan's appeal but we allow Tong's appeal. We acquit and discharge Tong.

Headnoted by Agnes Tan.