

CRC 5-1989

PUBLIC PROSECUTOR =v= CHEUNG SIU WAH

JUDGMENT

The accused, Cheung Siu Wah, appeared before me on the 6th day of July 1989 charged as follows:-

1. That sometime between the 12th February and 17th March 1989 he did import into the Republic of Vanuatu 50 kilograms of Heroin, an offence contrary to Section 2 of Joint Regulation No. 12 of 1939, and
2. Between the 17th March and 18th May 1989 in Vila, he was in possession of 677 grammes of Heroin, an offence contrary to Section 2 of Joint Regulation No. 12 of 1939.

The accused pleaded guilty to both charges. I accept his plea and convict him on both charges.

In outlining the facts the Public Prosecutor intimated that the charges related to a large scale international operation of a consignment of Heroin from Hong Kong and ultimately to Australia. That it was clear from investigations that not only the accused but a large number of Chinese both in Hong Kong and Australia played a part in the operation. That the organisation dealing with the drugs was linked with the Triad Society in Hong Kong and that the accused had connections with the Triad Society in setting up the enterprise of the importation of the Heroin. Vanuatu was chosen as a staging post for shipment of the consignment because the accused had legitimate business interests here which he could use for the first leg of the consignment of Heroin from Hong Kong to Australia and the organisation in Hong Kong obviously realised a shipment of Heroin from Vanuatu to Australia would attract little interest in Australia. The accused first came to Vanuatu in May 1988 to explore business possibilities. He was associated with a Hong Kong company which had connection with the company Olympic Investments Ltd here. The accused was interested, so it is alleged, in setting up a garment factory here. An application to incorporate a company to commence business was lodged and processed in early 1989 and it, the said Company, provided a front for the importation into Vanuatu of a consignment of sewing machines and a mini bus. In that mini bus was concealed 50 kilos of Heroin and the said mini bus and garment equipment were shipped from Hong Kong to Vanuatu on the ship "South Island 45". The vessel left Hong Kong in December 1988 and arrived in Vila on the 12th February 1989. The Bill of Lading was made out with the accused as consignee. Custom clearance in Vila was not completed until the 17th March 1989. The clearance was carried out by agents. The Heroin was removed from the mini bus by either the accused or two others engaged by him and concealed in the vacuum between the inner and outer lining of a large refrigerator and some was also put in kitchen equipment. The refrigerator came from a Chinese business called the Mandarin Restaurant in Vila which failed in December 1988. The accused played a part in the shipping arrangement for onward consignment of the Heroin to Australia and his name appeared on the Bill of Lading as shipper to Australia, also the name of the person to be notified on its arrival in Australia. The onward consignment left on the 21st April on the vessel "Nimos". Two of the packets of Heroin were not sent to Australia and were later removed from the mini bus in Vila by the authorities in May 1989. That was the saga of the arrival of the Heroin into Vanuatu and its onward shipment to Australia except for the two packages.

However, on the 21st of April the accused, for reasons unknown, decided to fly to Australia and notify the authorities there of the expected arrival of the consignment of Heroin from Vanuatu on the vessel "Nimos". As a result of the information he gave to the authorities the large consignment of Heroin to Australia was intercepted and a number of arrests were made both in Hong Kong and Australia. The accused then returned to Vanuatu in May 1989 and on the 18th May was arrested in Vila. He was interviewed on a number of occasions and after a caution, made lengthy cautioned statements now marked as Exhibit 5. Five photos were exhibited as Exhibit 1 to 5 taken by the custom officers showing where the two packets were hidden in the van. Exhibits 2, 3 and 4 also exhibited are photos taken by the Drug Authorities in Australia.

The last interview the police had with the accused i.e. on 14th June 1989, he stated he was expecting to be paid 20,000 HK\$ per unit for freight from Hong Kong, making a total of 1.5 million HK\$. That he knew the drugs were in the mini bus before it left Hong Kong for Vanuatu. Further that he expected to be paid A\$ 630,000 if the consignment arrived intact in Australia. Examination of the drugs were made by Geoffrey Clarence Williams, Analytical Chemist of the Australian Government and a Mr Peek of his department. Peek's findings are Exhibits 6 (a) and (b) and Williams' are Exhibit 7. Lastly copies of the shipping documents of the consignment to Australia are marked Exhibit 8.

In this case, Vanuatu was used as a stepping stone for the drugs to Australia because it was thought that the Australian Authorities would never expect a consignment of drugs would come from Vanuatu. It nearly succeeded. All countries in the Pacific should learn a lesson from what happened here and be on their guard against the ploys of wealthy drug barons using their country for a similar purpose. The only method I can foresee to thwart the wrongdoer is deterrent sentences. If the sentence is severe then operators may think twice before becoming involved.

Drugs are a plague slowly advancing across the world. I understand most states in America are saturated and that Europe is in an advanced stage of saturation and now the plague appears on our doorstep. It must be stopped and stopped quickly by deterrent sentences to those in any way involved in the advancement of such a plague. In this country the maximum penalty is 5 years imprisonment and a 200,000VT fine. This maximum is grossly inadequate as a deterrent to those involved in the spread of the plague. I strongly recommend to the Government that urgent consideration be given to increasing the penalty to a maximum of life imprisonment as a genuine effort to curb the activities of those involved. Vast sums of money are made from the sale of drugs. Legislation should be introduced in Parliament, as has been done elsewhere, to deprive the offenders of such fortunes. In the case before me, the accused has pleaded guilty to both the importation into this country of 50 kilograms of Heroin and possession of 667 grams of Heroin. He did give information to the Australian drug authorities about the arrival of the drugs into Australia but he did not mention the two packets found in the mini bus and discovered by the authorities here. Consideration is usually given to those who plead guilty but the offence is so grave and the repercussions on the unfortunate persons who take drugs are so terrific that I cannot bring myself to show any leniency to the accused. I impose the maximum punishment laid down by Parliament i.e. 5 years imprisonment on each charge, concurrent and a fine of 200,000VT.

Dated at Vila this 10th day of July, 1989.

*Frederick G. Cooke*

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CHIEF JUSTICE