

Rajagopalan Tamilarasan and Another v Public Prosecutor
[2002] SGCA 9

Case Number : Cr App 21/2001
Decision Date : 18 February 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : Lawrence Wong and A Jeyapalan (assigned) for the first appellant; Tan Teow Yeow and Devendarajan Vivekananda (assigned) for the second appellant; Amarjit Singh (Deputy Public Prosecutor) for the respondent
Parties : Rajagopalan Tamilarasan; Panneerselvan s/o Lallayah — Public Prosecutor

Judgment

GROUNDS OF DECISION

1. The first appellant, Rajagopalan Tamilarasan ("Raja"), and the second appellant, Panneerselvan s/o Lallayah ("Panneer"), were jointly tried and convicted of the following charges respectively:

First charge

That you, Rajagopalan Tamilarasan, on or about the 1st day of March 2001, at about 5.15pm, along Jurong West Street 42, 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 of vegetable matter containing 1648.8 grams of cannabis, 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.

Second charge

That you, Panneerselvan s/o Lallayah, on or about the 1st day of March 2001, at about 4.25pm, at the hawker centre of Blk 347 #01-180, Jurong East, Singapore, did engage with one Rajagopalan Tamilarasan in a conspiracy to do a certain thing, namely, to traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, and in pursuance of the said conspiracy and in order to the doing of that thing, an act took place at the aforesaid place and time, to wit, you gave possession of 2 blocks of vegetable matter containing 1648.8 grams of cannabis to the said Rajagopalan Tamilarasan for the purpose of trafficking, and you have thereby abetted the commission of the offence of trafficking of the said drugs and committed an offence under section 5(1)(a) read with section 5(2) and section 12 of the Misuse of Drugs Act, Chapter 185 and punishable under section 33 of the aforesaid Act.

2. Upon conviction, both Raja and Panneer were given the mandatory death sentence. They appealed against their conviction. After a careful consideration of the circumstances of the case and the evidence presented before the court, both appeals were dismissed for reasons set out below.

The prosecution's case

3. On the afternoon of 1 March 2001, a surveillance was conducted by a Central Narcotics Bureau ("CNB") officer, SSSgt B Chandrasegaran ("SSSgt Chandra"), in the vicinity of Block 347 Jurong East Avenue 1, a food centre in the Jurong East housing estate (the 'food centre'). SSSgt Chandra was instructed to look out for two male Indians. At around 4.25pm, he saw Raja on a motorcycle. Raja parked the motorcycle, alighted and waited for someone. Panneer was seen walking towards Raja with a yellow plastic bag. After reaching Raja's motorcycle, Panneer opened a carrier box at the rear of the motorcycle, placed the yellow plastic bag in it and shut the carrier box. Both men spoke for a short while, after which Raja left on his motorcycle and Panneer returned to the food centre.
4. SSSgt Chandra attempted to trail Raja's motorcycle but lost sight of it at a traffic light junction. He reported this to Insp Sivaraman ("Insp Siva"), who instructed another surveillance team, comprising Sgt Affendi Ideris ("Sgt Ideris") and Cpl D Sivarajaa ("Cpl Siva"), to look out for Raja's motorcycle. At around 4.50pm, Sgt Ideris and Cpl Siva saw Raja's motorcycle parked at the carpark of Block 554, Jurong West St 42. Raja's flat is in this Block. At around 5.10pm, they saw Raja and his wife approaching the motorcycle. Raja rode his motorcycle out of the carpark while his wife walked back to their flat. When informed of this, Insp Siva and his team pursued Raja.
5. Raja stopped his motorcycle by the roadside and appeared to be waiting for someone. At that juncture, he was arrested by Insp Siva and his team. Raja was told to stand beside the carrier box at the rear of the motorcycle. Insp Siva took the keys of the motorcycle and, before opening the carrier box, asked Raja in Tamil if there was anything in the box. Raja replied in Tamil that there was "jamma" inside. "Jamma" refers to "things" generally but is also a street name for cannabis.
6. The carrier box was then opened. Among the things inside were a blue plastic bag containing 61 one-dollar coins and a yellow plastic bag with two blocks of vegetable matter containing cannabis, which were wrapped with transparent plastic. Insp Siva then asked Raja a series of questions in Tamil. Sgt Raj Kumar was the witness. The questions and answers, which were recorded in Insp Siva's field book, are as follows:

Q: What is your name?

A: Rajagopalan s/o Tamilarasan.

Q: What is inside your bike Carrier?

A: Drugs.

Q: What kind of drugs is this?

A: Ganjah (Cannabis) "Jamma".

Q: Who does this Ganjah belong to?

A: It is mine.

Q: What is this Ganjah for?

A: It is for sale.

Q: When did you take this Ganjah?

A: About 10 – 20 minutes ago.

Q: Who did you take it from?

A: I took it from Paul.

Q: Where did you meet Paul?

A: At the Hawker's Centre.

Q: What block?

A: At the Hawker Centre near Esso Petrol Station.

Q: How did you contact Paul to collect the Ganjah?

A: I called him at handphone no: 96101229.

7. Insp Siva read the questions and answers in English and Tamil to Raja. He asked Raja in Tamil whether he understood the contents and invited him to make any changes he desired. Raja signed the field book after he replied in Tamil that he understood the contents and that they were true.

8. At around 6pm, Insp Siva instructed SSSgt Chandra to lead a team of officers to arrest Panneer. When the team arrived at the food centre, Panneer was having drinks beside a coffee stall with another Indian man, Subramaniam. Both men were arrested. Behind Panneer's seat was a steel cabinet, on which two black bags were placed. When questioned by SSSgt Chandra as to who owned the two bags, Panneer claimed that the bag with the letters "SCTS" belonged to him. He denied that the other bag, with the word "Brutini" on it, was his. The "SCTS" bag did not contain anything incriminating but the "Brutini" bag contained nine bundles of vegetable matter wrapped in aluminium foil, a Nokia handphone battery charger, an aluminium wrapper and ten sachets of vegetable matter. Panneer denied that these items belonged to him.

9. A mini sachet of vegetable matter was found in the left pocket of Panneer's trousers. He admitted that it was cannabis and said that it for his own consumption. SSSgt Chandra and his team proceeded to Panneer's flat but did not find anything incriminating there. Another team of officers which had proceeded to Raja's flat also did not find any controlled drugs in the flat.

10. At around 6.52pm, in his office and in the presence of two other officers, SSSgt Chandra asked Panneer three questions in English. Panneer answered these questions in English. The questions and answers were recorded on a piece of paper as follows:

Q: Does the 2 black bags which were recovered from the premises of the hawker centre where you were arrested belong to you?

A: Both bags belong to me. One black bag (Singa China Travel Service Logo) and (Berutini) brand belongs to me.

Q: Do you know what is in the black bag (Berutini) which was seized from you?

A: I know that there is Marijuana in the bag but I do not know the exact amount. I only know that is about 350 to 400 grams of Marijuana.

Q: The other black bag (SCTS) logo, did it contain any drugs before we seized it?

A: The bag contained 2 kilogram of Marijuana which I handed to my friend Raja only a few minutes before my arrest.

11. The questions and answers were read to Panneer, who confirmed that they were true by signing on the piece of paper.

12. Later that night, the seized items were handed over to the Investigating Officer, ASP Soh Thiam Loon ("ASP Soh"), at the Major Investigation Branch. Tests confirmed that the two blocks of vegetable matter found in the yellow plastic bag contained 824g and 824.8g of cannabis respectively. These blocks formed the subject matter of the charges against Raja and Panneer.

13. Raja's wife, Shiyamala d/o Kesavan ("Shiyamala"), who was called as a prosecution witness, testified that her husband had been unemployed after a motorcycle accident in 1996 and that he did odd jobs from time to time. On 1 March 2001, she took the afternoon off from work. She said that while having lunch at home, Raja received a call from his friend, Paul, a name by which Panneer is also known. Raja said that he had requested a loan of \$100 from Paul a few days ago to buy her a birthday gift and Paul had called to ask him to collect the \$100. Shiyamala claimed that she had never seen nor spoken to Paul before.

14. At around 4.30pm, Raja's handphone rang. After answering the call, Raja told his wife that Paul had asked him to meet him in Jurong to collect the \$100. After saying that he would be back home in ten minutes, he left the flat. Around ten minutes later, he called her and asked her to proceed to the ground level of their block of flats.

15. When Shiyamala met Raja downstairs, he was with his motorcycle in the carpark. He told her that he wanted to take her to buy things and added that he had been asked by Paul to deliver a bag to Paul's friend. When Shiyamala asked why Paul could not do it himself, Raja replied that Paul had to go somewhere. When questioned by Shiyamala as to what was inside the bag and to whom it was to be delivered, Raja replied that he did not know. Then another call came through on Raja's handphone. Raja, who said that Paul's friend had called to say that he had arrived, told Shiyamala that he would deliver the bag and return in about ten minutes. He asked her to go back to the flat and change her clothes as she was in her home clothes. He then left on his motorcycle. Shiyamala returned to the flat and waited for Raja. She learnt that her husband had been arrested when CNB officers arrived subsequently at her flat.

16. Ms Irene Ong, an executive with StarHub Pte Ltd, testified that the handphone was registered in Raja's uncle's name but the bills were sent to Raja's address in Jurong West. Records showed that on 1 March 2001, between 1.53 pm and 5.20 pm, six calls were made from Raja's handphone to Panneer's handphone.

17. On 2 March 2001, the Investigating Officer, ASP Soh Thiam Loon, recorded statements from both Raja and Panneer pursuant to section 122(6) of the Criminal Procedure Code (Cap 65). After amendments were made, both signed their respective statements. Raja's statement was as follows:

One person by the name of Paul. Paul told me whether I could help him to bring something. I agreed. Since I am looking after a child, I told him I would be able to help him. At about 4 o'clock in the afternoon, my wife came back. Then I telephoned Paul that I could go and help him to bring whatever thing he gave me. He also said he would pay me S\$100/- if I could bring the item which he give me and hand over to his friend.

Since my wife had already come home, I came out of my house after handing over the child to her. Before which I telephoned Paul where to go and deliver the goods. He asked me where can I go and deliver the goods. I told him near the bus-stop near my house. He told me that I supposed to go and collect the item from him and wait at the bus-stop near my house, and to deliver to a person who would come to see me at the bus-stop. Then I went to see Paul. Paul

came, carrying a plastic bag, yellow colour. I told him I am unemployed and I am taking this S\$100. I told him don't get angry because I know him. I asked for the S\$100 which he promised. He said go and deliver first and he would pay me tonight. He put the plastic bag into a box which was behind my motorcycle. I drove the motorcycle to Blk 554 Jurong West St 42, my house, under my block.

Then I went to speak to my wife. I told her I would come back shortly, as I had to go and deliver some goods near the bus-stop.

I drove my motorcycle to the bus-stop. I was waiting at the bus-stop. Officers moved in and I was arrested. After they took out from the box the plastic bag. Officers showed me the content of the bag was controlled drug.

I told the officer a friend of mine by the name of Paul told me to deliver, without knowing the contents. I am not accustomed to this type of work. I don't involved myself in drugs. That's all. Paul is the one who was arrested and sitting outside now.

18. As for Panneer, his statement was as follows:

Around 3-something afternoon, I went for a beer with my workers. After that, a guy from Malaysia came down and see me. He came down and he bring two bags. So he put down there, sit down with me for a while, on the beer cabinet. I know Raja two or three months only. He said: Paul, I am going out for a while. I'll come back in half-an-hour time. Before that, he said his friend, Raja, will call me. He said pass this yellow plastic bag to him. I never said what is inside. The other bag was on the same beer cabinet.

After I met Raja, Raja called me first. I went to see him, he came in a motorbike. Then he opened the box at the back of his motorcycle. Then I just said your friends asked me to pass to you. He also never checked what is inside.

He took just the yellow plastic bag and left in his motorbike. Then I came back to the same location, the hawker centre. I was drinking again with my worker and brother. They also left already. Suddenly a lot of people came into where I was sitting. They said they are CNB. They said "you just now put the yellow plastic bag inside the box." They asked whose bag was on the beer cabinet? One officer said: don't bullshit, this is yours. Because in the other bag, the black bag, you got this one belong to who? So I said nobody. Then the officer took another bag and asked what is this? So I said this is my friend's bag (the Malaysian friend, same guy).

Then they said they wanted to spot-check the house. So they came to my house. Nothing was down there. So they bring to narcotic that side to investigate. To tell the truth, I am an asthmatic patient. Casually, once in a blue moon, I would take marijuana for my asthma. I buy rations of \$0.20 for my own consumption. That was in my pocket. But the Malaysian guy never come back. So I told the CNB this is what happened.

19. Raja's evidence was similar to what he had said in his section 122(6) CPC statement and to his wife's account of what had happened on the day in question. He said that he got to know Panneer or Paul about two or three months before 1 March 2001 through a friend. On 28 February 2001, the day before their arrest, he had asked Panneer for a loan of \$100 to buy his wife a birthday gift. Panneer said that he would call Raja when he had the money.

20. Raja said that on 1 March 2001, Panneer called him on his handphone and asked if he was free. After the initial phone call from Panneer, he made several calls from his handphone to the latter on the afternoon of 1 March 2001. At 1.53pm, he called Panneer, who said that he was renovating his mother's flat in Jurong East. Panneer asked him whether he could deliver some things to a friend. At 1.57pm, Raja called Panneer to inform the latter that his wife would be returning early from work and that he would be able to deliver the things. After his wife returned home, Raja called Panneer at around 3.44pm to ask where he was to go to deliver the things. When he was leaving his flat, at around 4.26pm, he called Panneer again and was told to proceed to the food centre in Jurong East. He called Panneer again at 4.58pm when he did not see the latter after he arrived at the food centre in Jurong East.

21. Raja said that he did not see what was inside the yellow plastic bag which Panneer placed into the carrier box at the rear of his motorcycle. He said that he was not suspicious about the delivery because he was not paid for his services. He insisted that the \$100 that Panneer was to hand over to him that night was a loan and not the payment for delivering the bag.

22. Raja's account of what transpired upon his arrest was as follows. He was intercepted by a CNB car while he was waiting by the side of the road for the intended recipients of the yellow plastic bag. Three or four men alighted from the car and someone said that they were from CNB. He was then handcuffed. Insp Siva asked him whether there was anything inside the carrier box and he replied in Tamil, "There is thing." Someone opened the carrier box and he heard the words "confirmed, ganja" and "cannabis".

23. Raja said that his handphone and wallet were seized and he was told to sit on the kerb. Insp Siva asked him whether the things in the yellow plastic bag were his. As he could not see what Insp Siva was pointing at, he was told to stand up. It was only then that he noticed the contents of the plastic bag. He denied having answered "drugs" or "ganja".

24. Raja claimed that Insp Siva did not ask him the third, fourth and fifth questions recorded in the field book. He added that the sixth question was "When did you take the yellow bag?" and not "When did you take this Ganja?", as was recorded. Furthermore, the word "ganja" in the tenth question should be replaced with the word "bag". He asserted that Insp Siva did not use the word "ganja" at any time. He also pointed out that when Insp Siva asked, "Do these things belong to you?", he replied that the bag and the spray in the box were his but the yellow plastic bag had been handed over to him by Panneer. Finally, he denied that the questions and answers recorded in Insp Siva's field book were read back to him and claimed that he signed the book when told to do so, without knowing what he was signing.

The second appellant's case

25. Panneer's case is as follows. On the morning of 1 March 2001, he was doing some rewiring work in his parents' flat in Jurong East, together with his elder brother, Rajinthan, and a friend, Segar. They then proceeded to the food centre for lunch. Another friend, Subramaniam, joined them for lunch. Thereafter, Panneer asked Rajinthan and Segar to buy cement, wire and paint from a shop

nearby. He also asked Rajinthran to collect his winnings in the 4D lottery for him.

26. While alone with Subramaniam, Panneer received a call from Malaysia from a friend called Ravi, who wanted something to be sent to Jurong and was willing to pay \$100 for that to be done. Ravi said that he would meet Panneer at about 4pm.

27. Panneer said that he called Raja to ask whether the latter was free to run the errand. He said that he called Raja because the latter had asked for a loan of \$100 on the previous day. Raja said that he would call Panneer when his wife returned from work. Subsequently, Raja called and said that he would be available after 3pm.

28. Rajinthran and Segar returned to the flat to continue with the rewiring works while Panneer and Subramaniam remained at the food centre. Later on, Subramaniam also left to collect his own winnings in the 4D lottery and returned to the food centre at about 5pm.

29. Panneer said that at around 4pm, Ravi arrived at the food centre with two bags. After placing the bags on the cabinet, Ravi joined him for a drink. Ravi, who pointed to the bags and said that there was something inside to be delivered to someone, added that he could not do it himself as he was busy and was unfamiliar with the Jurong area. His two friends (the intended recipients) were also busy.

30. Raja then called Panneer to say that he had arrived at the carpark of the food centre. Panneer said that he told Ravi that he could not run the errand and that he had asked a friend, who was waiting at the carpark, to do it. Ravi opened one of the bags on the cabinet, took out a yellow plastic bag and passed it to him. Panneer claimed that he could not look inside the plastic bag as it was knotted at the top.

31. Panneer took the yellow plastic bag to Raja and told the latter that the plastic bag was to be delivered to Jurong West, as indicated by Ravi. Raja suggested a bus-stop along Jurong West St 42 as that was near his flat and that would be convenient for him. Ravi would call his friends to meet Raja at the designated bus-stop to collect the yellow plastic bag.

32. Panneer said that when Raja asked him for the \$100 loan, he told Raja to meet him in the evening to collect the money. He then returned to the food centre and asked Ravi about the \$100 promised by him. Ravi, who said that he would go and get the money, left the two bags at the food centre with Panneer. At around 5pm, Subramaniam returned to the food centre and sat down to have drinks with Panneer.

33. Panneer said that a short while later, the CNB officers arrived. SSSgt Chandra asked him if he had placed anything in Raja's motorcycle and he replied, "Yes, is there any problem?" The CNB officer then asked him, "Do you know that there are two kilos of ganja inside?". He replied, "I don't know." The officers then searched his body and found a small amount of cannabis in his pocket.

34. Panneer claimed that when he put the yellow plastic bag into the carrier box on Raja's motorcycle, he had no idea that the bag contained drugs. When cross-examined, he said that Raja did not look inside the yellow plastic bag and that he did not tell Raja what the contents were as he had no knowledge of the contents.

35. During cross-examination, Panneer said that he came to know Ravi, through another friend, Govind, about two years ago, and had met him four or five times. He added that Ravi gave small amounts of cannabis to Govind, who shared the drugs with him. After Govind migrated to Australia,

Ravi called Panneer and asked if he wanted cannabis. Panneer told Ravi to bring small amounts. Panneer also borrowed money from Ravi. As such, he claimed that when Ravi asked for a favour in delivering the yellow plastic bag, he agreed to help him without asking what its contents were.

The appeal

36. Both Raja's and Panneer's grounds of appeal against their conviction and sentence centred around the judge's assessment of the evidence. The key issue in this appeal was whether or not the appellants had, at the relevant time, the requisite knowledge that the yellow plastic bag contained cannabis. Counsel for both appellants contended that the trial judge failed to give sufficient weight to the appellants' evidence in court and erred when he relied on their statements to the CNB.

37. The trial judge accepted the prosecution's evidence that Raja answered the questions posed to him by Insp Siva in the presence of Sgt Raj Kumar and that all the questions and answers had been dutifully recorded. That Raja was in physical control of the drugs was not in dispute. His voluntary answers were incriminating and showed that he knew that he was delivering drugs.

38. An attempt was made to cast doubt on Insp Siva's credibility by pointing out a number of inconsistencies in his testimony. The trial judge, who had the benefit of assessing the witnesses, did not think that the inconsistencies were material. He did not believe Raja's evidence in court regarding his statements. There was no reason for this court to overturn the finding of the trial judge in this respect.

39. The available evidence showed that Raja had the drugs for the purpose of trafficking. There was thus no need for the prosecution to rely on the presumption in section 17(d) of the Misuse of Drugs Act (Cap 185). Raja's claim that he had agreed to deliver the yellow bag without knowing what it contained is not believable. Despite having had several phone conversations with Panneer and after having met the latter to collect the plastic bag, he made no attempt to find out the contents of the bag. The overall circumstances of the case were suspicious and gave rise to the reasonable inference that this was a well-organised plot. Raja must have known beforehand that he was delivering drugs.

40. As for Panneer, his counsel asserted that the trial judge erred in failing to consider whether or not the yellow plastic bag placed into the carrier box of Raja's motorcycle and its contents were the same plastic bag and contents that were subsequently recovered by Insp Siva and his team after Raja's arrest. It was contended that this doubt arose as SSSgt Chandra lost sight of Raja's motorcycle for a while. This contention is without merit. This issue was considered carefully by the trial judge. We agreed with his finding and with his reasons, which were stated in para 136 of his judgment as follows:

I accepted the First Accused's (Raja's) evidence that the carrier box of his motorcycle was shut but not locked even after the yellow plastic bag was placed in it by the Second Accused (Panneer). It was evident that a third person would not know it was not locked unless he tried to open the cover of the carrier box. The First Accused rode his motorcycle from Blk 347 back to Jurong West St 42. The CNB officers lost sight of him and his motorcycle for only about 18 minutes between 4.32 pm and 4.50 pm. The First Accused did not say that anyone had gone near his motorcycle. When the motorcycle was parked at the motorcycle lots between Blks 552 and 554, it was obvious that a careful man like the First Accused would have made sure that he could still keep an eye on his motorcycle. After all, even if he knew nothing about the contents of the yellow

plastic bag (which was clearly not the case), he had money kept in the carrier box and \$61 could not be a small amount for someone who had to importune the Second Accused for a \$100 loan. I had no doubt that the yellow plastic bag and its contents found by Insp Sivaraman at the point of arrest were the same ones placed by the Second Accused at Blk 347.

41. The answers given by Panneer to the questions posed by SSSgt Chandra at the police station after his arrest clearly showed that he was aware of the contents of the yellow plastic bag and the two black bags which was recovered from him upon his arrest at the food centre. The recording of the questions and answers was witnessed by Sgt Raj Kumar and SSgt Azman. No inducement, threat or promise was alleged by Panneer.

42. In response to SSSgt Chandra's first question, Panneer said that both the SCTS bag and the Brutini bag belonged to him. Subsequently, he claimed to have given that answer because Sgt Raj Kumar had insisted earlier on that they belonged to him. This claim was validly rejected by the trial judge because at the scene of his arrest at the food centre, Panneer had said that the SCTS bag was his while the Brutini bag was not. The clear and logical inference was that Panneer knew at the time of his arrest that the SCTS bag had been emptied of the yellow plastic bag and that its contents were already with Raja, and that the Brutini bag contained incriminating evidence. There was no allegation that any of the CNB officers had threatened him in any way.

43. Evidently, the trial judge could not be faulted for deciding that the prosecution had succeeded in showing that Panneer had conspired with Raja to traffic in the drugs and that he had abetted the offence committed by Raja. Although there was no direct evidence of the conspiracy, the words and actions of the two men showed that they pursued a common objective and gave rise to the inference that their actions must have been co-ordinated. Their plan was evident from their constant communication on the afternoon of 1 March 2001 before they were arrested. Both of them played their part in delivering the drugs from one place to another.

Conclusion

44. As it was not established that the trial judge had erred in convicting Raja and Panneer of their respective offences, both their appeals were dismissed.

Sgd:

YONG PUNG HOW
Chief Justice

Sgd:

CHAO HICK TIN
Judge of Appeal

Sgd:

TAN LEE MENG
Judge

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