

Public Prosecutor v Shanmugam s/o Murugesu
[2004] SGHC 88

Case Number : CC 13/2004
Decision Date : 04 May 2004
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Ravneet Kaur and Lee Cheow Han (Deputy Public Prosecutors) for prosecution; N Ganesan (N Ganesan and Associates) and Rajah Retnam (Rajah Retnam and Co) for accused
Parties : Public Prosecutor — Shanmugam s/o Murugesu

Criminal Law – Statutory offences – Misuse of Drugs Act – Whether accused able to disprove presumptions of possession and knowledge of nature of drug on balance of probabilities – Whether accused had imported one or six packs of cannabis – Misuse of Drugs Act (Cap 185, 2001 Rev Ed) s 18(1), s 18(1)(a), s 18(1)(b), s 18(2), s 21

4 May 2004

Tay Yong Kwang J:

1 The accused is 37 years old. He is a Singapore citizen. He was tried and convicted on the following capital charge:

That you, Shanmugam s/o Murugesu, on the 29th day of August 2003, at or about 5.35pm, in a motorcycle bearing registration number F7300G at A2 Green Channel, Lane number 34, Tuas Checkpoint, Singapore, did import into Singapore, a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, 6 packets of vegetable matter which were analysed and found to contain 1,029.8 grams of cannabis, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 of the Misuse of Drugs Act, Chapter 185 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

The Prosecution's case

2 At about 5.30pm on 29 August 2003, a Friday, the accused rode his motorcycle bearing registration number F7300G from Johor to Singapore *via* the Tuas Checkpoint. After clearing the passport section, he rode on through the Green Channel Lane 34, appearing to have missed Immigration and Checkpoints Authority ("ICA") officer Ng Chong Ling's hand signal to stop for an inspection. Ng then called out to his colleague, Mohamed Yusri bin Osman ("Yusri"), stationed a short distance further down the said lane, to stop the accused and check his motorcycle. Yusri did so.

3 The accused turned off the ignition and removed the key from his motorcycle. He was asked to open the left side carrier box and he did so using the key. Yusri did a quick check and found nothing suspicious inside that box. He then asked the accused to open the right side carrier box. The accused opened it using the same key. Inside that box, Yusri felt something hard underneath a black raincoat and he asked the accused to take it out. The accused took out a blue-coloured plastic bag from the raincoat. It contained a packet of greenish vegetable matter. Yusri asked the accused what the packet was and the accused replied in English, "Give me a chance, sir." Yusri did not know what he meant by that. Yusri also found a packet of prawn crackers inside the same box.

4 Yusri then called out to Ng Chong Ling ("Ng") who walked over to the motorcycle. Yusri showed him the packet of greenish vegetable matter. Ng then asked the accused to hand over his passport. Ng asked the accused whether the packet belonged to him and he replied, "no" and added that he might have taken a wrong packet when he was buying prawn crackers from a shop in Malaysia. Ng escorted the accused to the custom inspection pit nearby which was like an enclosed garage with shutters at the front. The shutters were up at that time and the accused pushed his motorcycle inside. He was still holding on to his bunch of keys. Two Gurkha officers with machine guns were standing guard near the inspection pit.

5 Ng then brought the accused and the packet of vegetable matter to the duty office. There, Ng briefed Assistant Superintendent of Police Neo Cheng Hue ("ASP Neo"). ASP Neo asked the accused what the substance in the packet was and he replied in English saying he did not know. As ASP Neo was attending to another case, he told Ng to bring the accused and the packet to the Central Narcotics Bureau ("CNB") office to verify the contents of the packet.

6 At the CNB office, Ng handed over the accused's passport and the packet to Sergeant Ravichandran and briefed the CNB officer about the case. Ng then left the office and resumed his duty outside.

7 Sgt Ravichandran asked the accused in Tamil what was inside the packet. The accused replied in Tamil that he did not know. Sgt Khairy then walked over and was briefed by Sgt Ravichandran. The two CNB officers then placed the accused under arrest and handcuffed his hands at the front of his body. Sgt Khairy searched the accused and found a bunch of keys and a wallet in his pockets. He also took custody of the accused's passport and the packet found in his motorcycle earlier.

8 Senior Staff Sergeant Jazuli was called to assist in the case. He arrived a short while later with Corporal Neeta Rai who kept a record of the timing of the various events. Cpl Neeta Rai was instructed to inform the officer from the Police Dog Unit to bring a sniffer dog to the said inspection pit.

9 At about 6.10pm, Sgt Ravichandran, SSSgt Jazuli and Sgt Khairy brought the accused to the inspection pit. Sgt Khairy held on to the accused's bunch of keys and the packet of vegetable matter. The officer from the Police Dog Unit brought his dog there. Yusri also joined them there.

10 The dog showed interest in the left side of the motorcycle. Sgt Ravichandran and SSSgt Jazuli then put on gloves and conducted a more thorough search of the motorcycle. Sgt Ravichandran took the bunch of keys from Sgt Khairy and, after the accused had confirmed that one of them was the motorcycle's key, handed the bunch to SSSgt Jazuli.

11 SSSgt Jazuli used the key to open the seat compartment of the motorcycle and found four packets of vegetable matter wrapped in plastic bags. Sgt Ravichandran found a haversack in the left carrier box from which he retrieved another packet wrapped in a plastic bag. The accused appeared calm while all this was taking place.

12 The officers then brought the accused and the total of six packets of vegetable matter back to the office of the ICA. There, the six packets were weighed in the accused's presence. They had a gross weight of 2.031kg.

13 The officers brought the accused and the drug exhibits to the CNB office. Three other CNB officers were there. While escorting the accused to obtain urine samples from him, Sgt Ravichandran

asked him in Tamil whether he smoked cannabis and he said he did. An instant urine test conducted on the accused's urine sample showed evidence of consumption of cannabis.

14 Staff Sergeant Karlson Teh, the Assistant Officer in Charge of Operations, CNB, at Tuas Checkpoint, ascertained that the accused wished to speak in Tamil. He then instructed Sgt Ravichandran to ask the accused some questions. While Sgt Khairy stood guard over the accused who was seated in front of Sgt Ravichandran across a table, Sgt Ravichandran asked the accused certain questions in Tamil and the accused replied in Tamil. The six packets recovered from the motorcycle were placed on the table in front of the accused. The questions and answers were recorded by Sgt Ravichandran in English in his pocket book as follows:

Q1: What is inside the six bundles?

A1: Ganja.

Q2: Who does this bundles belong to?

A2: Don't know.

Q3: Where did you get the 6 bundles from?

A3: From a toilet in JB Esso station.

Q4: Who do you supposed to deliver to?

A4: To nobody.

Q5: What are you going to do with the 6 bundles?

A5: I has to deliver it to Fort Road and place it at one of the pillars under Sheares Bridge.

Q6: Who will collect the 6 bundles?

A6: I need to call Mok, a Chinese in his thirties to confirm that I had placed the 6 bundles at the pillar. I then supposed to go away from the place. I do not know who collect.

Q7: How much do you get for doing this?

A7: \$2,000.

Q8: How the money will be given to you?

A8: Mok will call me within an hour, to collect my money from the same pillar where I place the 6 bundles. That is all.

15 Sgt Ravichandran pointed to the six packets as he was questioning the accused. He asked the accused whether the \$2,000 was in Singapore or Malaysian currency and the accused confirmed it was the former. At the end of the session, as requested by the accused, the CNB officer turned his pocket book to face the accused and flipped the pages for the accused as he read the recorded questions and answers himself. The accused was then asked whether he wished to make any alterations or additions. He declined to do so. He then signed in the pocket book. The recording took place between 7.15pm and 7.45pm.

16 Sgt Ravichandran and all the CNB officers present in the office during the recording of the questions and answers denied that he or any of them had shouted at the accused or that one of them had swung an arm to hit his head before the recording. Sgt Ravichandran denied he abused the accused in Tamil and slapped him. He testified that the accused did not say he brought in only one packet. The CNB officers also denied that one or more of the others present also asked the accused questions during the session. However, the accused, through his counsel, maintained that he was not challenging the admissibility of the questions and answers.

17 At about 9.45pm, a team of CNB officers left the checkpoint with the accused to conduct follow-up raids. Sgt Ravichandran took over custody of the six packets of vegetable matter which had been marked for identification. They went to the accused's mother's flat in Jurong West and to the accused's residence in Henderson Road but found nothing incriminating in both places. At about 11.05pm, they left for Rhu Cross to set up an ambush under Sheares Bridge. The pre-set mobile telephone number said to belong to Mok was dialled using the accused's mobile telephone. However, Mok's mobile telephone was switched off. The ambush was then called off.

18 At about 11.45pm, the accused was brought to the CNB Headquarters at the Police Cantonment Complex. The accused, his belongings and the six packets were handed over to the investigating officer, ASP Ong Pang Thong.

19 At about 12.40am, ASP Ong weighed all the drug exhibits in the presence of the accused. The accused was then brought to Alexandra Hospital for a medical examination. Upon his return, ASP Ong, with the assistance of Ramayah Palaya (also known as Bala), a Tamil interpreter, recorded a statement pursuant to s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"). The recording took an hour between 2.15am and 3.15am on 30 August 2003. The accused made the following statement in response to a charge of importing six packets of cannabis weighing over 2kg:

I admit to the charge. This is the first time I have committed an offence. I do not have any criminal records. Due to family circumstances and my love for my twin sons, which the court had granted custody to me after my divorce proceeding. In Malaysia, I met a Chinese man by the name of "Mok" at a Go-kart track, when I used to go there to do mechanical repairs for their vehicles. I became Mok's friend. Mok asked me to do a "lobang" and asked me whether am I willing to do it. He asked me to carry some "ganja" into Singapore, and placed it under Sheares Bridge at Fort Road. I agreed to his request. Mok also told me that on completing the job, I would be paid S\$2,000. My mother is divorced, my sister is divorced with 2 children and I am also divorced with 2 children. I have been working in many places, in several occupations and my income was insufficient to support my family. My father had been away for 6 years and he never come home. I look after the family. I used to sit down and think, and sometimes I cried thinking that why my family should suffer. I had money problem.

20 ASP Ong added that during the recording of the statement, the accused did not say he had been shouted at or assaulted by Sgt Ravichandran.

21 The six packets were kept in ASP Ong's office safe. On 4 September 2003, he sent the six packets to the Health Sciences Authority where they were analysed and found to contain a total of 1,029.8g of cannabis, the subject matter of the charge.

22 The accused also made four long statements to ASP Ong on 1 September, 2 September (one in the morning and one in the afternoon) and 14 October 2003. In the one recorded on 1 September 2003, the accused said he lied when he was answering Sgt Ravichandran's questions. He had told

Sgt Ravichandran that he had taken the six packets from an Esso petrol station in Johor Baru. The truth, he asserted, was that he took only one packet. He lied then because he did not want anyone to know about the transaction he had with Mok at the go-kart track. He had to go to the track often to work and did not want to get the people working there into trouble as they were consumers of ganja. He said he was stating the truth now because he had been thinking about his children over the previous two days. There would be no one to look after them if he shouldered the consequences of the six packets and was sentenced to death. He stated that he had brought in only the packet found in his haversack in the left carrier box of the motorcycle as Mok had informed him he would be carrying only 200g to 300g of ganja. He did not know how the other five packets came to be in his motorcycle.

23 ASP Ong checked with his Malaysian counterpart and was informed that the go-kart track at Taman Perling ("the track") mentioned by the accused had ceased to function as such a track since July 1998.

24 The Tamil interpreter, Ramayah Palaya, who assisted ASP Ong in the taking of all the statements, testified that he faithfully interpreted to the accused whatever ASP Ong said and to ASP Ong whatever the accused said. During the recording of the statement pursuant to s 122(6) CPC, the accused said he understood the nature and consequences of the charge preferred against him and admitted it. He did not try to explain that he had brought in only one packet of cannabis.

25 Deputy Superintendent of Police Tan Kong Hai, Head of the Intelligence Support of the Intelligence Division of the CNB, has been with the CNB since April 1975. In the course of his 29 years of service, he came to understand the jargon of drug addicts and traffickers and also received periodic updates from his officers on the market conditions and street prices of various drugs including cannabis. He testified that during the period of August and September 2003, the price of cannabis sold in packet forms of 1g to 1.5g was \$10 to \$15 while the price for cannabis sold in bulk form of one kilogram would be between \$2,800 to \$3,500. Based on the loose form price, the slightly more than 2kg of cannabis in the six packets would fetch some \$20,000. It would make no difference on the streets whether the substance was cannabis or cannabis mixture as addicts would not know whether it was one or the other.

The case for the Defence

26 The accused was a taxi driver before his arrest on 29 August 2003. He used to ride jet-skis and do boat repairs. He would go to Johor whenever there was boat repair work to be done there. He would go to the track at Taman Perling and do the repairs in a shed within the compound of the track. There were two or three containers within the compound. One Ah Seng would call him to inform him about the availability of repair jobs there.

27 About three months before the accused was arrested, Ah Seng called him to go over to Johor to do some repairs. It was on that occasion that he was introduced to Mok. Ah Seng told him that Mok was his friend and that he had a boat which required some repairs. The boat was at Mok's house. The accused asked Mok to bring the boat to the track for him to take a look. The three of them then smoked cannabis. They contributed money and Mok went to get the cannabis. The accused did not know where Mok got it from. They parted company after that. The accused added that he was not an addict and would only consume cannabis when it was available.

28 About a month later, Mok called the accused and said he had brought his boat to the track. The accused then travelled to the track and, after inspecting the boat, informed Mok about the repairs needed. Mok told him he would purchase the spare parts required for the repairs in Malaysia

and would call him again when he had done so. They smoked cannabis and the accused then left the track.

29 On 29 August 2003, Mok called the accused and told him he had obtained the spare parts. The accused went to the track at around noon that day. After Mok arrived and handed him the spare parts, Mok invited him to have lunch with him at a food outlet nearby. During lunch, Mok asked the accused whether he was willing to bring some cannabis to Singapore for a reward of \$2,000. The accused asked him how much cannabis would be involved and Mok told him it was 200g to 300g. The accused knew that importing more than 500g of cannabis would attract the mandatory death penalty if he was caught. He agreed to do the task. He then told Mok that the repair work would cost \$450 and Mok agreed to the amount quoted.

30 After lunch, they walked back to the boat and the accused started the repairs, telling Mok they would be completed by 4.30pm that day. Mok then left to get the money to pay the accused for the repairs.

31 About two hours later, Mok returned to the track. The accused was still working on the boat. Mok asked him whether he had a knife. The accused then walked over with Mok to his motorcycle parked about 50ft away, used his keys which were in the ignition switch to open one of the two carrier boxes and took out a knife from his haversack. Mok then told him to bring it to a container nearby where spare parts for boats were stored and to wait for him there. The accused did so. There were not many people around at that time.

32 After a while, Mok went to the container carrying a plastic bag. Inside the container, he removed two bundles wrapped in newspaper from the plastic bag. He took out the two bundles and asked for the knife. He then began to cut the two bundles into six pieces. He asked the accused to help him by holding on to the bundles while he cut them. The accused knew the bundles contained cannabis. He asked Mok how much one bundle would weigh and was told one block weighed one kilogram. When the accused asked him why he was cutting them into six pieces, Mok told him he (Mok) had to make some deliveries. The accused then enquired whether Mok was going to hand one packet to him but Mok said he would pass it to the accused later.

33 After Mok had finished cutting the two blocks, the accused returned the knife to his motorcycle's carrier box and resumed the repair work. He did not see where Mok was but, about half an hour later, Mok met him again. The accused told Mok that he would finish the repair work by 4.30pm. Mok paid him the agreed amount of \$450 and told him to meet him at 5.00pm at a particular Esso petrol station near the second link bridge leading to Tuas to collect the one packet that he was to bring into Singapore.

34 After completing the repair work, the accused went to the said petrol station on his motorcycle. He saw Mok standing near the toilet there. He took his haversack and they went into the toilet. Mok took out a packet from the cistern of a cubicle inside and passed it to him, telling him to call him once he cleared the Singapore checkpoint. He was then to go to Sheares Bridge, place the packet below it and then call Mok again. The payment would be made to the accused later at the same spot.

35 The accused threw away the outer plastic bag which was wet and placed the packet in his haversack. He then went inside the petrol station to buy some prawn crackers. He returned to his motorcycle and kept the haversack in the left carrier box. This was the packet recovered later by Sgt Ravichandran.[\[1\]](#)

36 The accused denied any knowledge of the other five packets found in his motorcycle. He believed that Mok had framed him or cheated him by placing them in his motorcycle. After all, the accused was involved in the cutting up of the two blocks into six pieces and Mok knew where his motorcycle and its keys were. He had parked his motorcycle at the track while working on the boat and would have had to take a few steps before he could see it as there was some obstruction.

37 The accused said that when the s 122(6) CPC statement was being taken, the Tamil interpreter told him that six packets were involved but he told the interpreter he had knowingly brought in only one packet. The interpreter told him that six packets were taken from his motorcycle and asked him whether he admitted that fact. The accused replied that he admitted the six packets were taken from his motorcycle. His admission in that statement must therefore be read in that light. He also insisted he told Sgt Ravichandran and many other CNB officers that he brought in only one packet but none of them seemed to believe him. He admitted that his statements were voluntarily made.

38 In cross-examination, the accused agreed that only he and the hire purchase company possessed the keys to his motorcycle and that his set of keys was with him all the while before his arrest. The keys were needed to start the engine and to unlock both carrier boxes and the seat compartment. As soon as he arrived at the track in Johor that day, he opened both carrier boxes in order to keep his helmet and his passport in the haversack. He could not really recall whether the carrier boxes were locked when he returned from Johor on 29 August 2003 but the seat compartment was locked. The seat compartment was normally not used by him.

39 At the track in Johor, he left the keys in the ignition switch as they would hinder his work if they were kept in his pocket. While having lunch with Mok, he could still see his motorcycle and therefore did not bring the keys with him. When he arrived there, the track was deserted. People started to arrive there after 2.00pm to rent go-karts or to wash their cars. The compound was fenced up and there was only one gate about 50m away from where he was doing the repair work. Therefore, if someone tried to take his motorcycle away, he would have to go past the accused in any event.

40 The accused said he regarded Mok as a customer. There was no bad feeling between him and Mok.

41 The accused said that when Yusri found the first packet in the right carrier box, he did not ask Yusri to give him a chance. What he did say was he did not know how the packet got into his motorcycle and he asked Yusri to "*tolong*" (help) because he could tell it was cannabis from its smell.

42 The accused alleged that during the recording of the s 122(6) CPC statement, ASP Ong told him that whatever he wanted to say, he could do so in court. The accused testified he was shocked and confused then. He also maintained that his allegation in para 13 of his statement of 1 September 2003 – that he was made to kneel on the floor in the CNB office at the Tuas checkpoint at one point – was true.

43 The accused said his main occupation was being a taxi driver. He was the hirer of a taxi which he drove daily. He also did part-time work as a window cleaner on a freelance basis. If he had other work to do, he would drive during the night shift. If not, he would drive during the day.

The decision of the court

44 There was no dispute that the accused intended to import and did import cannabis into

Singapore. The only issue was the amount he imported. He claimed he imported only one packet containing 116.7g of cannabis and 101.4g of cannabis mixture while the Prosecution maintained he imported all six packets found in his motorcycle.

45 The Prosecution has proved that he was in possession or had custody or control of the six packets found in his motorcycle and of the keys required for unlocking the carrier boxes and the seat compartment. By virtue of ss 18(1)(a) and 18(1)(b) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed), the accused was therefore presumed to have the cannabis in his possession. Further, the cannabis having been found in his motorcycle, he was also presumed to be in possession of the cannabis by virtue of s 21 of the same Act. Under s 18(2) of the Act, he was presumed to have known the nature of the drug in question. It was therefore incumbent on him to prove the contrary on a balance of probabilities.

46 I was satisfied beyond doubt that the ICA and CNB officers concerned were speaking the truth about the events of 29 August 2003. The accused, upon the discovery of the first packet in the right carrier box by Yusri, immediately implored the ICA officer to show him mercy and give him a chance. He obviously knew what was in the packet. He could not have taken the packet by mistake from the Esso petrol station because it was separate from the prawn crackers he had bought and was in fact hidden by his raincoat. It was not a case where the prawn crackers and the cannabis packet were bundled together in one plastic bag. In any event, that did not explain the presence of the other four packets in the seat compartment.

47 I accepted the evidence of Sgt Ravichandran that the recording of the questions and answers in the CNB office at the Tuas Checkpoint took place in the manner testified by him. There was no shouting, intimidation or assault by anyone. If Sgt Ravichandran wanted only a confession from the accused, it was strange that he would record the accused as saying he did not know whom the packets belonged to. Clearly, the CNB officer did point to the six packets placed on the table in front of them when he was asking the questions. I had no doubt that the accused did not claim to have imported only one packet.

48 This was reinforced by the s 122(6) CPC statement taken by ASP Ong several hours later. The number of packets was clearly spelt out in the holding charge against the accused. I was satisfied that the interpreter discharged his duties faithfully and would have conveyed the accused's denial about the other five packets if he had expressed such denial. There was also no evidence of any complaint of an earlier assault having been made by the accused to the doctors who examined him before and after the taking of that statement.

49 The street value of that one packet of cannabis weighing some 218.1g would be about \$2,181 (based on the price of \$10 per gram). The accused's commission for doing the task for Mok would have been \$2,000. It was highly unlikely that a trafficker like Mok would have agreed to take only about \$181 profit for that transaction. The commission of \$2,000 was much more plausible when seen in the light of the slightly more than 2kg of cannabis commanding a street price of about \$5,600 to \$7,000 (based on the bulk price of \$2,800 to \$3,500 per kilogram). Clearly, the commission promised to the accused was for the importation of a much larger amount of cannabis than the accused was willing to admit.

50 His explanation in his statement of 1 September 2003 on why he had lied earlier about having collected six packets from the petrol station in Johor Baru did not make any sense. There would be no more future because he knew about the mandatory death sentence. If, as he said he knew, one packet contained about 200g to 300g, simple arithmetic would have told him that anything above three packets would have triggered the death penalty. Why then would he still be thinking about his

future work at the go-kart track if he admitted to importing the six packets? Further, the first time he mentioned that he was bringing in only one packet was three days after his arrest. That showed it was highly unlikely to be true.

51 There was no opportunity for anyone to place the other five packets in his motorcycle without his knowledge. Obviously, if the accused had left the keys in the ignition switch while at the track, his motorcycle must have been only a short distance away from him and well within his sight. Otherwise, a thief could easily steal it and ride it away or steal his passport and helmet. It could not be that someone had the time to unlock the seat compartment and put four packets in it surreptitiously and put another packet in his raincoat in the right carrier box without him noticing at all. The same remarks apply to the short time he spent at the petrol station before returning to Singapore. Further, it would have been a remarkable coincidence that whoever placed the other five packets in the motorcycle chose the two compartments that the accused was not going to use after finishing the repair work at the track.

52 It was true that the accused did not try to run away when the first packet was found. However, he also appeared nonchalant when the other packets were found during the search at the inspection pit. One would have expected him to be horrified when he saw four other packets in his seat compartment. His calm was clear evidence of his knowledge of the presence of all the cannabis in his motorcycle.

53 On the totality of the evidence adduced, I had no doubt that the accused was guilty as charged and convicted him accordingly. The mandatory death sentence was passed on him.

Accused convicted and sentenced to death.

[1] Photographs P9 and P10