

Public Prosecutor v Samruamchit Wipha
[2015] SGHC 219

Case Number : Criminal Case No 37 of 2015
Decision Date : 29 September 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : April Phang Suet Fern and Koh Rong Eng Timotheus (Attorney-General's Chambers) for the Public Prosecutor; Ong Cheong Wei (Ong Cheong Wei Law Chambers) and Wong Seow Pin (S P Wong & Co) for the accused.
Parties : Public Prosecutor — Samruamchit Wipha

Criminal Law – Statutory offences – Misuse of Drugs Act

29 September 2015

Judgment reserved.

Choo Han Teck J:

1 The accused is a 30-year-old female from Thailand. She was charged for importing a Class A controlled drug under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), which is an offence punishable under s 33 of the said Act (“MDA”). Specifically, the accused was charged to have imported 2,961g of crystalline substance that was analysed and found to contain not less than 2,070g of methamphetamine into Singapore.

2 The essential facts were not disputed or challenged. The accused arrived at Terminal 3 of Changi International Airport at 6pm on 17 December 2012. She had a suitcase that she checked in and that had nothing incriminating. It contained her personal clothing and belongings. She also had a backpack with her and that was found to contain ten tops, nine bottoms, and three pairs of shoes. There was also a packet containing not less than 2,070g of methamphetamine in a false compartment in the backpack.

3 The accused admitted that she met a person named Kelvin in Bangkok and agreed to help him bring “illegal stuff” from New Delhi to Bangkok, through Singapore and Vientiane. The accused revealed that she had done a delivery on behalf of Kelvin once before in Thailand. She insisted, however, that all she saw or knew was that the “illegal stuff” Kelvin was referring to was the clothing and shoes that she carried in the backpack. On both occasions, the items were given to her by Kelvin.

4 Even though Singapore was not the ultimate destination of the accused’s trip, she is liable for the offence of importing drugs into Singapore under s 7 of the MDA if the other elements of the offence are made out. The Court of Appeal clarified in *Public Prosecutor v Adnan bin Kadir* [2013] 3 SLR 1052 that the act of bringing drugs into Singapore, whether or not with the intention or plan to bring the drugs into another country, falls within the definition of “import” in s 7 of the MDA.

5 Deputy Public Prosecutor Ms April Phang submitted that s 18(1) of the MDA applied. It was undisputed that the accused was in physical possession of the backpack which contained the methamphetamine in a hidden compartment. Ms Phang submitted that under s 18(1)(a) of the MDA, the accused was thus presumed to have been in possession of the methamphetamine. Under s 18(2)

of the MDA, the accused was then presumed to have known the nature of the methamphetamine that was found in the backpack.

6 After hearing the prosecution's case, I called upon the accused to give her defence. The accused had to rebut the presumptions under ss 18(1) and 18(2) of the MDA that she was in possession of the methamphetamine with knowledge of the contents. She was obliged to rebut the presumptions by showing on a balance of probabilities that she did not know that there was a hidden compartment in the backpack, or that there was a hidden packet of methamphetamine, or that the packet contained methamphetamine.

7 In her defence, the accused testified that she only knew that she would be carrying illegal stuff for Kelvin and that the illegal stuff was the clothing and shoes found in the backpack. The accused testified that she previously delivered a luggage bag on Kelvin's instructions within Thailand. She claimed that on that occasion, she opened the luggage bag and saw only clothes. This led her to believe that the illegal stuff she was tasked to deliver was the clothes. She explained that for the second delivery where she was supposed to bring the backpack from New Delhi to Bangkok, she also did a thorough check on the backpack and found only clothing and shoes. She testified that this again led her to believe that these were the "illegal stuff" Kelvin was referring to.

8 The accused tried to show that she shared a close relationship of trust and confidence with Kelvin and thus trusted him enough to make the deliveries on his behalf. According to the accused, she first met Kelvin, whom she described as a 35-year-old Nigerian male, when he approached her in a café named "Coffee Shop" in Bangkok one night in October 2012 and asked her why she was alone and looked sad. She had just quarrelled with her Italian boyfriend, Simone, over the phone that night. When Kelvin came over, she chatted with him for almost an hour and took up his offer to have a drink at the night club next door. Thereafter, Kelvin started messaging her and also called her about two to three times daily. Although the accused was careful to clarify that Kelvin was not her boyfriend, she admitted to having a sexual relationship with Kelvin. Her evidence was that Kelvin was very nice to her throughout their interactions in the two months they knew each other and thus she trusted that Kelvin was a responsible man who would not hurt her.

9 The biggest obstacle in the accused's case is that the contents of her statements, which were translated by a Thai interpreter, Ms Orawan Triteeyaprasert, and recorded by Central Narcotics Bureau ("CNB") officers, contradict her assertion that she believed that the clothing and shoes were the "illegal stuff". There were various references to drugs in the accused's statements, the clearest of which is found in paragraph 44 of the accused's statement dated 21 December 2012, which reads:

... Kelvin asked me what I thought about doing illegal stuff to make money. I told him that I could not decide because I did not know what type of illegal stuff he was talking about. Kelvin then told me that it had to do with drugs. I thought of "ganja", "yaba" and "Ya E". I thought of these 3 drugs because these were the ones I knew that were in Thailand. ...

10 The accused did not contest the admissibility of any of her recorded statements. She did, however, claim that a CNB officer, Station Inspector Tor Kok Hwee ("SI Tor") (PW10) made certain hand gestures that resembled the slashing of his throat to her whilst she was detained at Changi Airport and was being questioned by Woman Station Inspector Lynette Chng Hwee Hwee ("SI Chng") (PW11). The accused testified that the actions of SI Tor, coupled with the fact that she had been arrested and was placed in handcuffs, caused her to be confused and in fear. The accused claimed that as a result, she lied in her contemporaneous statement that was recorded by SI Chng.

11 It is unclear what the accused is trying to achieve with this claim. She did not challenge the

admissibility of any of the statements, including the contemporaneous statement. Nor did she assert that she laboured under the same fear and confusion during the recording of the subsequent statements, which had more incriminating content. It appears that the accused was only seeking to explain why her account in her contemporaneous statement differed from that in her other statements. This is neither an issue that is disputed by the prosecution nor one that bears much weight in this case.

12 The accused tried two other ways to explain away the inconsistency between the references to drugs in her statements and her defence that she did not know that the backpack contained drugs. The first was that some parts of her statements were wrongly interpreted by Ms Orawan and the second was that her hearing impairment in her right ear prevented her from understanding the CNB officers or Ms Orawan properly.

13 Specifically, she claimed that she had not used the word "drugs" in her statements to the CNB but the word "illegal stuff". Her case is that it was the Thai interpreter, Ms Orawan, who had translated "illegal stuff" wrongly as "drugs" in the relevant portions of the statement.

14 I do not think that Ms Orawan, who is a certified Thai interpreter, would have made such a mistake, especially when both "drugs" and "illegal stuff" were used by the accused in the same paragraph of the statement. In Thai, "illegal stuff" is "kong phid kdhmay" and "drugs" is "ya seph tid". It is clear that the two words do not sound alike in Thai at all. Further, all of the accused's statements were also read back to her in Thai and she was given the opportunity to make amendments, which she took up (as seen from paragraphs 125 to 128 of her statement).

15 That brings me to the other aspect of her defence. The accused claimed that she had a hearing impairment of her right ear and that as a result, she was unable to communicate properly with the CNB officers or Ms Orawan. Dr Wijeratne Sijani (PW3), the doctor who examined her before and after the recording of the statement, testified that she performed an otoscopic examination on the accused's ears after the accused informed her of the issue, but found no acute medical condition. Although she acknowledged that the examination would not be conclusive in showing whether the accused had hearing impairment, she testified that the accused was able to give appropriate responses to the questions that she posed during the medical examination and did not show signs of difficulty in hearing. Similarly, Deputy Superintendent Lee Tien Shiong Herman (PW16), SI Chng and Ms Orawan also testified that the accused did not appear to have any hearing difficulty and did not inform them that she had any hearing problems.

16 I can accept that the accused might have some difficulty hearing clearly at times but I do not think that she was totally deaf. The evidence does not show that she was unable to communicate with the officers or with Ms Orawan. If she had heard the word "drugs", she ought to have corrected the interpreter. If she did not hear it, then she ought to have asked the interpreter to repeat herself. I am of the view that any hearing impairment that the accused might have did not affect her understanding of what was asked or read back to her.

17 The law requires the accused to rebut the presumption that she knew she was carrying drugs. Given the many references to drugs in her statement, I am not satisfied that the accused was unaware that the backpack contained the drugs. Even if I were to give her the benefit of doubt so far as the use of the word "drugs" in her statement was concerned, I must be satisfied that she did not know that she was carrying drugs.

18 The evidence in support of the accused's account is scant. She had a pile of inexpensive looking clothes and two pairs of inexpensive looking shoes and one pair of sandals. None of the items

were branded. Counsel for the accused's submission that these items were the "illegal stuff" because the accused was going to evade custom duties on them is implausible. For carrying these items she was to be paid 60,000 Thai baht (S\$2,300). I am not satisfied that the accused was carrying only those items from New Delhi to Bangkok and was to be paid S\$2,300 for carrying them. Whoever who was going to pay her for this job also had to pay her airfare and accommodation. I am also not satisfied that the accused really believed she would be paid S\$2,300 just to deliver those items.

19 Even on the accused's own account, she was anxious after taking possession of the backpack and had asked Kelvin whether it was safe for her to carry it. After she was arrested, she deleted several text messages between her and Kelvin from her mobile phone when she was given access to her phone. These deleted messages were later retrieved by the forensic investigators. Although the messages are not directly incriminating, I accept the prosecution's submission that the accused's behaviour was suspicious, to say the least.

20 Having considered the evidence before me, I am not satisfied that the accused had rebutted the presumptions under ss 18(1) or 18(2) of the MDA. I thus find her guilty as charged.

21 The evidence shows that she had agreed to carry the drugs from New Delhi to Bangkok via Singapore and that she was to be paid for that service. There being nothing more than this, I am of the view that she acted solely in the role of a courier.