

Public Prosecutor v Siva a/l Sannasi
[2015] SGHC 73

Case Number : HC/Criminal Case No 9 of 2015
Decision Date : 17 March 2015
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Charlene Tay Chia, Ruth Teng and Elton Tan (Attorney-General's Chambers) for the prosecution; Kanagavijayan Nadarajah and Ranadhir Gupta (M/S Kana & Co) for the accused.
Parties : Public Prosecutor — Siva a/l Sannasi

Criminal Law – Statutory offences – Misuse of Drugs Act

17 March 2015

Tay Yong Kwang J:

1 The accused claimed trial to and was convicted on the following charge:

That you, **SIVA A/L SANNASI**,

On 22 April 2013, at about 11.42am, along Sungei Kadut Avenue, Singapore, inside vehicle JLF 7845, did traffic in a controlled drug specified as a "Class A" drug in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"), to wit, by having in your possession for the purpose of trafficking, four bundles of granular / powdery substance which was analysed and found to contain not less than 43.32 grams of diamorphine, without any authorisation under the Act or the regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) and punishable under s 33 of the Act, and further upon your conviction under s 5(1) of the Act, you may alternatively be liable to be punished under s 33B of the Act.

2 A second charge of drug trafficking was stood down and subsequently withdrawn after I convicted and sentenced the accused on the first charge. [\[note: 1\]](#)

The Prosecution's case

3 The accused was arrested on 22 April 2013 by Central Narcotics Bureau ("CNB") officers as part of a drug operation. [\[note: 2\]](#) The accused was seen driving a heavy goods vehicle bearing the registration plate number JLF 7845 ("the Prime Mover"). He had entered Singapore via the Woodlands Checkpoint between 2.00am and 3.00am. After driving the Prime Mover to the Marina Bay area, he repacked the drugs and then slept until 8.30am. After he woke up, he went about his work duties until about 9.40am to 10.00am, when he arranged to meet the people to whom he was supposed to give the drugs. The accused was tailed by CNB vehicles from the Marina Bay area to Ang Mo Kio, where the accused alighted and crossed the road to a petrol kiosk. The accused was seen making a phone call before returning to the Prime Mover. He continued to drive in the direction of Yio Chu Kang. CNB officers lost sight of the Prime Mover, but it was spotted shortly after in the Sungei Kadut area, at about 11.00am.

4 While the Prime Mover stopped along Sungei Kadut Way, two men, who had been acting suspiciously and talking under a tree, boarded the Prime Mover. The men stayed inside the cabin of the Prime Mover for about 20 minutes. The Prime Mover was then driven for a short distance and the two men alighted at a bus stop while the Prime Mover continued on its way. The two men were arrested by CNB officers who moved in on them. [\[note: 3\]](#) The accused drove on for a short distance before stopping and alighting from his vehicle, apparently to check on the passenger door which had not been properly shut when the two men alighted. CNB officers moved in and arrested him. [\[note: 4\]](#)

5 Amin bin Abdullah ("Amin") was one of the two men arrested at the bus stop. [\[note: 5\]](#) He was searched and found to possess one plastic bag containing some brown granular substance, which was later analysed and found to contain diamorphine. [\[note: 6\]](#) It transpired that, in the Prime Mover, Amin had given the accused \$4,000 in exchange for that plastic bag containing the drugs. [\[note: 7\]](#)

6 The accused was led into the rear seat of a CNB vehicle, where an oral statement was taken from him. [\[note: 8\]](#) It reads:

Q1: What do you want to speak?

Ans: English.

Q2: Just before your arrest, what did you do?

Ans: I got call from one Malay guy and ask me to come Yishun then I said to him to come to Sungei Kadut as I am going back to JB.

Q3: What is the purpose of meeting this guy at Sungei Kadut?

Ans: I suppose to deliver a pack of "bolla" to the guy who call me earlier.

Q4: So where do you meet the guy who call you earlier?

Ans: At Sungei Kadut Way, near no. 30 roadside.

Q5: So what happen at No 30, roadside of Sungei Kadut Way?

Ans: I saw two Malay guys standing at the roadside and call my handphone that I guess must be him as I've never seen them before.

Q6: What happen next?

Ans: They both walked to my lorry JLF7845 then they get in, I pass the "bolla" to the guy that wears specs also with a Bluetooth or ear piece and he give me \$4000/- and ask me to send to the nearest bus-stop.

Q7: Can you recognise the person? (Recorder note: B1 was shown the following pictures for B1 to confirm) Is the person inside the picture I show you?

Ans: Yes, it's him with the beard and he is smelly, the shirt is black and white short pants.

Q8: How about the other guy?

Ans:He was smoking inside my lorry and I never focus him.

Q9: So is there, anything illegal you want to surrender from your lorry JLF7845?

Ans:Yes, a few more "bolla" about 3 and the half and sing dollars about six thousands plus.

Q10:Is the six thousand plus dollars you mentioned is all drugs money?

Ans:I collected from them and suppose to hand over to my boss in Malaysia.

Q11:Who is your boss?

Ans:I've never seen him but I've got his handphone number in my handphone.

Q12:Are you aware that the money you collected which is going to hand over to your boss were all drug money?

Ans:I only know the money they pay were from the pending payment to boss.

Q13:All the "bolla" that you say balance about 3 and the ½ belongs to who?

Ans:My boss.

Q14:What do you intend to do with it?

Ans:The customers will call me then I hand over to them.

Q15:Is there anything else you wanna say or change pertaining means all the answers you have given me?

Ans:I am sorry, I know it's wrong but I need to earn money as all my children need money for their studies.

7 The Prime Mover was searched in the accused's presence by CNB officers who recovered, among other things, one tied black plastic bag with three packets of brown granular substance (in the compartment above the driver's seat) and one green plastic bag containing one packet of brown granular substance (in the centre console to the left of the driver's seat). [\[note: 9\]](#) These exhibits were sealed, brought back to CNB, and later conveyed to the Health Sciences Authority ("HSA") for analysis. They were analysed and found to contain not less than 43.32g of diamorphine in total. [\[note: 10\]](#)

8 Over the course of investigations, W/Insp Yang Rongluan took six statements under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). These were recorded in English with an interpreter's help and admitted into evidence without challenge as to their admissibility. [\[note: 11\]](#) In these statements, the accused admitted that this was the fourth occasion he had brought drugs into Singapore. He had brought "bola" from Malaysia to Singapore on three occasions in January and April 2013 prior to his arrest. [\[note: 12\]](#) He understood "bola" to mean drugs. He obtained the supply from a person known to him as Jagen. [\[note: 13\]](#) The accused agreed to work for Jagen because he needed money to pay off his loans. [\[note: 14\]](#) He had delivered "half bola" on the first occasion and four

packets each on the second and the third occasions. [\[note: 15\]](#) He received RM2,000 for each of the second and third deliveries. [\[note: 16\]](#) The accused also helped Jagen collect money from drug clients in Singapore in February and March 2013 for "about 11 times". The money would be collected by men on behalf of "drug bosses". [\[note: 17\]](#) Jagen subsequently paid the accused between S\$50 and S\$150 for each successful collection of money. [\[note: 18\]](#) For this fourth trip, Jagen and another man, known to the accused as "Dinesh", handed one and a half packets and three packets of drugs to the accused respectively. These were to be delivered to various clients of the "drug bosses" in Singapore. Dinesh had told the accused that the packets contained chocolate but the accused did not believe him at any point in time. [\[note: 19\]](#) The accused entered Singapore in the early hours of 22 April 2013, parked his vehicle at his worksite, slept and then went about his regular work duties in the morning before arranging to deliver the drugs to the various drug clients.

The defence

9 The accused admitted that he was delivering "bola" or drugs on Jagen's behalf but contended that he did not know the nature of the drugs he was delivering at the material time.

10 He said that he first accepted Jagen's offer to deliver "half bola" to a drug client in January 2013 because he needed money to clear his debts with a bank and with one Mohan, who was Jagen's friend. Jagen told the accused that bringing drugs into Singapore would fetch quick money and that the drugs would contain little drug content. He would therefore face a very light sentence if caught. [\[note: 20\]](#) The accused said that he was initially reluctant to perform this fourth delivery but Jagen told the accused that the "bosses" may do "something harmful" to the accused and his family if he did not. The accused eventually relented and agreed to do the delivery. [\[note: 21\]](#)

11 The accused also called Amin as his witness. At the time of the trial, Amin was in remand awaiting trial. The other man who was arrested, one Razali bin Shafiei ("Razali"), has been given a discharge not amounting to an acquittal and was released from custody before the present trial. The accused did not wish to call Razali as a witness. According to Amin, a person known to him as "J Boy" gave him the accused's phone number so that he could meet and pass money to the accused. On 22 April 2013, Amin called the accused's phone six times. Through these calls, the accused arranged to meet Amin at Sungei Kadut Way. However, Amin denied asking the accused whether the latter had "batu". At Sungei Kadut, Amin boarded the Prime Mover with Razali and Amin handed \$4,000 to the accused. The accused later handed him a packet of drugs, to which Amin said "not mine". Amin then received a call from "J Boy". Amin asked "J Boy" whether he needed to "*masak*" (Malay for "cook") the drugs. Amin complained that "\$4,000 was not worth it" but took the packet of drugs. Amin asked to be dropped off at a bus stop. Both Amin and Razali then alighted from the Prime Mover and were arrested by CNB officers shortly thereafter.

The court's decision

12 In substance, the defence focused on the issues of knowledge and, to a small extent, duress. Before I deal with each in more detail, I will quickly deal with a point that arose during the trial.

13 The accused contended that he never used the words "drug boss" in his statements. Instead, he said that he had consistently referred to an Indian man in his s 22 statements and he had said "boss" (but not "drug boss") in his contemporaneous statement. However, the accused conceded that the statements were recorded accurately and he had an opportunity to correct his statements. [\[note: 22\]](#) In any event, the issue of whether it was an Indian man or a drug boss was immaterial as

the accused knew he was delivering drugs on another's behalf.

Whether the presumption of knowledge applied

14 Section 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") provides that any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug. This applies to the accused in two ways: first, by virtue of s 18(1)(a) of the MDA, as he was arrested with the drugs in the plastic bags that he was carrying and second, by virtue of s 21 of the MDA, as the accused was in charge of the Prime Mover at the material time. To rebut the presumption of knowledge in the context of s 18(2) of the MDA, the accused must prove on a balance of probabilities that he did not know or could not reasonably be expected to have known that the thing in his possession contained that controlled drug (*Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [\[21\]](#)).

15 The accused claimed that he had relied on the assurances of Jagen (who he said was a close friend) that the drugs had low drug content and that he would face a light sentence if he was caught. Accordingly, he did not know and could not reasonably be expected to have known that the plastic bags he was carrying contained diamorphine. To this end, the defence relied on the Court of Appeal decision in *Khor Soon Lee* [2011] 3 SLR 201 ("*Khor Soon Lee*"). There, the appellant appealed against his conviction on the charge of importing 27.8g of diamorphine into Singapore. The appellant, on the instructions of one Tony, had brought in various types of drugs like Ketamine and Ecstasy to Singapore. However, the appellant did not know the contents of the fourth bundle and thought it to be "ice". The Court of Appeal, in allowing the appeal, considered that:

- (a) the appellant had consistently imported drugs which would not attract a death sentence;
- (b) he had been careful to confirm with Tony that the packages contained only controlled drugs and not diamorphine;
- (c) he trusted Tony because of a close and personal relationship; and
- (d) accordingly, he did not have a strong suspicion to which he turned a blind eye; at most, his failure to check the nature of the drugs amounted to negligence or recklessness but that was not enough to establish wilful blindness.

16 Additionally, the accused also said that he wanted to ask his good friends who were customs officers what exactly the drugs were, but, unfortunately for him, none of them was on duty at the checkpoint when he drove into Singapore.

17 Finally, it was submitted that the accused did not know the nature of what he was carrying, as supported by the fact that he had left the package of drugs in an exposed part of the Prime Mover while it was parked in Johor Baru overnight [\[note: 23\]](#) and that he was neither nervous nor behaving unusually both the night before his arrest (after receiving the drugs from Jagen and Dinesh) and when passing through the customs checks. The accused also said that he did not even know what heroin or diamorphine was. He said that when he asked why he was charged for importing diamorphine, two CNB officers had told him "It's heroin. You don't know, ah?" He asked the interpreter what "diamorphine" meant and the interpreter replied that it was the scientific name for heroin. W/Insp Yang also testified that she explained to the accused that diamorphine is a chemical name for the drugs that he had brought into Singapore.

18 I shall dispose of the last submission first. The fact that he was behaving normally might show

that he did not have actual knowledge of the nature of his drugs or that he was a cool courier of drugs. As for his claim that he did not even know what "heroin" or "diamorphine" was, he nevertheless said that he knew that it was wrong to bring drugs in and that he was sorry. [\[note: 24\]](#) The real issue is whether the presumption of knowledge applied and whether it has been rebutted. This in turn depends on whether the accused had a strong suspicion that he was carrying diamorphine and, if so, whether he had turned a blind eye to it. This brings me back to the accused's first two submissions.

19 The evidence shows that the accused did or should have had a strong suspicion that he was carrying diamorphine. First, based on his police statements and oral testimony, he was fully aware that the plastic bags contained illegal drugs, which he referred to as "bola". Second, the accused had an untenable way of reasoning that "bola" had little drug content. He knew he was carrying "bola" or "batu" (street names for illegal drugs) and saw that the drugs were brown and powdery. It was different from another drug known to him as "ganja", which he knew to be the "green colour leaf thing". [\[note: 25\]](#) He had been told by Jagen that "ganja" was "nothing" and contained "very little drug content" and he reasoned that "bola" contained less drug content than "ganja" simply because it was not "ganja" and because it was a different colour from "ganja". In my view, the accused had no basis to reason this way. Instead, it should have raised suspicions in his mind about the true nature of what he was carrying. Third, the accused was disproportionately rewarded for previous deliveries of "bola". He was promised a payment of RM2,500, which he conceded was a "big sum" and he had in fact wondered he was paid so much for delivering such small packets. [\[note: 26\]](#) The fact that Jagen was known to deal in drugs and the fact that the accused was being paid so handsomely for an apparently easy task must have created a strong suspicion that what the accused was carrying was valuable and highly illegal and to which he turned a blind eye.

20 The accused conceded in cross-examination that he knew that drug offences were very serious and potentially carried the death penalty. [\[note: 27\]](#) Despite this, he was content to rely only on Jagen's bare assurances. However, I do not see why the accused should have done so. Nothing suggests a close friendship with Jagen; the facts point instead to a more arm's-length relationship. In cross-examination, the accused could only say that they would meet in the coffee shop on Sundays to watch football and that Jagen would offer him a lift if he was going back to Seremban or Kuala Lumpur. [\[note: 28\]](#) However, he could not even say where Jagen lived. Moreover, he described his first encounter with Jagen as one where Jagen had chased the accused to clear his debt with Mohan on Mohan's behalf, and where Jagen said that "Mohan would spread the news and spoil [his] name if [he did] not pay up soon". [\[note: 29\]](#) As for Dinesh's assurance that the drugs were chocolate, the accused had already said that he knew Dinesh was lying and he did not believe Dinesh. [\[note: 30\]](#)

21 The accused claimed that he could not check with his friends working at the checkpoint what exactly the drugs were as none of them was on duty when he drove into Singapore. Since he had delivered drugs on three previous occasions over a span of three months, he had ample opportunity to check what the drugs were. Moreover, he did not mention this anywhere in his police statements, which were otherwise quite detailed. This excerpt from the cross-examination of the accused is particularly telling:

Q: Okay, I want to put it to you that even though you were not entirely in a relationship of trust with these---with Jagen, you were content to rely on Jagen's bare assurances that the drugs you were bringing in were not serious drugs or hardcore drugs.

A: Yes.

Q: I put it to you that that you knew that Dinesh was not trustworthy.

A: Yes.

...

Q: Okay, my final put to you, Mr Siva, you didn't conduct your own checks because you were willing to bring the drugs into Singapore regardless of what drugs they were, you just wanted to earn the 2,500 Ringgit.

A: In a way. [\[note: 311\]](#)

22 This case is not like *Khor Soon Lee*, where the appellant was in a relationship of trust with the person who had passed him the drugs and where he had actually satisfied himself that the drugs he was handling did not involve the death penalty. Furthermore, the appellant had been prejudiced by the fact that Tony, who would have been a significant defence witness, was not available to testify. In fact, the Court of Appeal warned at [29] that the facts were unusual and should not set a precedent for future cases. On the present facts, a reasonable person in the accused's shoes would not only have had great suspicions about the true nature of the drugs that Jagen and Dinesh had handed over but would also have inquired further to determine the true nature of those drugs. In my view, the accused, not having done so, turned a blind eye to these suspicions. Accordingly, I found that he failed to rebut the presumption of knowledge.

Whether the defence of duress applied

23 Although the defence made no arguments on duress in closing submissions, I will mention it briefly. To establish duress under s 94 of the Penal Code (Cap 224, 2008 Rev Ed), the accused must prove on a balance of probabilities that the threats made to him were "imminent, persistent and extreme", that such threats *could* and *did* impress upon him a reasonable apprehension that "instant death" would otherwise be the consequence of his failure to commit the crime and that he had no reasonable opportunity to escape from or neutralise the threat (*Public Prosecutor v Nagaenthran a/l K Dharmalingam* [2011] 2 SLR 830 at [\[17\]](#) and [\[28\]](#) per Chan Seng Onn J).

24 On the facts, I saw no duress. Although the accused had, in his police statements and oral testimony, suggested that there was a threat to his well-being, he could not state any specific threats. Instead, he could only say that he "felt [that he] was being forced" as the "drug bosses" knew where he was staying. The accused was also in control of his situation—on the day of his arrest, he drove into Singapore, slept in his Prime Mover, repacked the drugs, went about his daily work and even dictated the time at which he would pass the drugs to other persons. He could have, for example, escaped or contacted the police for help at any time. If duress had been raised during the trial, I would have rejected it.

25 As the accused has not rebutted the presumptions on a balance of probabilities, I convicted him accordingly.

The sentence

26 The Public Prosecutor certified that the accused had substantively assisted the CNB. I also found, on a balance of probabilities, that the accused was a mere courier in that his involvement in the offence was restricted to transporting and delivering the drugs (s 33B(2)(a)). Having satisfied both limbs of s 33B(2) of the MDA, the accused could be sentenced under s 33B(1)(a) of the MDA

which provides that the court may, instead of imposing the death penalty, sentence the accused to imprisonment for life and, if the accused is sentenced to life imprisonment, the court shall also sentence him to caning of not less than 15 strokes.

27 No facts were given and no submissions were made to justify the imposition of the ultimate punishment of the death penalty on the accused. The accused was born on 14 September 1968 and is now 46 years old. He therefore does not fall within s 325(1)(b) of the CPC which provides that men who are more than 50 years of age (at the time of infliction of the caning) shall not be punished with caning. The only submission on sentence made by his counsel after the conviction was that the minimum number of strokes should be imposed as the accused was already 46 years old. Accordingly, I sentenced him to life imprisonment (to commence from 22 April 2013, his date of arrest) and 15 strokes of the cane, the minimum sentence provided by law.

28 On 26 February 2015, the accused filed a notice of appeal against his sentence only, on the ground that "the sentence is unreasonable and manifestly excessive". As indicated earlier, the accused was sentenced to the minimum imprisonment and caning provided by law and his life imprisonment term was backdated to the date of his arrest. It is therefore unclear upon what grounds he is asserting that the sentence imposed is unreasonable or excessive.

[\[note: 1\]](#) NE, Day 5, p 22:8–14.

[\[note: 2\]](#) AB 247 AB 252–253 (Statement of SSI Ng Tze Chiang Tony).

[\[note: 3\]](#) AB 247–249 (Statement of Insp Sea Hoon Cheng).

[\[note: 4\]](#) AB, 287–288 (Statement of SI Larry Tay).

[\[note: 5\]](#) AB 249 (Statement of Insp Sea Hoon Cheng).

[\[note: 6\]](#) AB 59–60 (P5—HSA Certificate for AM-A1A1); AB 284 (Statement of SSgt Muhammad Fardlie); AB 303–304 (Statement of ASP Edmund Lim); AB 315 (Statement of W/Insp Yang Rongluan).

[\[note: 7\]](#) NE, Day 4, pp 5–7 (EIC of DW2).

[\[note: 8\]](#) AB 253 and 256–264 (Statement of SSI Ng Tze Chiang Tony).

[\[note: 9\]](#) AB 277 (Statement of SSSgt Jason Tay); AB 314 (Statement of W/Insp Yang Rongluan).

[\[note: 10\]](#) AB 54–58 (P2–P4—HSA Certificates for A1A, A1B and A1C).

[\[note: 11\]](#) AB 330, 334, 338, 345, 352, 357, 362 and 406 (P45–P52—Statements of the accused).

[\[note: 12\]](#) AB 358 at para 83; AB 360 at para 92 (P50—4th s 22 statement of the accused).

[\[note: 13\]](#) AB 340 at para 8 (P48—2nd s 22 statement of the accused); AB 358 at para 83 (P50—4th s 22 statement of the accused).

[\[note: 14\]](#) AB 357–358 at paras 77–82 (P50—4th s 22 statement of the accused).

[\[note: 15\]](#) AB 358 at para 83; AB 360 at para 92 (P50—4th s 22 statement of the accused).

[\[note: 16\]](#) AB 360 at paras 93–94 (P50—4th s 22 statement of the accused).

[\[note: 17\]](#) AB 359 at para 85 (P50—4th s 22 statement of the accused).

[\[note: 18\]](#) AB 359 at para 86 (P50—4th s 22 statement of the accused).

[\[note: 19\]](#) AB 339–341 at paras 4–10 (P47—1st s 22 statement of the accused).

[\[note: 20\]](#) AB 358 at para 81 (P50—4th s 22 statement of the accused).

[\[note: 21\]](#) AB 340 at para 7 (P47—1st s 22 statement of the accused).

[\[note: 22\]](#) NE, Day 3, pp 89:29–94:7 (XX of DW1).

[\[note: 23\]](#) AB 341–342 at paras 13–14 (P47—1st s 22 statement of the accused).

[\[note: 24\]](#) AB 333 (P45—Section 23 statement of the accused for the 1st charge).

[\[note: 25\]](#) AB 404 at para 122 (P52—6th s 22 statement of the accused).

[\[note: 26\]](#) NE, Day 3, p 115:10–15 and p 138:8:14 (XX of DW1); AB 405 at para 126 (P52—6th s 22 statement of the accused).

[\[note: 27\]](#) NE, Day 3, pp 135:29–136:11 (XX of DW1).

[\[note: 28\]](#) NE, Day 3, p 133:3–135:3 (XX of DW1); AB 358 at para 81 (P50—4th s 22 statement of the accused).

[\[note: 29\]](#) AB 357–358 at para 78 (P50—4th s 22 statement of the accused)

[\[note: 30\]](#) AB 339–341 at para 9 (P47—1st s 22 statement of the accused).

[\[note: 31\]](#) NE, Day 3, pp 144:18–145:26 and p 138:8:14 (XX of DW1);