

Public Prosecutor v Zaini bin Mohamed Noor
[2016] SGHC 123

Case Number : Criminal Case No 23 of 2015
Decision Date : 04 July 2016
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Han Ming Kuang and Tan Yanying (Attorney-General's Chambers) for prosecution; Ramesh Chandr Tiwary (Ramesh Tiwary) and Jason Peter Dendroff (JP Dendroff & Co) for accused.
Parties : Public Prosecutor — Zaini bin Mohamed Noor

Criminal Law – Statutory offences – Misuse of Drugs Act – Illegally importing controlled drugs

4 July 2016

Judgment reserved

Choo Han Teck J:

1 The accused, Zaini bin Mohamed Noor (“Zaini”), a 53-year-old Singaporean, is tried for a charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) for illegally importing not less than 771.1g of methamphetamine into Singapore. It is not disputed that on 27 October 2011, Zaini drove a green “Proton Gen 2” motorcar bearing the registration number SGS 961T (“the car”) from Singapore to Johor Bahru and back. On his way back to Singapore at around 2.15pm, he was stopped at the Woodlands Checkpoint by officers from the Central Narcotics Bureau (“CNB”). The officers found, concealed below the radio compartment of the car, four packets wrapped in black tape. Each of the four packets contained crystalline substances. Forensic laboratory analysis established that the four packets cumulatively contained not less than 771.1g of methamphetamine.

2 In making out the charge against Zaini, the issues before this court are whether Zaini knew that the packets were hidden in the car, and knew that the packets contained methamphetamine. As Zaini was the person who was driving the car when the packets were found in it, he is presumed under s 21 of the MDA to be in possession of the methamphetamine. Further, by s 18(2) of the MDA, he is presumed to have known the nature of the drugs in his possession (*ie* that the drugs in his possession was methamphetamine). The onus is on him to rebut both presumptions on a balance of probabilities.

3 Zaini claims that he did not know anything about the hidden packets, much less that they contained methamphetamine. In his statements to the CNB recorded between 27 October 2011 and 23 May 2012, he said that an unknown male had instructed him to drive the car from Singapore to Johor Bahru for servicing, and then drive it back to Singapore afterwards. Zaini was first tried before me between March and April 2015, but the hearing was adjourned before the close of the Prosecution’s case because defence counsel said that they have new information and the authorities needed more time to carry out further investigations. It transpired that Zaini had given a fresh statement to the CNB on 20 March 2015, just one week before the commencement of this trial on 31 March 2015. In that statement, Zaini said that it was one Haroun who had instructed him to drive the car from Singapore to Johor Bahru and back. As it turned out, one Jamalludin (“Jama”) also decided at around the same time to come forward as a witness for the Defence.

4 When the hearing resumed I called on Zaini to enter upon his defence. Zaini elected to testify. He says that he was looking to earn extra cash when his nephew Amin introduced him to a friend, Haroun. Haroun is the registered owner of the green "Proton Gen 2" motorcar bearing the registration number SGS 961T, that is, the car that Zaini was driving on 27 October 2011 and from which the methamphetamine was recovered. Zaini says that Haroun wanted him to drive the car from Singapore to the "Extra Shopping Centre" at Johor Bahru. Zaini was to park the car beside the shopping centre, and thereafter leave the car unattended for about 30 to 45 minutes, while leaving the car doors unlocked and the car key exposed inside the car. Haroun told him that someone will service the car during the 30 to 45 minutes, and that Zaini was to return to the car after this period and to drive the car back to Singapore. Zaini maintains that Haroun never told him that drugs would be placed inside the car. He agreed to help Haroun because Haroun offered to pay him \$100 for the job and he felt that it was an easy way to earn money. The trip on 27 October 2011 was in fact the second trip that he made on behalf of Haroun; Zaini had made an earlier trip to Johor Bahru and back in the same car on 23 September 2011 on the same instructions. Zaini says that he duly carried out Haroun's instructions because he did not suspect that there were any illegal business involved and also because he was afraid that he might lose the job if he had asked questions. In his earlier statements recorded between 27 October 2011 and 23 September 2011, he told the CNB officers that he did not know the identity of the person who had instructed him to drive the car to Johor Bahru and back because he was afraid that his nephew, Amin, may be implicated.

5 Amin (PW24), Haroun (PW29), and one Noor Bahri bin Noordin ("AB") (PW28) testified as witnesses for the Prosecution. They say that Zaini had asked to borrow the car and had told them that he wanted to use the car to drive his girlfriend around. Zaini first told Amin that he wanted to borrow a car, and Amin in turn asked his friend AB if he knew anyone who owned a car. AB decided to ask Haroun, and Haroun agreed to do the favour even though he had previously not met Zaini before. On both occasions (*ie* on 23 September 2011 and 27 October 2011), Haroun met up with Zaini to hand over the car, and AB was present but not Amin. Haroun denies that he had ever given Zaini any money to drive the car, and both Amin and AB say that they had never witnessed Haroun giving Zaini any money.

6 To contradict the evidence of Haroun, Amin and AB, the Defence called one Jamalludin ("Jama") (DW2). Jama says that he received a call from Haroun in the evening of 27 October 2011 after Zaini's arrest. Haroun requested to meet Jama urgently, at their regular meeting place at a coffeeshop at Blk 95, Lorong 4, Toa Payoh (the "Blk 95 coffeeshop"). When Jama arrived at the coffeeshop, Haroun was already there. Shortly after, Amin and AB arrived together in a taxi. Haroun paid their taxi fare. In Amin's and AB's presence, Haroun then handed \$3,500 to Jama and asked him to pass the money to Mr Jason Dendroff. It transpired that Jama has been working as the manager at Mr Jason Dendroff's law firm even before 27 October 2011, and is presently still in that appointment. Haroun told Jama that the money was for Mr Dendroff to engage a lawyer "to check on Zaini's statements". Jama told Haroun that he did not think that any lawyer would be able "to check on Zaini's statements", but took the money from Jama nonetheless. In court, he testifies that he did hand the money to Mr Dendroff. He also says that at the Blk 95 coffeeshop on 27 October 2011, he witnessed Haroun instructing Amin and AB that should they be approached by the CNB in connection with Zaini's case, they should all say that it was Zaini who asked to borrow Haroun's car for the purpose of meeting his girlfriend. Haroun also testifies that he subsequently attended another meeting with Haroun, Amin and AB at the Blk 95 coffeeshop on a second occasion. At the time of that meeting, Haroun, Amin and AB had already given their statements to the CNB, and Haroun was "scrutinising" what each had said to the CNB to make sure that their statements were consistent.

7 I find that neither Zaini, nor Haroun, AB, and Amin, have been completely truthful in court. Jama has also not been completely forthright in giving his testimony. Zaini's claim that he was

instructed (whether by Haroun or an unknown individual) to drive the car to Johor Bahru for servicing is incredible. The circumstances were highly suspicious. If the purpose of the trip to Johor Bahru was to get the car serviced, why was Zaini not asked to drive the car to a car serving workshop in Johor Bahru? Instead, he was asked to drive the car to a shopping centre in Johor Bahru. By his own testimony, he was specifically instructed to leave the car unattended by the shopping centre, with the car door unlocked and the car key placed on top of the steering wheel unconcealed. These are instructions that no reasonable car owner would likely give, and yet Zaini maintains that he never questioned the instructions nor found them odd. He says that he went shopping during the 30 to 45 minutes that the car was left unattended. But he also says that when he returned to the car after he had done his shopping, he went around the car to check that it was free from damage. Putting aside the question of why Zaini would be concerned that the car may be damaged if he genuinely believed that the car had just been serviced, the caution exercised by Zaini at that point towards the condition of the car is inconsistent with how he had earlier readily left the car unattended. Further, it seems to me that 30 to 45 minutes is hardly enough time for a car to be serviced. Zaini maintains that that was sufficient time, but he was, by his own evidence, never told which car servicing workshop would be servicing the car, how far that workshop was from Extra Shopping Centre, or the extent of servicing which was to be done to the car. He also did not question why the owner of the car was willing to pay him \$100 for an easy task of driving the car to Johor Bahru for some very quick servicing, or why the car needed servicing again barely a month after he had driven it to Johor Bahru for the same purpose on 23 September 2011. Despite the highly suspicious circumstances, Zaini claims that he truly believed that his task was simply to drive the car to Johor Bahru for servicing and then to drive it back, and that he did not suspect that he was being made used of to facilitate an illegal transaction. I do not believe him. Accordingly, I am of the view that Zaini fails to rebut the presumptions of possession and knowledge under ss 21 and 18(2) of the MDA.

8 As for the evidence from Haroun, Amin and AB, all three deny that they had colluded on what to tell the CNB with respect to their involvement in Zaini's case. They also deny that they had met Jama at the Blk 95 coffeeshop on 27 October 2011, although Amin says that they had met up at a coffeeshop in Toa Payoh on a different day but he could not remember whether it was the coffeeshop at Blk 95. It is not disputed that a receipt for \$3,500 was issued by Mr Dendroff's law firm to Amin, but neither Amin nor Haroun would admit to having provided the money. When lead counsel for Zaini, Mr Tiwary, put to Haroun during cross-examination that Haroun gave \$3,500 to Jama for Jama to engage a lawyer for Zaini, Haroun disagreed and said that it was Amin who had handed the money to Jama. He said that he was present when Amin handed the money to Jama, but then changed his testimony to say that he did not see Amin handing over the money. When Mr Tiwary asked him where it was that Amin had handed the money to Jama, Haroun said that he could not remember but insisted that it was not at the Blk 95 coffeeshop. Amin, on the other hand, told the court that he did not pay the \$3,500 but he signed the receipt because Jama told him to. He said that he did not know who paid the money. He had asked Jama but Jama told him not to worry about it. During re-examination, when Mr Han pointed Amin to a statement recorded from him by the CNB on 25 July 2015 in which Amin said that Haroun had made the first payment for Zaini's lawyer's fees, Amin informed the court that he was referring to "a different payment" in that statement, where Haroun paid \$5,000 and not \$3,500. Haroun was working as a lorry attendant at the time of Zaini's arrest. By his own evidence, Haroun did not know Zaini well and had only met Zaini twice before Zaini was arrested. There is no reason why Haroun would give so much money to engage a lawyer for Zaini who he hardly knows, unless he had an interest in Zaini's case. I accept that the question of whether he had paid \$5,000 towards Zaini's legal fees was not put to Haroun at trial, but having heard the testimonies of Haroun, Amin and AB at trial and observed their demeanour, I am of the view that all three had not been completely truthful in court. There may be many reasons why they had chosen to withhold the truth, and one possible reason may be that put forth by counsel for Zaini, namely that they were each involved in a joint criminal enterprise to traffic drugs. It is nonetheless not a function of this court to

determine whether Haroun, Amin and AB, who are not on trial here, had indeed conspired with each other to traffic drugs.

9 As for Jama, there seem to me little reason why a person like him who was not implicated in the case would choose to come forward to give false evidence against Haroun, Amin and AB. Even so, I do not think that he had been completely honest in giving his testimony. Assuming that Jama had spoken the truth about the meeting on 27 October 2011 at the Blk 95 coffeeshop, this court has not been informed how Jama got to know Haroun, and why Haroun chose to seek help from Jama and not others in engaging a lawyer for Zaini. Further, by his own testimony, Jama ought to have been suspicious about Haroun, Amin and AB since the meeting at the Blk 95 coffeeshop on 27 October 2011. He admits that he had made an anonymous call to the CNB in relation to Zaini's case, although he says that he could not remember what was said in that call and when he made it, when the Prosecution put it to him in cross-examination that the call was made on 7 November 2011 and that Jama had told the CNB then that Haroun was the one behind the drugs found in the car. Jama further admits that he was present at Zaini's committal hearing on 7 January 2014. All this while, he has also been working at Mr Dendroff's law firm. He says that he had passed the \$3,500 from Haroun to Mr Dendroff in 2011. It would be surprising if he did not disclose his suspicion about Haroun, Amin and AB to Mr Dendroff then. Mr Dendroff continues to act for Zaini in the present trial before me. There seems to me no reason why Jama waited till April 2015 to come forward as a witness for Zaini. He provides no reason, except to say that his "conscience was pricking him". In the circumstances, I agree with the Prosecution that Jama's evidence should be treated with caution. Jama's behaviour is remarkable, but it is not known how much of it he disclosed to Mr Dendroff who is not only his employer but also Zaini's counsel at all material times. A fuller explanation would have been helpful to the court. And lawyers in Mr Dendroff's position ought to determine the facts more fully.

10 Although the evidence of Haroun, Amin, AB and Jama are not satisfactory, they do not affect my finding that Zaini has failed to rebut the presumptions of possession and knowledge under ss 21 and 18(2) of the MDA. Even if I am to accept Zaini's account that it was Haroun who had given instructions for him to drive the car to Johor Bahru for servicing and then back to Singapore, that account is, for the reasons set out in [7] above, incredible. It is equally incredible whether it was Haroun, or someone else, who had given those instructions.

11 For the reasons above, I am satisfied that the Prosecution has proved the charge against Zaini beyond a reasonable doubt. I find Zaini guilty as charged, and convict him accordingly. As the Prosecution adduced no evidence which shows that Zaini, in committing the offence, did anything more than the activities listed in s 33B(2)(a) of the MDA, namely transporting, sending or delivering drugs and/or offering to transport, send or deliver drugs and/or doing or offering to do any act preparatory to or for the purpose of transporting, I am satisfied that Zaini was acting no more than as a courier.