

Public Prosecutor v Kisshahllini a/p Paramesvaran
[2016] SGHC 57

Case Number : Criminal Case No 18 of 2016
Decision Date : 07 April 2016
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Isaac Tan and Yvonne Poon (Attorney-General's Chambers) for the prosecution;
Amarick Gill (Amarick Gill LLC) for the accused.
Parties : PUBLIC PROSECUTOR — KISSHAHLLINI A/P PARAMESUVARAN

Criminal Law – Statutory offences – Misuse of Drugs Act

7 April 2016

Tay Yong Kwang J:

1 The accused is a female Malaysian who is now 24 years old. She pleaded guilty to the following charge:

That you, KISSHAHLLINI A/P PARAMESUVARAN,

on 25 January 2014, at about 8.21 p.m. at Woodlands Immigration Checkpoint, Singapore, did import into Singapore a controlled drug listed in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), to wit, two bundles of granular substances weighing not less than 905.7 grams, which were analysed and found to contain not less than 14.99g of diamorphine, concealed inside your underwear, whilst travelling into Singapore inside a motor vehicle bearing Malaysian registration number HJA5277, without authorisation under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) or the Regulations made thereunder, and you have thereby committed an offence under Section 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and punishable under Section 33(1) of the said Act.

2 The punishment prescribed by s 33(1) read with the Second Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") is a minimum of 20 years' imprisonment and 15 strokes of the cane and a maximum of 30 years' imprisonment or life imprisonment and 15 strokes of the cane.

3 Taking into consideration the fact that the accused is female and therefore not liable to caning as provided in s 325(1)(a) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), I sentenced her to 22 years' imprisonment with effect from the date of her arrest (25 January 2014). This included the maximum 12 months' imprisonment that I imposed *in lieu* of the caning pursuant to s 325(2) of the CPC.

The Statement of Facts

4 The accused admitted all the facts set out in the following statement of facts:

a) The Accused

1. The accused is Kisshahllini A/P Parameswaran, female/ 24 years old/ Malaysian (D.O.B.: 15 Feb 1992), bearing FIN GXXXXXXX and holder of Malaysian Passport No. AXXXXXXX. She resided at No. 15 Jalan Gunung 7, Bandar Seri Alam, 81750, Masai, Johor prior to her arrest and was unemployed.

b) Background

2. On 25 January 2014 at about 6.30pm, the accused boarded a Malaysia-registered taxi bearing registration number HJA5277 from the taxi stand located at Jalan Trus in Johor Bahru to travel to Rochor Centre taxi stand in Singapore. She shared the taxi with another male Chinese individual, one Seah Yu Xuan. At this point, the taxi driver, one Mohd Yusoff Bin Hussein, noted that the accused was walking awkwardly with her legs wide open and rather slowly and uncomfortably when she boarded the taxi.

3. Mohd Yusoff began driving his taxi to Singapore at about 6.45pm. At about 8.06pm, when the trio arrived at Singapore Woodlands Checkpoint for immigration clearance at Immigration counter 37, a notification alert was triggered upon screening of the accused's passport. As such, the accused was escorted to the Immigration Checkpoints Authority ("ICA") Arrival Car Secondary Team ("ST") Office for further screening. ICA personnel noted that the accused was walking with an abnormal gait.

4. The accused was informed that, as part of routine checks, a physical search would be conducted upon her by two female ICA officers. The accused was uncomfortable and anxious and repeatedly asked why she had to be searched. At about 8.20pm, after ICA personnel had explained to the accused once again that this was normal procedure and instructed her to remove her clothing for the search, the accused removed her jeans. The ICA officers conducting the search then noted that there was an object protruding from the crotch area of the accused's purple underwear.

5. The accused was asked to take out the item, whereupon she removed two bundles wrapped in newspaper from the crotch panel of her underwear. The two newspaper bundles were placed in a ziplock bag. When questioned, the accused indicated that she was supposed to give these bundles to someone in Singapore, who would have contacted her subsequently.

6. At about 8.59pm, in the Central Narcotics Bureau ("CNB") Woodlands Team ("WT") office and in the presence of the accused and ICA officers, the two newspaper bundles were weighed by CNB personnel and determined to be of 479.5g and 478.6g in gross weight respectively. The two bundles were then unwrapped to reveal two packets of a brownish granular substance believed to be heroin. The two packets were marked A1A and A2A respectively and placed in a tamper-proof bag.

7. Further investigations were then carried out upon the accused and the taxi HJA5277. From about 2.40am to 3.10am on 26 January 2014, the case exhibits were labeled and photographed in the presence of the accused (photographs attached at Tab A). The accused was then escorted to CNB Headquarters, where the exhibits were weighed in her presence from 4.10am to 4.12am. The exhibits were then sealed and submitted to the Health Sciences Authority ("HSA") for analysis on 27 January 2014.

8. On 29 April 2014, Lim Hui Jia Stephanie, an analyst with the Illicit Drugs Division of the HSA, having conduct of the two exhibits marked as A1A and A2A, prepared two certificates

under s 16 of the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed.) ("MDA") (attached at Tab B).

(a) In certificate bearing Lab No. ID-1432-00151-001, it was stated that A1A was found to be one packet containing not less than 453.1g of granular/powdery substance which was pulverised and homogenized into a powdery substance. The powdery substance was analysed and found to contain not less than 6.61g of diamorphine.

(b) In certificate bearing Lab No. ID-1432-00151-002, it was stated that exhibit A2A was found to be one packet containing not less than 452.6g of granular/powdery substance which was pulverised and homogenized into a powdery substance. The powdery substance was analysed and found to contain not less than 1 1.42g of diamorphine.

9. As such, exhibits A1A and A2A were found, collectively, to be not less than 905.7g of granular/powdery substance which contained not less than 18.03g of diamorphine.

10. Diamorphine is a Class A Controlled Drug listed in the First Schedule to the MDA. The accused is not authorized under the MDA or the Regulations made thereunder to import diamorphine.

11. Further investigations revealed that, on 25 January 2014, the accused had been asked by a male Malaysian individual known to her as "John" to meet an unknown male Indian at Danga Bay in Malaysia to pick up an item to bring into Singapore. The accused understood that the item was illegal; "John" had previously asked her to bring drugs into Singapore before, though the accused had allegedly declined his request then. Upon meeting the unknown male Indian, the accused received a pink plastic bag containing two newspaper-wrapped bundles that were later established to contain exhibits A1A and A2A. John told the accused to conceal the two bundles within her underwear and the accused did so accordingly within a public restroom in Kotaraya in Malaysia. The accused was suspicious as to the contents of the two bundles. Despite having sufficient time and opportunity to check what was in the bundles, the accused did not do so. She proceeded to take a taxi into Singapore, where she was stopped and detained at Woodlands Checkpoint Immigration.

12. Under s 18(2) of the MDA, as the diamorphine was found in the accused's possession, the accused is presumed to have known the nature of the controlled drug in the absence of proof to the contrary.

13. As such, the accused has committed an offence of importation of not less than 14.99g of diamorphine, a Class A Controlled Drug, under s 7 of the MDA, punishable under the Second Schedule with a maximum of 30 years' imprisonment or imprisonment for life and a minimum of 20 years' imprisonment.

14. She is accordingly charged.

[Tabs A and B are not reproduced here.]

The accused's antecedents

5 The accused did not have any known antecedents.

The Prosecution's submissions on sentence

6 The Prosecution submitted that the accused should be sentenced to at least 22 years of imprisonment. The cases of *PP v Balakrishnan A/L Sannasy*, Criminal Case No. 30 of 2007 (19 November 2007, unreported) ("*Balakrishnan*"), *PP v Sng Choong Peng*, Criminal Case No. 1 of 2009 (9 January 2009, unreported) ("*Sng Choong Peng*"), *PP v Kesavan A/L K Tayabalan*, Criminal Case No. 9 of 2013 (26 June 2013, unreported) and *PP v Nares Kumar A/L Segaran*, Criminal Case No. 23 of 2012 (7 September 2012, unreported) were cited in support of the sentence. Notably, the accused persons in these cases similarly had no criminal record, had pleaded guilty and the sole or the most significant charge involved the importation or the trafficking of diamorphine, the amount of which was reduced to just below the level attracting the death penalty.

7 The Prosecution further submitted that the quantity of drugs imported by the accused was a significant factor. The Prosecution argued that there was a discernible trend of higher sentences being meted out to offenders who exceeded the 14.99g limit by a greater amount. In *Sng Choong Peng*, a sentence of 22 years' imprisonment and 15 strokes of the cane was imposed where the actual quantity of diamorphine involved was 17.70g. In *Balakrishnan*, a sentence of 24 years' imprisonment and 15 strokes of the cane was imposed where the accused had trafficked in 28.28g of diamorphine. In both these cases, the Prosecution proceeded on the charge of possession for the purposes of trafficking in not less than 14.99g of diamorphine. The Prosecution submitted that such a trend corresponded to the magnitude of harm that could be occasioned by the drug. Given that the accused in the present case had imported 18.03g of diamorphine, it was argued that her culpability fell somewhere on the scale between *Sng Choong Peng* and *Balakrishnan*, therefore warranting the imposition of at least 22 years of imprisonment.

8 The Prosecution also noted that pursuant to s 325(1) of the CPC, the accused, being female, could not be subject to caning. However, s 325(2) of the CPC gives the court the discretion to order, *in lieu* of caning, an additional term of imprisonment of up to 12 months. For instance, in *PP v Yap Siew Luan* [2002] SGHC 93 ("*Yap Siew Luan*"), a case decided before the introduction of s 325(2) of the CPC, the court added two years to the female offender's imprisonment term for importing not less than 249.99g of methamphetamine because she was not liable to be punished with the mandatory 15 strokes of the cane.

9 Taking into account the need to deter future cases of drug importation, the Prosecution submitted that a total sentence of at least 22 years of imprisonment would be appropriate.

The mitigation plea

10 The Defence submitted that a term of 20 years' imprisonment, which is the minimum prescribed by law, would suffice. The Defence also submitted that court should not exercise its discretion under s 325(2) of the CPC to impose a term of imprisonment *in lieu* of caning. In support of its position, the Defence cited the cases of *PP v Lim Bee Hoon and another* [2015] SGHC 45 and *PP v Masoud Rahimi bin Mehrzad and another* [2015] SGHC 288. In these cases, the minimum imprisonment term of 20 years was imposed for the principal offence of trafficking in not less than 14.99g of diamorphine.

11 The following points in mitigation were also raised:

- (a) The accused pleaded guilty and had no criminal record.
- (b) The accused rendered her fullest cooperation to the investigation officers, giving the full particulars of Jeremiah and John who were the ones who instructed her to collect the parcel. She also gave the registration number of the black car which she believed was following the taxi that

she was in along the way to the Woodlands Checkpoint. Her mobile phone was also used by the investigation officers in their attempts to track down further suspects.

(c) The accused was a mere courier. She did not pack nor consume the drugs. Her urine specimen was tested negative for drug consumption.

(d) The accused is of a young age and committed the offence when she was only 22 years old. She had foolishly trusted Jeremiah and John and followed their instructions to carry the bundles from Malaysia to Singapore. The minimum term of 20 years is a significant and gruelling term.

The Court's decision

12 Although the MDA gives the court the discretion to impose life imprisonment in the present case, I was of the view that the imposition of the maximum sentence would not be appropriate. The accused has pleaded guilty to the offence and has no criminal record. There were no aggravating factors that justified the imposition of the maximum sentence.

13 The accused has admitted to importing 18.03g of diamorphine. The Prosecution exercised its discretion to proceed on a non-capital charge, which is that of the unauthorised importation of not less than 10g but not more than 15g of diamorphine. Both parties agreed that the total amount of diamorphine that was actually imported was relevant to the sentence. Given that the actual amount of diamorphine that the accused admitted to importing exceeded 15g, I disagreed with the Defence that the minimum sentence of 20 years' imprisonment would be adequate.

14 The accused was of a relatively young age of at the time of the offence (which was less than a month before she turned 22). She made the decision to import drugs into Singapore in exchange for money although she did not participate in the packing of the drugs and was a mere courier.

15 In my view, an additional 12 months of imprisonment should be imposed *in lieu* of caning in this case. In the ordinary case, pursuant to s 33(1) of the MDA read with the Second Schedule of the said Act, a person convicted for the unauthorised importation of not less than 10g but not more than 15g of diamorphine would be given the mandatory 15 strokes of the cane. However, because the accused is female, she was not liable for caning (as per s 325(1) of the CPC). In *Yap Siew Luan*, I imposed an additional two years of imprisonment on the accused person but that case must now be read subject to s 325(2) of the CPC which states that the maximum imprisonment term that may be imposed *in lieu* of caning is 12 months.

16 In respect of the present charge, the MDA prescribes a mandatory sentence of 15 strokes of the cane. That being the case, the court should consider imposing an additional imprisonment term in respect of offenders who are exempted from caning unless there are special circumstances that justify doing otherwise. The purpose is to deter individuals, to whom this exemption applies, from importing or trafficking in drugs. Anecdotal evidence suggests that caning is regarded by would-be offenders as one of the most dreaded forms of punishments. The mandatory number of strokes for the present offence is 15, which is significantly high considering that the maximum number of strokes that can be inflicted on an offender at any one time is 24. Given the severity of the mandatory punishment of 15 strokes of the cane which this offence attracts, the maximum of 12 months' imprisonment should be added if the accused person is exempted from caning. In this case, no special circumstances exist to justify otherwise. This approach must be taken so that such exempted accused persons have less incentive to be involved in the movement of drugs.

17 For the above reasons, I sentenced the accused to 22 years' imprisonment, which included the additional 12 months' imprisonment under s 325(2) of the CPC. The imprisonment would take effect from the date of her arrest (25 January 2014).

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