

Public Prosecutor v Shanmuga Nathan Balakrishnan
[2016] SGHC 95

Case Number : Criminal Case No 39 of 2014
Decision Date : 16 May 2016
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Eugene Lee, Goh Yi Ling and Lim Shin Hui (Attorney-General's Chambers) for prosecution; Eugene Thuraisingam and Jerrie Tan (Eugene Thuraisingam LLP) for accused.
Parties : Public Prosecutor — Shanmuga Nathan Balakrishnan

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

16 May 2016

Judgment reserved

Choo Han Teck J:

1 The accused faces a charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) for illegally importing not less than 67.49g of diamorphine into Singapore. The prosecution’s case leading to his arrest is largely unchallenged. The essential facts as established by the prosecution witnesses are that the accused rode a Malaysian registered motorcycle (licence plate number JLT 6428) (“the motorcycle”) with his wife Zainab as pillion from Johor to Singapore on 28 November 2012. They arrived at the Woodlands Checkpoint at about 8.39pm, where they were stopped by officers of the Immigration and Checkpoints Authority (“ICA”) and referred to officers of the Central Narcotics Bureau (“CNB”).

2 The motorcycle was searched. It had a modified fuel tank. A hidden compartment was created in that tank, which could only hold less than half the quantity of petrol in an unmodified tank. The design was clever and anyone looking at the motorcycle might not have detected the change without careful observation. Sgt Suffian of the CNB testified that when he lifted the motorcycle onto a stand for a search, he felt that it was lighter than it should be because the fuel gauge showed that the motorcycle had a full tank. Furthermore, he noticed some new screws and a spanner in the tool kit below the seat of the motorcycle. He removed a screw and pried open the fuel tank. He then saw a plastic packet in the tank and raised the alarm to have the accused and Zainab arrested. In total, the CNB found 11 bundles of diamorphine with a gross weight of 2,695.4g (and a nett weight of 67.49g) hidden in the modified fuel tank of the motorcycle.

3 Mr Thuraisingam, counsel for the accused, did not challenge these facts, although he did make a point at trial that it was not possible to know that the fuel tank had been tampered with just by comparing the fuel gauge and the weight of the motorcycle and that it was not unusual for the fuel gauge of a motorcycle to be faulty.

4 As there is no dispute that the accused was riding the motorcycle, he is presumed under s 21 of the MDA to be in possession of the diamorphine. By s 18(2) of the MDA, the accused is further presumed to have known the nature of the drugs in his possession (ie that the drugs in his possession was diamorphine).

5 The defence sought to rebut the presumptions by proving that the accused did not know that the fuel tank contained the drugs in question, and that he did not know that the drugs were diamorphine. The defence's case is that the accused came into Singapore on that motorcycle which he had borrowed from his friend Selvam. He came to Singapore for two purposes. First, he was looking for a job in Singapore and wanted to buy local newspapers to look for advertisements of job offers. Secondly, he brought Zainab as pillion because she wanted to check whether her former employer had credited her salary into her bank account in Singapore using the Automated Teller Machines ("ATM") here. The background to this is that the accused was working as a cleaner in the Tan Tock Seng Hospital from 20 March 2012 to 6 July 2012. Zainab also worked as a cleaner in the same hospital. She started working there on 14 March 2012 and left on 29 September 2012 when she terminated her employment prematurely by being absent without notice. Their immediate employer was a company called ISS Facilities Service Pte Ltd ("ISS") which had a service contract with the Tan Tock Seng Hospital. The travel records show that the accused had travelled to Singapore on 34 separate occasions in a two-month period between 1 October and 30 November 2012, and that Zainab had travelled together with him on more than 20 of these occasions. The accused maintains that he and his wife had travelled to Singapore for the same two purposes on each of these occasions.

6 I am not at all persuaded by the defence's case. First, I find it difficult to accept the accused's claim that he came to Singapore to buy newspapers. The accused told the court during cross-examination that he bought "The Straits Times" in Singapore, but the defence offered no evidence that he could not get the same newspaper in Malaysia. Furthermore, the records show that he had mostly travelled during peak periods on the 34 occasions that he had come to Singapore in October and November 2012. At trial, the accused suggested that he could only enter Singapore during peak periods as he was working part-time in Malaysia from 8.30am to between 3.00pm and 5.00pm daily. This is inconsistent with his statements to the CNB, where he not only did not mention that he was employed in a part-time job in Malaysia but in fact said that he had been "unemployed and was looking around in Singapore for jobs". I accept the prosecution's submission that the accused had no legitimate explanation for why he had chosen to travel in and out of Singapore during peak hours. His claim to have a part-time job in Malaysia was an afterthought, and he had probably chosen to travel during peak hours amidst heavy traffic to avoid detection.

7 As for the accused's claim that he and his wife had come to Singapore to check her bank account, the prosecution's evidence from ISS was that no outstanding salary was due to Zainab. On the contrary, the representative from the company testified that Zainab owed the company money for having left employment without notice. Furthermore, during her period of employment with ISS, Zainab was paid her salary by cash or cash cheque and never by crediting money into her bank account. I accept that there is evidence that Zainab had used the ATM to check her account balance, but the reason for doing so could not be what the accused told the court. She might have checked her bank account when she was here, but that is not the same as saying that she came here because she wanted to check her bank account. If she really wanted to know whether her employer had paid her she could have called them. When she used the ATM to check her account balance and found that no money had been credited the first time, she would reasonably have called them. Yet, according to the representative from ISS, not once had Zainab called the company to enquire about her salary. The accused does not dispute that Zainab had never made any enquiry with ISS on outstanding pay. Instead, his account is that instead of making a call or one trip down to ISS to make the enquiry, the couple had preferred to travel from Johor to Singapore on multiple occasions for Zainab to use the ATM at Woodlands to check her bank account, notwithstanding that on each occasion, she had found that the money had not been credited. I find this account illogical.

8 That brings us to the question of Zainab's absence at trial and the defence's application for her statements to the CNB to be admitted as hearsay evidence under s 32(1)(j)(ii) and s 32(1)(j)(iii) as

well as s 32(3) of the Evidence Act (Cap 97, 1997 Rev Ed). These provisions are set out below for convenience:

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

32.—(1) Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise), are themselves relevant facts in the following cases:

...

(j) when the statement is made by a person in respect of whom it is shown —

(i) ...

(ii) that despite reasonable efforts to locate him, he cannot be found whether within or outside Singapore;

(iii) that he is outside Singapore and it is not practicable to secure his attendance;

...

...

(3) A statement which is otherwise relevant under subsection (1) shall not be relevant if the court is of the view that it would not be in the interests of justice to treat it as relevant.

9 There is no question that both the defence and the prosecution had been unable to find Zainab who had returned to Malaysia after she was released without being charged. The accused's brother Jeganath gave evidence that when Zainab returned to Malaysia, she stayed with the accused's parents for a brief period. Thereafter, she left. Jeganath tried to contact her at her mobile number on several occasions but was unable to get through to her. He also contacted Zainab's sister, but she informed him that Zainab had told her own family that she would not be returning home and the family was unaware of her whereabouts. The defence further sought help from the prosecution to locate Zainab. The Prosecution sent a registered mail to Zainab's official address but there was no response. The CNB contacted its counterpart in Malaysia but even with that assistance Zainab could not be found. I accept that reasonable efforts had been made to locate Zainab and allowed her statements to be admitted pursuant to s 32(1)(j) of the Evidence Act, but for the reasons below, I am of the view that her statements were of insufficient weight to assist the defence.

10 Counsel for the accused submitted on the law at length as to the admissibility of Zainab's statements as well as the efforts made to find her, but he made no reference to those statements except to say, generally, that her statements corroborated the evidence of the accused. I find nothing in her statements assisted the accused except that she too had said that she had come to Singapore with him for the purpose of checking her bank account. I am not persuaded that this was the true purpose of their trips here. It is also conspicuous that in all of her statements to the CNB, Zainab made no mention that she had travelled with the accused to Singapore because the accused wanted to buy newspapers. This is inconsistent with the accused's testimony at trial. During cross-examination at trial, when it was pointed out to the accused that it was not logical for them to come to Singapore on multiple occasions just to check Zainab's bank account for expected deposits that

were never made, the accused said that the "main reason" why he had come to Singapore in October 2012 was to buy newspapers and that he and his wife would check the bank account only "sometimes".

11 Finally, the evidence from the defence concerning how the accused came to Singapore on that motorcycle on 28 November 2012 is too implausible to be true. The accused testified that he had borrowed the motorcycle from Selvam on each occasion that he had travelled to Singapore between October and November 2012, as it saved him time to travel using the motorcycle as opposed to taking other forms of transport. On 28 November 2012, he received a phone call from Selvam's brother Raja. Raja asked him if he wanted the motorcycle and the accused said that he informed Raja that he did not require the motorcycle that day. Then, inexplicably, at 5.30pm, Selvam arrived at the accused's house in Johor to hand the motorcycle to him. According to the accused's contemporaneous statement to the CNB dated 28 November 2012, after Selvam handed the motorcycle over to him, Selvam mentioned that he (Selvam) would be coming in to Singapore to settle some matters and asked the accused to meet him at Woodlands where he (Selvam) would then drive the motorcycle "somewhere". Given the accused's own evidence that he had originally not intended to travel to Singapore on 28 November 2012, it is incredible that he would change his mind and make the trip after Selvam expressly told him that he would be taking over the motorcycle when they are in Singapore. This would mean that the accused may not be able to return to Malaysia using the motorcycle but may have to use alternative means of transport – something which he had been trying to avoid. In a subsequent statement dated 4 December 2012 and also at trial, the accused presented a different account. He testified that it was only when he was at the immigration checkpoint that Selvam telephoned him and asked for his motorcycle to be returned to him. In gist, this would have meant that the accused had taken the motorcycle just to clear immigration for Selvam. The accused testified to this equally incredible account solemnly but expressed no surprise at the time or at the trial that he could have been so used by Selvam. It is also the accused's evidence that he did not ask Selvam how he had wanted to use the motorcycle and for how long. He said that it did not strike him to ask Selvam these questions, but this can hardly be the case if the accused had truly borrowed the motorcycle to save time and thus would be concerned to know if he would be able to use the motorcycle for his journey back to Johor. I am unable to accept that the accused's account could possibly be true.

12 I find that neither the story given by the accused nor the accused himself as a narrator of that story is credible. In the circumstances, I find that the accused had not rebutted the presumptions under ss 21 and 18(2) of the Act and I convict him accordingly.