

Public Prosecutor v Shanmugam a/l Applanaidu
[2017] SGHC 101

Case Number : Criminal Case No 12 of 2017
Decision Date : 15 May 2017
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Shahla Iqbal and Star Chen (Attorney-General's Chambers) for the prosecution;
A Revi Shanker s/o K Annamalai (AR Shanker Law Chambers) and Krishna
Ramakrishna Sharma (LDB Law LLP) for the accused.
Parties : Public Prosecutor — Shanmugam A/L Applanaidu

Criminal Law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 23 of 2017 was withdrawn.]

15 May 2017

Judgment reserved.

Choo Han Teck J:

1 The accused, a 20 year-old Malaysian, was arrested on 18 December 2014 at about 7.55pm when he drove his Malaysian registered car JQK 9845 through the Woodlands Checkpoint in Singapore. Immigration officers detained him when they found two blocks of vegetable matter hidden in the engine air filter compartment of the car. The vegetable matter was ascertained to be the cannabis and cannabis mixture that are part of the subject matter of the two charges upon which the accused was jointly charged before me. Two more blocks of cannabis and fragmented vegetable matter were found in the back cushion of the driver's seat and two more in the back cushion of the front passenger seat. The total of six blocks were analysed and found to contain not less than 1,969.3g of cannabis and 3,584.2g of cannabis mixture. These facts are not disputed by the accused. He faces two charges under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act") for importing the said cannabis and cannabis mixture without authorisation.

2 The only two issues are whether the accused was in possession of the drugs and if so, whether he knew the nature of the drugs in his possession (*ie*, cannabis and cannabis mixture). The Prosecution, led by Deputy Public Prosecutor Shahla Iqbal ("Ms Shahla"), relies on the presumptions of possession under s 18(1) and s 21 of the Act to prove its case. It is incontrovertible that s 18(1) applies because the accused was driving the car containing the drugs. Hence, he is presumed to have those drugs in his possession. Section 21 is even more specific when it provides that, "if any drug is found in any vehicle, it shall, until the contrary is proved, be presumed to be in the possession of the owner of the vehicle and of the person in charge of the vehicle".

3 The accused elected to testify after his defence was called. He was the sole witness for his defence. To rebut the presumption, the accused said that he was instructed by one "Siva" to drive the car containing illegal items into Singapore and leave it in a car park at Kranji. He admitted that he knew that illegal items were placed in the engine of his car but said that he did not know what those items were. In his 21 December 2014 statement, he said that these items could be "drugs or cigarettes". At trial, he denied mentioning this and claimed that "illegal items" meant "knife or.. something else" to him. His own counsel, in closing submissions, acknowledges that "illegal items can

be anything ranging from contraband cigarettes, medicines and other forms of drugs which are banned in Singapore". He further claimed that he only knew about the items in the engine but did not know about the existence of the items in the cushions behind the driver and passenger seats. This is contrary to Central Narcotics Bureau ("CNB") officer Muhammad Khairul Bin Khairudin's statement that the accused had told him that there were illegal items in the car, but he was not sure of their exact location. In the accused's contemporaneous statement, he acknowledged that Siva told him that "whatever items inside the car will already be concealed". Even if the accused did not say that he knew that these "illegal items" could be drugs, or did not know precisely where the drugs were concealed, he accepted that these "illegal items" were concealed in the car in various areas, and knowingly agreed to drive that car into Singapore. This is sufficient to find that he has not rebutted the presumption and is in possession of the six bundles of cannabis and cannabis mixture.

4 The second issue is whether the accused knew the nature of the drugs he possessed, *ie*, that it was cannabis and cannabis mixture. As he is unable to rebut the presumption of possession under s 18(1) or s 21 of the Act, he is presumed to know the specific nature of the drug under s 18(2) of the Act. The accused again claims that he did not know that there were drugs inside the car, much less cannabis and cannabis mixture, and had no opportunity to check till the point he was arrested. His defence is therefore a plain denial of knowledge of the exact nature of the illegal items he was carrying. He only tries to support this defence by saying that Siva was constantly following him to make sure that he (the accused) did not stop to check the items, thus giving him no chance to do so.

5 In the cautioned statement, the accused admitted that Siva offered him RM\$800 to deliver "things in the car" to "a couple". He stated that he was told that the couple would drive the car away for a while and then return it to the same place they took it. They would then put some money in the passenger seat. The accused said that he was supposed to bring the money from that couple back to him (Siva). This statement is of little assistance to the Defence. It has snatches of truth, but its significance lies in what it does not say. It does not say that the accused did not know what he was carrying in his car. Neither does it explain why he did not try to find out what those things were.

6 The accused also proved to be an unreliable witness whenever his relationship with Siva was brought up. He tried to distance himself from Siva by claiming that he had met Siva for the first time only two days before his arrest. This proved to be inconsistent with what he told the psychiatrist from the Institute of Mental Health ("IMH"), Dr Rajesh Jacob ("Dr Rajesh"), who has it on his notes and subsequently testified in court that the accused told him that he had met Siva in Perak and again in Johore. The accused retracted in court what he had told Dr Rajesh. Even the forensic evidence from the accused's phone records showed that the accused was in contact with Siva, not from 16 December 2014 as he claimed, but since 11 December 2014. The accused explains this by claiming that his friend "Boy" used his (the accused's) phone to call Siva. This is inconsistent with the fact that "Boy" has his own phone (it is saved as a contact in Siva's phone) and that multiple calls were made to Siva on the accused's phone. There is no explanation for why Boy would have needed to borrow the accused's phone to make more than 20 calls to Siva in the week preceding the accused's arrest.

7 After the accused was arrested, and still at the Woodlands Checkpoint, CNB officers took over custody of the accused and the car. The accused initially denied that Siva and another person known as "Boy" or "Mugen" were involved. He told the officers that the car belonged to his brother. Subsequently, when interviewed by Senior Station Inspector Md Azman Bin Idris, the accused admitted that he was to go to Kranji on Siva's instructions. A Checkpoint Inspector from the Immigration and Checkpoints Authority ("ICA"), R Subramaniam ("CI Subramaniam"), acted as the Tamil interpreter because the accused claimed that he did not understand Malay. The accused was

then instructed to call Siva. The call was made on the accused's phone, which was placed on "speaker mode" so that CI Subramaniam could listen to Siva. CI Subramaniam testified in court that the accused did not answer any of Siva's questions. Finally, when Siva asked whether the accused was arrested, the accused replied that he could not hear Siva and the line was then disconnected. When the accused was instructed to call again, Siva did not pick up the call. CI Subramaniam testified that he could hear Siva clearly. The conclusion I can draw from this was that the accused pretended not to be able to hear Siva's question "got caught, is it?" and thus deliberately tipped him off. This is an incongruous conduct and is inconsistent with someone who claims that he did not know what illegal items he was carrying.

8 The evidence as a whole makes the accused to be an unreliable witness and I do not find his evidence truthful or coherent. Further, the conduct of the accused from the time of his arrest to the testimony he gave in court is incongruent with someone who truly did not know what it was that he had in his possession. The accused is a very young man but he did not strike me as simple and naïve. On the contrary it seems to me that he was perfectly aware of the situation he was in the moment he was detained at the Woodlands Checkpoint. Even in the presence of the ICA and CNB officers, the accused was calm enough to try alerting Siva that he (the accused) had been arrested.

9 The accused also claims that he had only driven the car into Singapore because Siva had threatened to "disturb" his family, and that he was deprived of the opportunity to check the car because he was followed all the way to the Malaysian customs. His story is again contradictory in several respects (eg, whether it was Siva and one Motteh, or Motteh alone, who had followed him). The purported threat was also extremely vague and the accused could not give a consistent account of when the threats had been made to him. In his long statements, he had also admitted that money, and not Siva's threat, was his primary motivation for driving the car into Singapore. Further, he testified in court that he had the opportunity to check the car after he had cleared the Malaysian customs, since Motteh's car had turned back before reaching customs. He had the "thought" to check, but he decided that he would just "give the car, return, take the money and go back to hometown".

10 I am therefore unable to find that he has discharged the presumption under s 18(2) of the Act. The incontrovertible evidence is such that the accused cannot ignore the fact that he might be carrying banned drugs. He had testified to realising that the job for a cleaner in Singapore was a lie, being offered more than his monthly salary for one drive into Singapore, knowing that the items he was carrying was illegal (and failing to give any credible account of what he thought the items were), and having seen similar bundles in Siva's possession before. His evidence shows that the only reason he did not check or enquire (although I do not believe his claim that he had no opportunity to check) what he was carrying, was that he either already knew that it was cannabis or that if he were to check he would have seen that it was cannabis. If he did not check it was only because he did not want to know – or that he already knew.

11 I note for completeness that Dr Rajesh's medical report stated that "on 18th November 2014, 6 packets of cannabis were handed over to the [accused] who went on to hide the packets in the car with the help of his accomplices". The accused had used the word "ganja" to describe what Dr Rajesh translated to be "cannabis". This is strong evidence that the accused was knowingly in possession of the cannabis. The accused denied ever saying that and that Dr Rajesh spoke to him in a "clean Tamil" he did not understand. I find the accused's allegations unconvincing. Dr Rajesh testified that he was fluent in Tamil and had prepared the report based on three interviews with the accused. The purpose of the last interview was specifically to go through the contents of the draft report with the accused. Dr Rajesh had also recorded the accused's personal history accurately, showing that he had no problems communicating with the accused. There is no reason for Dr Rajesh to lie. Nevertheless, given

that the accused has not mentioned anything similar in any of his statements or testimony, and strongly denies having made that statement, I did not rely on Dr Rajesh's medical report in my determination of the accused's guilt.

12 For these reasons I find that the accused was not truthful and that he failed to prove on the balance of probabilities that he did not possess the drugs, and did not know the nature of the drugs in his possession. I therefore find him guilty as charged. I also find that he was only acting as a courier and his role was confined to delivering or transporting the drugs under s 33B(2)(a)(i) of the Act. His role was to drive the car into Singapore and leave it in the Kranji car park, and afterwards to drive the car back to Malaysia with the payment collected.

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